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PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

List of Designated Areas

Section 1914.4 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1914.4 List of designated areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
* * *	* * *	* * *	* * *	* * *	* * *	* * *
California	San Bernardino	Victorville				June 11, 1971.
Florida	Manatee	Anna Maria	I 12 081 0050 02	Department of Community Affairs, State of Florida, 309 Office Plaza, Tallahassee, Fla. 32301. State of Florida Insurance Department, Treasurer's Office, State Capitol, Tallahassee, FL 32304.	City Hall, City of Anna Maria, 10005 Gulf Dr., Anna Maria, FL 33501.	Do.
Do	do	Bradenton Beach.	I 12 081 0345 02	do	City Hall, City of Bradenton Beach, 207 1st St. North, Bradenton Beach, FL 33510.	Do.
Do	do	Holmes Beach	I 12 081 1430 02	do	Office of the City Clerk, City of Holmes Beach, 5901 Marina Dr., Holmes Beach, FL 33510.	Do.
Do	Palm Beach	Tequesta	I 12 099 2982 03 I 12 099 2982 04	do	Office of the Village Manager, Village Hall, 357 Tequesta Dr., Tequesta, FL 33458.	Do.
Georgia	De Kalb	Decatur	I 13 089 1610 03 I 13 089 1610 04	State Planning and Programming Bureau, 270 Washington St. SW., Atlanta, GA 30334. Georgia Insurance Department, State Capitol, Atlanta, GA 30334.	Office of the City Clerk, City of Decatur, Post Office Box 220, Decatur, GA 30030.	Do.
Do	Bibb	City of Macon and Bibb County (except Payne City).				Do.
Missouri	Clay, Jackson, and Platte.	Kansas City				Do.
New Jersey	Ocean	Lavallette Borough.	I 34 029 1630 03 I 34 029 1630 04	New Jersey Department of Environmental Protection, Division of Water Resources, Box 1390, Trenton, NJ 08625. Department of Banking and Insurance, State House Annex, Trenton, N.J. 08625.	Borough Hall, Lavallette, N.J. 08735.	Do.
New Mexico	Dona Ana	Las Cruces	I 35 013 0470 02 through I 35 013 0470 09	State Planning Office, Santa Fe, N. Mex. 87501. State Engineer's Office, Santa Fe, N. Mex. 87501. New Mexico Insurance Department, Post Office Drawer 1269, Santa Fe, NM 87501.	City Hall Planning Department, Post Office Box 760, Las Cruces, NM 88001.	Do.
New York	Suffolk	East Hampton				Do.
Wisconsin	Pierce	Bay City	I 55 093 0350 02 I 55 093 0350 03	Department of Natural Resources, Post Office Box 450, Madison, WI 53701. Wisconsin Insurance Department, 4802 Sheboygan Ave., Madison, WI 53081.	Village Board Meeting Room, Village Hall, Village of Bay City, Bay City, Wis. 54723.	Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969; and designation of Acting Federal Insurance Administrator effective July 22, 1970, 35 F.R. 12360, Aug. 1, 1970)

Issued: June 11, 1971.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.71-8138 Filed 6-10-71;8:45 am]

PART 1915—IDENTIFICATION OF FLOOD-PRONE AREAS

List of Flood Hazard Areas

Section 1915.3 is amended by adding in alphabetical sequence a new entry to the table, which entry reads as follows:

§ 1915.3 List of flood hazard areas.

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of identification of areas which have special flood hazards
* * *	* * * *	* * *	* * *	* * *	* * *	* * *
California	San Bernardino	Victorville				June 11, 1971.
Florida	Manatee	Anna Maria	H 12 081 0050 02	Department of Community Affairs, State of Florida, 309 Office Plaza, Tallahassee, FL 32301. State of Florida Insurance Department, Treasurer's Office, State Capitol, Tallahassee, FL 32304.	City Hall, City of Anna Maria, 10005 Gulf Dr., Anna Maria, FL 33501	July 1, 1970.
Do	do	Bradenton Beach	H 12 081 0345 02	do	City Hall, City of Bradenton Beach, 207 1st St. North, Bradenton Beach, FL 33510.	Do.
Do	do	Holmes Beach	H 12 081 1430 02	do	Office of the City Clerk, City of Holmes Beach, 5901 Marina Dr., Holmes Beach, FL 33510.	July 11, 1970.
Do	Palm Beach	Tequesta	H 12 099 2082 03 H 12 099 2082 04	do	Office of the Village Manager, Village Hall, 357 Tequesta Dr., Tequesta, FL 33458.	Dec. 4, 1970.
Georgia	De Kalb	Decatur	H 13 089 1610 03 H 13 089 1610 04	State Planning and Programming Bureau, 270 Washington St., SW., Atlanta, GA 30334. Georgia Insurance Department, State Capitol, Atlanta, GA 30334.	Office of the City Clerk, City of Decatur, Post Office Box 220, Decatur, GA 30030.	June 17, 1970.
Do	Bibb	City of Macon and Bibb County (except Payne City).				June 11, 1971.
Missouri	Clay, Jackson, and Platte.	Kansas City				Do.
New Jersey	Ocean	Lavallette Borough.	H 34 029 1630 03 H 34 029 1630 04	New Jersey Department of Environmental Protection, Division of Water Resources, Box 1390, Trenton, NJ 08625. Department of Banking and Insurance, State House Annex, Trenton, N.J. 08625.	Borough Hall, Lavallette, N.J. 08735	Sept. 9, 1970.
New Mexico	Dona Ana	Las Cruces	H 35 013 0470 02 through H 35 013 0470 09	State Planning Office, Sante Fe, N. Mex. 87501. State Engineer's Office, Sante Fe, N. Mex. 87501. New Mexico Insurance Department, Post Office Drawer 1269, Sante Fe, NM 87501.	City Hall Planning Department, Post Office Box 760, Las Cruces, NM 88001.	Aug. 7, 1970.
New York	Suffolk	East Hampton				June 11, 1971.
Wisconsin	Pierce	Bay City	H 55 093 0350 02 H 55 093 0350 03	Department of Natural Resources, Post Office Box 450, Madison, WI 53701. Wisconsin Insurance Department, 4802 Sheboygan Ave., Madison, WI 53081.	Village Board Meeting Room, Village Hall, Village of Bay City, Bay City, Wis. 54723.	Aug. 7, 1970.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 F.R. 17804, Nov. 28, 1968), as amended (secs. 408–410, Public Law 91–152, Dec. 24, 1969), 42 U.S.C. 4001–4127; Secretary's delegation of authority to Federal Insurance Administrator, 34 F.R. 2680, Feb. 27, 1969; and designation of Acting Federal Insurance Administrator effective July 22, 1970, 35 F.R. 12360, Aug. 1, 1970)

Issued: June 11, 1971.

CHARLES W. WIECKING,
Acting Federal Insurance Administrator.

[FR Doc.71-8139 Filed 6-10-71;8:45 am]

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Commerce and Department of Justice

1. Section 213.3314 is amended to show that the position of Deputy Assistant Secretary for Tourism is no longer excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER, subparagraph (2) of paragraph (l) of § 213.3314 is revoked.

2. Section 213.3310 is amended to show that the position of Chief, Criminal Section, Internal Security Division, is no longer excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6–11–71), subparagraph (4) of paragraph (p) of § 213.3310 is revoked.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[FR Doc.71-8189 Filed 6-10-71;8:49 am]

PART 213—EXCEPTED SERVICE

Environmental Protection Agency

Section 213.3318 is amended to show that one position of Secretary to the Director, Office of Congressional Affairs, is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6–11–71), paragraph (r) is added to § 213.3318 as set out below.

§ 213.3318 Environmental Protection Agency.

* * * * *

(r) One Secretary to the Director, Office of Congressional Affairs.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[FR Doc.71-8188 Filed 6-10-71;8:49 am]

PART 213—EXCEPTED SERVICE

Occupational Safety and Health Review Commission

Section 213.3344 is added to show that the position of one Confidential Assistant to the Chairman is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6-11-71), § 213.3344 is added as set out below.

§ 213.3344 Occupational Safety and Health Review Commission.

(a) One Confidential Assistant to the Chairman.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[FR Doc.71-8190 Filed 6-10-71;8:50 am]

PART 213—EXCEPTED SERVICE

Selective Service System

Section 213.3346 is amended to show that one position of Private Secretary to the Deputy Director of Selective Service is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (6-11-71), paragraph (d) is added to § 213.3346 as set out below.

§ 213.3346 Selective Service System.

* * * * *

(d) One Private Secretary to the Deputy Director of Selective Service.

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

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

[FR Doc.71-8191 Filed 6-10-71;8:50 am]

Title 7—AGRICULTURE

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

PART 719—RECONSTITUTION OF FARMS, ALLOTMENTS, AND BASES

This part is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), to provide for the constitution and reconstitution of farms for the purposes of farm marketing quota, acreage allotment, feed grain, rural environmental assistance and other programs administered by the State and county ASC committees.

This part is reissued in order to consolidate the existing provisions and nineteen amendments (29 F.R. 13370, 16185; 30 F.R. 3855, 5701, 6511, 6975; 31 F.R. 1236, 3186, 4580, 7030, 13204, 14253, 15019; 32 F.R. 14599; 33 F.R. 9145, 9755, 11811; 34 F.R. 244, 11410; and 35 F.R. 10353) with necessary reorganization of content for clarity, together with the following principal changes:

(1) Land covered by a cropland adjustment or cropland conversion program agreement may be combined with other land if the farm operator agrees to a zero permitted acreage for the commodity under agreement.

(2) An option is provided whereby States may choose not to notify owners of the action taken on a reconstitution request.

(3) The approval of the State committee and concurrence by the Deputy Administrator are required in specified cases of farm reconstitution involving certain types of corporations and family trusts.

(4) The owner-designation method is expanded to cover feed grain bases. In addition, a memorandum of understanding is to be filed by both the buyer and seller where the owner-designation method is to be used. The filing of the memorandum makes unnecessary the current restriction on the use of the owner-designation method only during the first year after the sale of land by an owner. The restriction is therefore eliminated.

Since farms are now being reconstituted for the 1971 programs, it is essential that this part as revised and reissued be made effective as soon as possible. It is hereby found and determined that compliance with the notice, public procedure and 30-day effective date requirements of 5 U.S.C. 553 is impracticable and contrary to the public interest. Accordingly, this part shall become effective upon publication in the FEDERAL REGISTER.

Sec.

719.1 Applicability.
719.2 Definitions.
719.3 Farm constitution.
719.4 Guides for determining the land constituting a farm.
719.5 County committee action to reconstitute a farm.
719.6 Farm corporations and trusts.
719.7 Reconstitution of farm allotments, history acreages, and farm bases.
719.8 Rules for determining allotments and bases where reconstitution is made by division.
719.9 Rules for determining farm bases, farm allotments, and history acreages where reconstitution is by combination.
719.10 Preservation of cropland and allotment acreage.
719.11 Eminent domain acquisitions.
719.12 Exempting Federal prison farms and Federal wildlife refuges.
719.13 Supervisory authority of ASC State committee.
719.14 Transfer of allotments and feed grain bases—State public lands.
719.15 Federally owned land under restrictive lease.

AUTHORITY: The provisions of this Part 719 issued under secs. 375, 378, 379, 52 Stat. 66, as amended, 72 Stat. 995, as amended, 79 Stat. 1211, 7 U.S.C. 1375, 1378, 1379; secs. 601, 602, 706, 79 Stat. 1206, as amended, 1210, 7 U.S.C. 1801 note, 1838, 1305; sec. 105, 84 Stat. 1368, 7 U.S.C. 1441 note.

§ 719.1 Applicability.

The provisions of this part apply to reconstitution of farms, allotments and bases for 1971 and subsequent years under any program administered by the Agricultural Stabilization and Conservation Service through State and county committees. The provisions of §§ 719.1 to 719.15 (29 F.R. 13370, 16185; 30 F.R. 3855, 5701, 6511, 6975; 31 F.R. 1236, 3186, 4580, 7030, 13204, 14253, 15019; 32 F.R. 14599; 33 F.R. 9145, 9755, 11811; 34 F.R. 244, 11410; 35 F.R. 10353) are superseded.

§ 719.2 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

(a) *Allotment.* Acreage allocated to a farm for a year for cotton, peanuts, rice, tobacco, or wheat, pursuant to the Agricultural Adjustment Act of 1938, as amended. The term includes base acreage allotments for cotton and domestic allotments for wheat.

(b) *Combination.* Consolidation of two or more farms or parts of farms into one farm.

(c) *Committees*—(1) *Community committee.* Persons elected within a community as the community committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees in Part 7 of Subtitle A of this title.

(2) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees in Part 7 of Subtitle A of this title, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the county committee.

(3) *State committee.* Persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State committee under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, except that for Puerto Rico and the Virgin Islands,

the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the State committee.

(d) *County.* County or parish of a State except that for Alaska, Puerto Rico and the Virgin Islands, county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

(e) *County Executive Director.* Person employed by the county committee to execute the policies of the county committee and be responsible for day-to-day operations of the ASCS county office or the person acting in such capacity.

(f) *Cropland.* Land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest.

(2) Has been tilled and is currently devoted to legumes or grasses which were established by a producer.

(3) Is suitable for crop production and although not currently tilled it can be established that the land has been tilled in a prior year.

(4) Has been tilled and is currently devoted to vineyards, orchards, or one-row shelter belt planting (excluding abandoned orchards or vineyards).

(5) Is preserved as cropland under § 710.10. Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land (i) is removed from agricultural production; (ii) is no longer suitable for production of crops; (iii) is devoted to trees (other than orchards or one-row shelter belt plantings) which were planted in the preceding year except that land planted to trees in the fall of the preceding year will retain its cropland classification for the succeeding year; or (iv) is no longer preserved as cropland under the provisions of § 719.10 and does not meet the conditions in subparagraphs (1) through (4) of this paragraph.

(g) *Current year.* Calendar year for which the applicable allotment, base acreage, history acreage, yields, marketing quota penalties, or other program determinations are established or considered.

(h) *Department.* U.S. Department of Agriculture.

(i) *Deputy Administrator.* Deputy Administrator, or acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(j) *Division.* Dividing a farm into two or more farms or parts of farms.

(k) *Farm number.* Serial number assigned to a farm by the county committee for the purpose of identification.

(l) *Federally owned land.* Land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

(m) *Landlord.* An owner who rents or leases, or a tenant who subleases, farmland to another person.

(n) *OGC representative.* Deputy General Counsel, or appropriate Regional Attorney, or Attorney-in-Charge, Office of the General Counsel.

(o) *Operator.* Person who is in general control of the farming operations on the farm during the program year.

(p) *Owner.* Person who has legal ownership of farmland.

(q) *Person.* Individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

(r) *Preceding year.* Calendar year immediately preceding the current year.

(s) *Producer.* Person who as owner, landlord, tenant or sharecropper, is entitled to share in the crops available for marketing from the farm or in the proceeds thereof, and, in the case of rice, a person who furnishes water for a share of the crop.

(t) *Reconstitution.* Change in the land constituting a farm as a result of combination or division.

(u) *Representative of the State committee.* Member of the State committee or any employee of the State committee.

(v) *Secretary.* Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority is delegated to act in his stead.

(w) *Sharecropper.* A producer who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for his labor.

(x) *State executive director.* Person employed by the State committee to execute the policies of the State committee and to be responsible for the day-to-day operations of the ASCS State office, or the person acting in such capacity.

(y) *Tenant.* (1) A person usually called a "cash tenant," "fixed-rent tenant," or "standing-rent tenant," who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or (2) a person, other than a sharecropper, usually called a "share tenant," who rents land from another person and pays as rent a share of the crops or proceeds therefrom.

(z) *Representative of the county committee.* A member of the county committee or any employee of the county committee.

§ 719.3 Farm constitution.

(a) *Farms constituted under prior regulations.* Land which has been properly constituted under prior regulations shall remain so constituted until a reconstitution is required under paragraph (d) of this section.

(b) *Farms constituted for the first time or reconstituted hereafter.* With respect to the constitution and identification of land as a farm for the first time or the reconstitution of farms made hereafter, a farm shall include all land operated by one person which is nearby and easily accessible except that it shall not include land under any of the following conditions:

(1) Land under separate ownership unless (i) the owners agree in writing, and (ii) the county committee determines that the land is approximately equally productive;

(2) Field-rented tracts under a short-term agreement of 1 year or less (such tracts shall remain with the farm of which they are a part);

(3) Federally owned land under a lease restricting the production of price-supported commodities in excess supply;

(4) Federal- and State-owned wildlife refuges unless the former owner has possession of the land under a leasing agreement with the eminent domain acquiring agency; or

(5) Land covered by a whole farm conservation reserve contract unless all the other land included in the farm is also covered by a whole farm conservation reserve contract.

(6) Land covered by a whole farm cropland conversion program agreement unless all the other land included in the farm is also covered by a whole farm cropland conversion program agreement.

(7) Land covered by a cropland adjustment or cropland conversion program agreement unless (i) the specific commodity diverted under the agreement is also diverted under a cropland adjustment or cropland conversion program agreement covering the other land and having the same expiration date, or (ii) the other land does not have an allotment or base of the same commodity, or (iii) the farm operator agrees to a zero permitted acreage for the commodity under agreement.

(c) *Location of farm for administrative purposes.* (1) If all land in the farm is located in one county, the farm shall be administratively located in such county.

(2) If the land in the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county (i) where the principal dwelling is situated, or (ii) where the major portion of the farm is located, if there is no dwelling.

(3) Notwithstanding the provisions of subparagraphs (1) and (2) of this paragraph, if the land in the farm is part of an Indian reservation and is operated by a grazing association, the farm may be administratively located in the county where such grazing association has its headquarters if the county committees involved and the farm operator agree to such location, provided the persons using the land do not reside thereon and the geographic features are such that administrative access would be more practical.

(d) *Required reconstitutions.* A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) of this section: *Provided*, That no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to (i) establish eligibility to transfer allotments subject to sale or lease or (ii) obtain small farm benefits under a program;

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

(3) An owner requests in writing that his land no longer be included in a farm which is composed of tracts under separate ownership;

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator; or

(5) The county committee determines that the tracts of land included in a farm are not being operated as a single farming unit.

§ 719.4 Guides for determining the land constituting a farm.

(a) *General.* In determining the constitution of a farm, consideration shall be given to a number of provisions such as ownership, operation, accessibility and nearness, and the productiveness of different tracts. A brief explanation of these provisions is outlined in this section to assist committees in properly determining what land is to be included in a farm.

(b) *Ownership.* The county committee shall require specific proof where there is doubt as to ownership.

(c) *Family members.* Land owned by different members of an immediate family living in the same household and operated as a single farming unit shall be considered as being under the same ownership in determining a farm.

(d) *Parent corporations and subsidiaries.* All land which is nearby and easily accessible and which is owned and operated by a parent corporation and subsidiary corporations of which the parent corporation owns more than 50 percent of the shares of stock (or which is owned and operated by such subsidiary corporations) shall be constituted as one farm.

(e) *Nearby and easily accessible.* Tracts of land shall be considered nearby and easily accessible if the county committee determines such tracts are close enough together so that they will be operated as a single farming unit. In determining whether such tracts are nearby and easily accessible, the county committee shall consider whether: (1) The farm labor and machinery are or could be freely interchanged during the period when normal farming operations are in progress; (2) the cropping pattern or land uses will be such as to reflect a single farming unit.

(f) *Productivity.* Combinations of tracts under different ownership shall not be permitted where the county committee determines that (1) one tract is primarily irrigated land and the other tract is primarily nonirrigated, or (2) the present productivity of the cropland on one tract differs substantially from the productivity of the other tract. Farm yields may be considered in making this determination but they should not be the sole basis for such determination.

(g) *Operation.* The county committee, in determining the constitution of a farm, shall satisfy itself that the operator will be in general control of the farming operations on the farm in the program year.

§ 719.5 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator of the farm. Any request for a farm reconstitution shall be filed with the county committee. The county committee shall act on each proposed reconstitution. All interested operators shall be notified of the action taken by the county committee. All interested owners shall also be notified provided the State committee determines such notification is desirable and this policy is applicable to all counties in the State. If the proposed reconstitution is approved, the notice shall show the program year in which the reconstitution will become effective for each allotment, base, and program.

§ 719.6 Farm corporations and trusts.

Notwithstanding any other provision of this part, whenever the county committee has reason to believe a farm corporation(s) or trust(s) are formed primarily for the purpose of obtaining additional program benefits under this Title 7, the farm or farms shall not remain as presently constituted, or be reconstituted, when owned and operated, or operated but not owned, by corporations or trusts listed below without approval of the State committee and concurrence by the Deputy Administrator: (a) Corporations in which more than 50 percent of the shares of stock is owned by members of the same family living in the same household; (b) corporations in which more than 50 percent of the shares of stock is owned by stockholders common to more than one of the corporations; (c) trusts in which the beneficiaries and the trustee are family members living in the same household.

§ 719.7 Reconstitution of farm allotments, history acreages, and farm bases.

(a) *When to reconstitute.* Farms shall be reconstituted as soon as it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the change requiring the reconstitution occurred. For each farm reconstituted, the farm allotments, history acreages, and farm bases shall also be reconstituted in accordance with the provisions of this part. County office records shall be corrected as necessary to reflect properly the basic data for each farm as reconstituted.

(b) *Effective date of reconstitutions.* The effective date of the reconstitution shall be as follows:

(1) *Allotment crops.* (i) The reconconstitution shall be effective for an allotment crop for the current program year if such reconstitution is initiated before such crop is or would have been planted.

(ii) The reconstitution may be made effective for the current program year after the crop has been or would have been planted if the county committee determines that no adverse effect to the program will result and the farm owner(s) and operator(s) agree to make the reconstitution effective for such year.

(2) *Feed grain crops.* (i) The reconstitution shall be effective for feed grain crops for the current program year if such reconstitution is initiated before any spring seeded feed grain crop is or would have been planted.

(ii) The reconstitution may be made effective for the current program year after any spring seeded feed grain crop has been or would have been planted if the county committee determines that no adverse effect to the program will result and the farm(s) and operator(s) agree to make the reconstitution effective for such year.

(3) *Conservation Reserve, Cropland Conversion, and Cropland Adjustment Programs.* The reconstitution shall be effective for purposes of the Conservation Reserve, Cropland Conversion, and Cropland Adjustment Programs (CRP, CCP, and CAP) for the current program year unless the reconstitution would cause noncompliance with the contract or agreement.

(4) *Rural Environmental Assistance Program.* The reconstitution shall not be effective for purposes of the Rural Environmental Assistance Program (REAP) if the county committee has approved cost-sharing for a producer on the farm for the current program year unless (i) the parent farm on which cost-sharing was approved was not properly constituted at the time of approval, or (ii) the county committee determines that some producer on the farm would not be eligible to participate in the REAP if the reconstitution is not made effective.

(5) *Misrepresentation.* Notwithstanding any other provision of this section, if the county committee determines that the farm was or was not reconstituted because of a misrepresentation by a producer, the farm shall be properly reconstituted, and the effective date of such reconstitution for all purposes shall be retroactive to the date the farm was improperly constituted.

(c) *Maximum and minimum provisions, adjustments, and release and reapportionment.* Allotments for reconstituted farms resulting from the divisions or combinations of parent farms in accordance with this part are subject to maximum and minimum

allotment provisions and to adjustments from allotment reserves for the commodity and released farm allotments as provided in the regulations governing the determination of allotments for the commodity.

(d) *Continuous application.* Where a farm reconstitution for the current year is made before the current year's allotments or bases are determined, the history acreages and other basic data for the reconstituted farms shall be used to establish the current year's allotments and bases: *Provided,* That where the current year's preliminary allotment on one or more parent farms involved in a proposed combination would be reduced for underplanting, the allotment shall be determined as follows: (1) The current year's allotment for each parent farm shall be established separately, and then (2) the current year's allotment for the combined farm shall be determined by adding the allotments established for the parent farm.

§ 719.8 Rules for determining allotments and bases where reconstitution is made by division.

The methods for dividing allotments and bases in order of precedence are estate, designation by landowner, contribution (including contribution-cropland and contribution-history), cropland, and history.

(a) *Estate method.* The estate method is the proration of the allotments and bases for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments and bases for the tract shall be determined by using one of the methods provided in paragraphs (b) through (f) of this section. The allotments and bases shall be divided among the heirs in settling an estate as follows:

(1) In accordance with a will by the testator if the county committee determines that the terms of the will are such that a division can reasonably be made on this basis.

(2) If the provisions of subparagraph (1) of this paragraph are not applicable, the allotments or bases shall be apportioned in the manner agreed to in writing by all interested heirs. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs.

(3) If the provisions of subparagraphs (1) and (2) of this paragraph do not apply, the allotments and bases shall be divided pursuant to paragraphs (c) through (f) of this section, as applicable.

(b) *Designation of allotments and bases by landowner.* If the ownership of a tract of land is transferred from a parent farm, the county committee shall at the request of the transferring owner divide the allotments and bases between the parent farm and the transferred tract, or between the applicable tracts if the entire farm is sold to two or more purchasers, in the manner designated by the owner of the parent farm subject to conditions set forth in this paragraph. If the county committee determines that the allotments and bases cannot be divided in the manner designated by the owner because of the conditions set forth in this paragraph, the owner shall be notified and permitted to revise the designation so as to meet the conditions in this paragraph. If the owner does not furnish a revised designation of allotments and bases within a reasonable time after such notification or if the revised designation does not meet the conditions of this paragraph, the county committee shall make the proration of allotments and bases in accordance with paragraphs (c) through (f) of this section. If a parent farm is composed of tracts under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (c) through (f) of this section, as applicable, prior to application of the provisions of this paragraph. The eligibility conditions that shall be complied with for applying this method of division are:

(1) The interested owners (seller and purchaser) shall file a memorandum of understanding of the designation with the county committee. The heirs of an estate may use this method to designate the allotments or bases for allocation to a tract of land sold prior to dividing the parent farm among the heirs in settling an estate: *Provided, however,* That designation by the administrator or executor shall not be accepted in lieu of designation by the heirs.

(2) Where the land of the parent farm is subject to a deed of trust, lien, or mortgage, the holder of the deed of trust, mortgage, or lien must agree to the division of allotments and bases.

(3) Neither the tract transferred from the parent farm nor the remaining portion of the parent farm shall receive allotments or bases in excess of allotments or bases for similar farms in the same area having allotments or bases of the commodity or commodities involved and such allotments or bases shall be consistent with good land use.

(4) Where the part of the farm from which the ownership is being transferred was owned for a period of less than 3 years, the provisions of this paragraph shall not be applicable to such transfer unless the State committee with concurrence of the Deputy Administrator finds that the primary purpose of the ownership transfer was not to retain or sell an allotment or base. In the absence of such a finding, and if the farm contains land which has been owned for a period of less than 3 years, that part which has been owned for less than 3 years shall be considered as a separate farm and the allotments and bases shall be assigned to that part using the rules in paragraphs (c) through (f) of this section, as applicable. Such apportionment shall be made prior to any designation of allotments and bases with respect to the part which has been owned for 3 years or more.

(5) This method is not applicable to burley tobacco except where the ownership of the tract is transferred for nonagricultural uses.

(6) The land for which ownership is being transferred to a Federal, State, or other agency was not or could not have been acquired under the right of eminent domain. If eminent domain is applicable, the provisions of § 719.11 shall apply.

(c) *Contribution method.* The contribution method for dividing allotments and bases is the proration of the parent farm's allotments and bases to each identical tract separated from the parent farm in the same proportion that each tract contributed to the allotments and bases at the time of combination. Unless the provisions of paragraph (a) or (b) of this section are applicable this method shall be used to divide allotments and bases for a farm which resulted from a combination that became effective during the 6-year period immediately prior to the current year. This method for dividing allotments shall be used beyond the 6-year period if records are available to show the contribution of the separate tracts at the time of combination unless the county committee determines with the concurrence of a representative of the State committee that the use of the contribution method would not result in an equitable distribution of the allotments and bases considering available land, cultural operations, and changes in type of farming. The contribution method shall not be used in cases involving the division for any commodity for which there was no allotment or base established at the time of combination, and a parent farm, in the case of rice, which includes one or more tracts on which an established crop rotation system was being carried out at the time of the combination.

(d) *Contribution-Cropland or Contribution-History method.* In cases where the allotments or bases are divided by the contribution method pursuant to paragraph (c) of this section and a further division of an identical tract is required, the allotments and bases shall first be apportioned to the identical tracts and then apportioned among the parts of the identical tracts by the cropland or history method pursuant to paragraph (e) or (f) of this section, as applicable.

(e) *Cropland method.* The cropland method for dividing allotments and bases is the proration of allotments and bases to the tracts being separated from the parent farm in the same proportion that the cropland acreage for each such tract bears to the cropland for the parent farm. For rice, the acreage of cropland that is available for the production of rice shall be used to make the proration. The county committee shall verify or redetermine, if considered necessary, the cropland on each of the tracts of the parent farm prior to making the proration. This method shall be used if the provisions of paragraphs (a) through (c) of this section are not applicable unless the county committee determines that a division by the history method

would result in allotments and bases more representative of the operation normally carried out on each tract during the respective base period for the commodities. Notwithstanding any other provision of this paragraph, the allotments and bases shall be apportioned on the basis of the cropland available for and adapted to the production of the allotment or feed grain crop on each tract when the owners file with the county office a written agreement as to the amount of available and adapted cropland and the county committee approves such agreement.

(f) *History method.* The history method of division of allotments and bases is the proration of allotments and bases to the tracts being separated from the parent farm on the basis of the acreage determined to be representative of the operations normally carried out on each tract during the respective base period for the commodities. The history method shall be used when the county committee determines that division by the cropland method should not be used.

(g) *Variation in reconstituted allotments and bases.* Allotments or bases apportioned among the divided tracts, pursuant to paragraphs (c) through (f) of this section, may be increased or decreased by as much as 10 percent of the allotment or base established for the parent farm if (1) the interested owners agree in writing, and (2) the county committee determines that the method used did not provide an equitable distribution concerning available land, cultural operations and changes in type of farming. Any increase in an allotment or base on a tract pursuant to this paragraph shall be offset by a corresponding decrease on the other tract and all variations between tracts must be compensating.

(h) *Adjustments in conserving bases.* Conserving bases for farms divided pursuant to paragraphs (c) through (f) of this section, and apportioned among the tracts, may be adjusted by the county committee taking into consideration the physical location of conserving use acreage, the feed grain bases and allotments apportioned to the reconstituted farms, and changes in type of farming. Any decrease in the conserving base on a tract must be offset by a corresponding increase on the other tract and all conserving base adjustments must be compensating.

(i) *Divided history acreage and other data.* The history acreage and other basic data, except commodity yields and minimum allotments, for divided farms shall be determined by using the same percentage figure as was used to apportion the allotment or base crop for the respective commodity. For commodity yields and minimum allotments applicable commodity regulations shall apply.

§ 719.9 Rules for determining farm bases, farm allotments, and history acreages where reconstitution is by combination.

If two or more farms or tracts are combined for the current year, the current year's allotments, farm bases, history acreages, planted acreages, and acreages considered planted for the years in the base period for the respective commodities for the reconstituted farm shall be the sum of the allotments, farm bases, history acreages, planted acreages, and acreages considered planted for each of the tracts comprising the combination, subject to the provisions of § 719.7(c).

§ 719.10 Preservation of cropland and allotment acreage.

(a) *Definitions.* Notwithstanding the definitions in § 719.2, for the purposes of this section, the following terms shall have the following meanings:

(1) *Final acreage.* The actual crop acreage, plus any additional acreage considered planted to the crop under applicable commodity regulations.

(2) *Underplanted acreage.* The acreage by which the allotment or feed grain base for a commodity exceeds the final acreage of the commodity.

(b) *Preservation of cropland and acreage available for diversion credit—* (1) *CAP, CCP, CRP, GPCP, and RCP.* Cropland acreage established and maintained in vegetative cover under the Cropland Adjustment Program, Cropland Conversion Program, Conservation Reserve Program, Great Plains Conservation Program, and Regional Conservation Program, shall retain its cropland classification for the period of time the contract or agreement is in effect plus the period of time thereafter that the cover is maintained. Cropland acreage established in trees under one of the programs listed in this section shall retain its cropland classification for the period of time the contract or agreement is in effect plus an equal period thereafter provided the practice is maintained. All acreage under this subparagraph shall be available for diversion credit to the extent of the underplanted acreage of an allotment or feed grain base crop where needed to protect the history for such crop.

(2) *REAP–ACP and comparable practices carried out without Federal cost-sharing.* Cropland acreage established and maintained in vegetative cover (excluding trees) under the Rural Environmental Assistance Program, the Agricultural Conservation Program, or comparable practices carried out without Federal cost-sharing shall retain its cropland classification for the period of time that the cover is maintained. To qualify for diversion credit under this subparagraph (2), the following conditions shall be met:

(i) Acreage must be in excess of the sum of the conserving base and set-aside acreage requirements under other adjustment programs.

(ii) The practice must have been established after November 3, 1965, and carried out in accordance with good farming practices.

(iii) The producer must request preservation in the year in which the cover is established except that the county committee may accept a request in a later year if the producer establishes to the satisfaction of the county committee that the cover was established after November 3, 1965, and the request is made before December 31 of the year in which preservation credit is needed.

(c) *Termination of diversion credit.* Acreage shall cease to be available for diversion credit when:

(1) The permanent vegetation is destroyed or not properly maintained.

(2) The additional period of protection in the case of trees established under a conservation program listed in paragraph (b) of this section expires or the trees are destroyed.

(d) *Diversion credit for divided farms.* When a parent farm is reconstituted by division, future diversion credit shall accrue to the farm or tract on which the vegetative cover is physically located.

(e) *Use of diversion credit.* The diversion credit determined under the provisions of this section for each underplanted allotment or feed grain base crop shall be considered as acreage devoted to the crop and shall be utilized in the establishment of future State, county, and farm allotments and bases. Notwithstanding any other provisions of this part, this section shall not be applicable with respect to a crop for which there is participation in the set aside program for wheat, feed grains, or upland cotton authorized by the Agricultural Act of 1970 and payments are earned for such participation.

§ 719.11 Eminent domain acquisitions.

(a) *Commodities covered.* This section provides a uniform method for handling farm allotments for extra long staple cotton, upland cotton, peanuts, rice in farm States, tobacco and wheat; and feed grain bases for corn, grain sorghums and barley; on land involved in an eminent domain acquisition. If eligible for pooling under this section, such allotments and bases are pooled for the benefit of the owner who is displaced from his farm by an eminent domain acquisition. Such pooling is for a 3-year period from the date of displacement and during such period the owner so displaced may request transfers of allotments and bases from the pool to other farms in the United States owned by him. This section does not apply in the case of extra long staple cotton, upland cotton, peanuts, and tobacco to any farm from which the owner was displaced prior to 1950; in the case of wheat to any farm from which the owner was displaced prior to 1954; in the case of rice to any farm from which the owner was displaced prior to 1955; and in the case of feed grains to any farm from which the owner was displaced prior to 1961.

(b) *Eminent domain acquisition.* An eminent domain acquisition is a taking of title to land, or the taking of an impoundment easement to impound water on the land, or the taking of a flowage easement to intermittently flood the land, consummated with respect to land which is, or could be, so taken under the power of eminent domain by a Federal, State,

or other agency. Such acquisition may be by court proceedings to condemn the land or by negotiation between the agency and the owner. Any acquisition by an agency with respect to land not subject to the agency's power of eminent domain shall not be an eminent domain acquisition for purposes of this section. All land acquired by an agency for the intended project, including surrounding land not needed for the project but acquired as a package acquisition, shall be considered to be in the eminent domain acquisition if the agency expended funds for the package acquisition on the basis of its power of eminent domain. For example, a governmental agency acquires 150 acres of land from an owner as a package acquisition and requires 130 acres for the public purpose but supports the expenditure of funds for the unneeded 20 acres on the grounds that no additional cost resulted, or that avoidance of condemnation proceedings warranted the package acquisition.

(c) *Owner.* For purposes of this section, owner means the person, or persons in a joint ownership, having title to the land for a period of at least 12 months immediately prior to the date of transfer of title or grant of impoundment or flowage easement under the eminent domain acquisition. If such person or persons have owned the land for less than such 12-month period, they may, nevertheless, be considered the owner if the State committee determines that such person or persons acquired the land for the purpose of carrying out farming operations and not for the purpose of obtaining status as an owner under this section. However, no person shall be considered the owner if he acquired the land subject to an eminent domain acquisition under an outstanding contract to an agency or an option by an agency or subject to pending condemnation proceedings. In any case where the current title holder cannot be considered the owner for the purposes of this section, the State committee shall determine the person or persons who previously had title to the land and who qualify for status as the owner under the criteria in this paragraph.

(d) *Displacement.* The owner shall be considered displaced from a farm covered by an eminent domain acquisition on the date (1) the right to produce an allotment or feed grain crop is relinquished voluntarily even though the owner is not required to give up possession of the land; or (2) in the case of a flowage easement the owner determines it is no longer practical to conduct farming operations on the land; or (3) the owner loses possession of the land as owner or as lessee under a lease from the agency or its designee if the lease provided unbroken possession to the owner from the date of acquisition to the end of the lease or extensions of the lease. In cases where the agency and the owner have executed a binding contract for acquisition of the farm, the owner may be considered displaced prior to completion of the acquisition if he wishes to plant the commodity on other land he owns or buys.

(e) *Notice of displacement.* The owner shall notify the county committee in writing of the eminent domain acquisition and furnish the date of displacement as soon as possible so that the allotments and bases may be pooled in accordance with this section. Failure to so notify the county committee shall not operate to extend the 3-year period of the pool.

(f) *Pool.* Whenever the county committee determines, by notice from the owner or otherwise, than an owner has been displaced, the county committee shall establish in a pool for a 3-year period, beginning on the date of displacement, the allotments and bases eligible for pooling under this section. Pooled allotments and bases shall be considered fully planted and for each year in the pool, shall be established in accordance with applicable commodity regulations.

(g) *Cases where pooling not permitted or required*—(1) *Agency has authority to continue crop production.* Pooling shall not be permitted if the agency files written notice with the county committee within 30 days after the date of acquisition designating the crops it intends to continue producing and the county committee determines that the agency has the authority under its power of eminent domain to make the acquisition solely for the purpose of continued crop production. An agency intention to continue crop production after the date of displacement as an interim revenue producing operation cannot form the basis for retention of allotments and bases on the acquired farm unless it has power of eminent domain to acquire land solely for continued crop production. In general, agencies with such power are limited to experiment stations and educational institutions with vocational agricultural training programs.

(2) *Owner waives right to have pooling.* If the owner files written notice with the county committee of intention to waive his right to have all the allotments and bases, or any part thereof, pooled and the county committee determines that the owner fully understands his right to have allotments and bases pooled and has not been coerced to waive his right, the allotments and bases shall be retained on the agency acquired land.

(3) *Less than 15 percent of cropland acquired.* If an agency acquires part of a farm and the cropland on the land so acquired represents less than 15 percent of the total cropland on the farm, the allotments and bases shall be retained on the portion of the farm not acquired by the agency and shall not be pooled.

(4) *15 percent or more of cropland acquired.* If an agency acquires part of a farm and the cropland on the farm so acquired represents 15 percent or more of the total cropland on the farm, the allotments and bases attributable to the acquired land shall be retained on the portion of the farm not acquired by the agency if the owner files a written request with the county committee for such retention. However, only such amounts of allotments and bases may be retained as can be supported on the available cropland and which will not exceed the allotments and bases established on similar farms in the area, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices and other physical factors affecting production. Allotments and bases not retained shall be pooled.

(5) *In-county transfer upon displacement.* If, prior to pooling, an owner files a request to transfer the allotments and bases to other farms which he owns in the same county, the county committee may approve a direct transfer without formal establishment in the pool. Such transfer shall be subject to the requirements of paragraph (j) of this section.

(h) *Release of pooled allotments.* Pooled allotments, but not feed grain bases, may be released on an annual basis by the owner to the county committee during any year for which the allotments are pooled and not otherwise transferred from the pool. The county committee may reapportion such released allotments to other farms in the same county having allotments for such commodity. Pooled allotments shall not be released on a permanent basis or surrendered after release to the State committee for reapportionment in other counties. Reapportionment shall be on the basis of past acreage of the commodity, land, labor, and equipment available for the production of the commodity, crop rotation practices and soil and other physical facilities affecting the production of the commodity. Released pooled allotment shall be regarded as fully planted in the pool and not on the farm receiving reapportionment. This paragraph shall govern the release and reapportionment of pooled allotments notwithstanding other procedures contained in applicable commodity regulations.

(i) *Sale, lease, and owner transfers.* Pooled allotments for which there is statutory authority implemented in the applicable commodity regulations for transfer of allotments on a permanent or temporary basis by sale, lease, or by owner (within the meaning of owner for such purposes) may be transferred permanently from the pool by the owner or temporarily for the life of the pooled allotment, subject to the terms and conditions in the applicable commodity regulations for such transfers.

(j) *Regular transfers from pool*—(1) *General rule.* The owner may request transfer of all or part of the pooled allotments and bases to any farm in the United States of which he is the bona fide owner: *Provided,* That there are farms in the receiving county with allotments or bases for the particular commodity, or if there are no such farms, the county committee determines that farms in the receiving county are suitable for the production of the commodity. For purposes of this paragraph:

(i) Receiving farm means the farm to which transfer from the pool is to be made;

(ii) Receiving State and county committees mean those committees for the State and county in which the receiving farm is located; and

(iii) Transferring State and county committees mean those committees for the State and county in which the agency acquired farm is located.

(2) *Application for transfer.* The owner shall file with the receiving county committee written application for transfer of allotment and feed grain base from the pool within 3 years after the date of displacement. The application shall contain a certification by the owner that he has made no side agreement with any person for the purpose of obtaining an allotment or feed grain base from the pool, for a person other than himself. The owner shall attach to the application all pertinent documents pertaining to his ownership or purchase of land and any leasing arrangements as for example, the deed of trust or mortgage, warranty deed, note, sales agreement, and lease.

(3) *Action by receiving county committee.* The receiving county committee shall consider each application and determine whether the transfer from the pool shall be approved. Before an application is acted upon by the receiving county committee, the owner shall personally appear before the receiving county committee after reasonable notice, bring any additional pertinent documents as may be requested for examination by the receiving county committee, and answer all pertinent questions bearing on the proposed transfer: *Provided,* That the personal appearance requirement may be waived if the receiving county committee determines from facts presented to it on behalf of the owner that such personal appearance would unduly inconvenience the owner on account of illness or other good cause and such personal appearance would serve no useful purpose. Any action by the receiving county committee shall be subject to the approval required under subparagraph (5) of this paragraph.

(4) *Elements of bona fide ownership.* The receiving county committee shall approve the transfer from the pool only where the documents and other evidence presented by the owner show conclusively that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish his farming operations. The elements of such an acquisition shall include, but are not limited to, the following conditions:

(i) Appropriate legal documents must establish title to the receiving farm;

(ii) If the owner was the operator of the acquired farm at the date of displacement, such owner shall personally operate and be the operator of the receiving farm for the first year that allotment or feed grain base is transferred;

(iii) If the owner was not the operator of the acquired farm at the date of displacement and he was not a producer because the leasing or rental agreement provided for cash, fixed rent, or standing-rent payment, such owner shall not be required to personally operate and be the operator of the receiving farm but at least 75 percent of the allotment or feed grain base for the receiving farm shall be planted on the receiving farm for the first year;

(iv) If the owner was not the operator of the acquired farm at the date of displacement but he was a producer on the acquired farm at the date of displacement by virtue of receiving a share of the crops produced on the acquired farm, such owner shall not be required to be the operator of the receiving farm but he shall be a producer on the receiving farm the first year that an allotment or feed grain base is transferred;

(v) The contractual arrangements between the owner and the seller of the receiving farm shall not contain a requirement that the receiving farm be leased to the seller or a person designated by or subject to the control of the seller nor shall the seller or a person designated by or subject to the control of the seller lease the receiving farm for the first year the allotment or feed grain base is transferred even though such contractual arrangements are silent as to any lease; and

(vi) Contractual arrangements under which the receiving farm was purchased or leased are customary in the community where the receiving farm is located with respect to purchase price, size of payments due, time when payments are due, and size of rental payments, if any.

(5) *Action of receiving State committee.* The approval of a transfer from the pool under this paragraph by the receiving county committee shall be effective upon concurrence by the receiving State committee. Notwithstanding any other provision of this section, the receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that the eligibility requirements of subparagraph (4) (ii), (iii), or (iv) of this paragraph cannot be met without creating a hardship because of illness, old age, multiple farm ownership, or lack of a dwelling on the farm to which allotment or feed grain base is to be transferred. Notwithstanding any other provisions of this section and particularly subparagraph (4) (v) of this paragraph, the receiving State committee may authorize a transfer from the pool in any case where the owner presents evidence satisfactory to the receiving State committee that the owner has made a normal acquisition of the receiving farm for the purpose of bona fide ownership to reestablish his farming operations although the farm is leased to the seller of the farm for the first year the allotment is transferred.

(6) *Amount of allotment or feed grain base available for transfer.* Upon completion of all necessary approvals under this paragraph, the receiving county committee shall issue an appropriate allotment or feed grain base notice under the applicable commodity regulations. The allotment or feed grain base to be transferred for a commodity shall be no greater than an amount required to establish an allotment or feed grain base comparable with allotments or feed grain bases determined for other farms in the same area which are similar (except for the past acreage of the commodity), taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors affecting the production of the commodity. For purposes of determining such amount, the receiving county committee shall consider the receiving tract as a separate farm when such tract is in combination with land under separate ownership. The acreage transferred from the pool shall not exceed the allotment or feed grain base most recently established for the acquired farm and placed in the pool. When all or a part of the allotment or feed grain base placed in the pool is transferred and used to establish or increase the allotment or feed grain base for other farms owned or purchased by the owner, all or the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future allotments or feed grain bases to have been planted on the receiving farm for which an allotment or feed grain base is established or increased under this section. If only a part of the available allotment or feed grain base is transferred from the pool, the remaining part of the allotment and feed grain base, and past acreage history shall remain in the pool for transfer to other farms of the owner until all such allotment or feed grain base acreage has been transferred or until the period of eligibility for establishing or increasing allotments or feed grain bases under this section has expired.

(7) *Cancellation of transfers.* If any allotment or feed grain base is transferred under this paragraph and it is later determined by the receiving county or State committee, or the Deputy Administrator, that the transfer was obtained by misrepresentation by or on behalf of the owner, or the conditions applicable under subparagraph (4) of this paragraph are not met, the allotment or feed grain base for the receiving farm shall be reduced for each year the transfer purportedly was in effect by the amount attributable to the acreage transferred from the pool; and if the time for withdrawal from the pool has not expired, the amount of acreage initially transferred from the pool shall be returned to the pool after the period of time has expired in which the producer could exercise his rights of review and court action. Any cancellation of transfer of allotment or feed grain base by the receiving county committee shall be subject to approval by the receiving State committee. The receiving county

committee shall issue any notice of marketing quota and penalty as may be required in accordance with applicable commodity regulations.

(8) *Effect of release of pooled allotment.* Notwithstanding the provisions prescribed in this paragraph, if the displaced owner files a request for the transfer of a pooled allotment within the prescribed period for filing such request but his request for transfer is filed during a year in which all or a part of the pooled allotment was released to the transferring county committee pursuant to paragraph (h) of this section, the application for transfer will be processed in the usual manner but the amount of the commodity released shall not be effective on the receiving farm until the succeeding year. When a request for transfer of a pooled allotment involves a transfer from one State to another, the receiving State committee shall obtain information from the transferring State committee as to whether any part of the allotment for which the transfer is requested has been released to the transferring county committee for the current year.

(k) *Constitution of acquired land.* (1) Where the owner leases part but not all of the agency acquired land, such part shall be constituted as a separate farm on the date of his displacement from the land not so leased.

(2) If a parent farm consists of separate ownership tracts, each such tract being acquired in whole or in part shall be considered as a separate farm for purposes of paragraphs (g) (3) and (4) of this section.

(3) If part of a farm is acquired by an agency and the owner is displaced therefrom, such part shall be constituted as a separate farm on the date of displacement unless the allotments and bases are retained on the part not acquired as provided in paragraphs (g) (3) and (4) of this section in which case the farm shall not be reconstituted but the farmland and cropland data shall be corrected on all appropriate records for the parent farm.

(l) *Successors in interest*—(1) *Designation of beneficiary.* The owner may file with the county committee a written designation of beneficiary of his rights in the allotments and bases attributable to the acquired land in the event of his death and may revise such designation from time to time. The beneficiary of a deceased owner may exercise the right to continue a lease or to negotiate a lease with the agency or its designee and exercise the regular transfer rights with respect to farms owned by such beneficiary and may also exercise the release and sale, lease and owner transfer rights under this section.

(2) *Cases where no beneficiary designated.* If the owner does not file a designation of beneficiary under subparagraph (1) of this paragraph and the owner dies before displacement or after pooling occurs, the following persons shall be considered the beneficiary with the rights as provided under subparagraph (1) of this paragraph:

(i) The surviving joint owner of the farm where two persons own the farm as joint tenants with right of survivorship under which title passes to the survivor;

(ii) The person(s) who succeed to the deceased owner's interest under a will or by intestate succession. However, in the case of intestate succession, such person(s) shall be limited to surviving spouse, mother, father, brothers, sisters, or children of the deceased owner. In the settlement of the estate of the deceased owner, the heirs may file a written agreement with the county committee for the division of the deceased owner's rights under this section.

(m) *Limitations on transfers from pool.* (1) No transfer from the pool under paragraph (h), (i), or (j) of this section shall be approved if there remains unpaid any marketing quota penalty due with respect to the marketing of the commodity from the acquired farm or by the displaced owner; or if any of the commodity produced on the acquired farm has not been accounted for as required under applicable commodity regulations.

(2) If the tobacco or peanut allotment for an acquired farm next established after the date of displacement would have been reduced because of false or improper identification of the commodity produced on or marketed from the farm or due to a false acreage report, the allotment shall be reduced in the pool in accordance with the applicable regulations.

§ 719.12 Exempting Federal prison farms and Federal wildlife refuges.

No marketing penalty shall be assessed or entered on the county or State office debt record for excess acreage of any commodity which may be produced on a Federal prison farm or Federal wildlife refuge: *Provided, however,* That this exception does not apply to penalties incurred by an individual who has a separate interest in a crop which is subject to marketing quotas and which was produced on such Federal prison farms and Federal wildlife refuges.

§ 719.13 Supervisory authority of ASC State committee.

The State committee may take any action required by these regulations which has not been taken by the county committee. The State committee may also (a) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or (b) require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

§ 719.14 Transfer of allotments and feed grain bases—State public lands.

(a) *General authority.* Section 706 of the Food and Agriculture Act of 1965 (79 Stat. 1210, 7 U.S.C. 1305) enacted November 3, 1965, authorizes the Secretary to permit transfers of allotments and feed grain bases between farms in the same county where both farms are composed of public lands of the State. Such transfers, effective beginning with the 1966 crops, shall be permitted in accordance with the conditions prescribed by this section.

(b) *Applications for transfer.* An application in writing requesting the transfer of one or more of the allotments and feed grain bases on a farm entirely composed of public lands of a State shall be filed with the county committee by the agency of the State charged with the adminstration of the land in such farms. The application shall identify the farms as being within the same county, show that each farm is entirely composed of public lands of the State, and list the acreages requested to be transferred. Additional information as to the present operations on the farms, including all leasing arrangements, shall also be set forth in the application.

(c) *Closing date for filing applications.* The State committee shall establish the closing date for filing applications under paragraph (b) of this section for each year which shall be no later than the date when planting of the commodity involved in the transfer becomes general in the county.

(d) *Productivity adjustments in allotments, bases, and history acreages.* Each transfer of allotment and feed grain base under this section shall be adjusted for differences in farm productivity if the yield (projected for the year the transfer is to take effect) for the farm to which transfer is made exceeds the yield (projected for the year the transfer is to take effect) for the farm from which transfer is made by more than 10 percent. The county committee shall determine the amount of allotment or base to be transferred where productivity adjustment is required by dividing (1) the product of the yield for the farm from which transfer is made and the acreage to be transferred from such farm, by (2) the yield for the farm to which transfer is made. History acreage for the farm receiving allotment or base shall be adjusted by the same percentage as the allotment or base being transferred is adjusted. The amount of allotment, base, and related farm history acreage transferred from the farm from which the transfer is made with respect to that farm shall be the full amount but the amount of allotment base, and related farm history acreage for the farm to which the transfer is made shall be the adjusted amount. The county acreage history, if applicable, shall be reduced to correspond with the adjusted history transferred to the farm. The history remaining unassigned to the county as a result of such productivity adjustments shall be tabulated by the State committee and included with the sum of county history acreages for purposes of determining the State history acreage.

(e) *Limitation on acreages to be transferred.* The amount of allotment or feed grain base on a farm after a transfer under this section is made shall not exceed the average amount of allotment or feed grain base of at least three but not more than five farms with acreages of

cropland similar to the farm receiving the transfer in the community having the applicable allotment or base on these farms.

(f) *Permanent vegetative cover requirement.* Each transfer of any allotment or base shall be subject to the condition that an acreage equal to the allotment or base transferred (before any productivity adjustment) shall be devoted to and maintained in permanent vegetative cover on the farm from which the transfer is made.

(g) *County committee action.* The county committee shall approve transfer under this section only if it determines that a timely filed application has been received, that the conditions of this section have been met, and a representative of the State committee has approved the transfer. The county committee shall issue revised notices of allotments and bases for each farm affected by the transfer. If a county committee obtains evidence that the conditions applicable to any transfer under this section have not been met, a report of the facts shall be made to the State committee. The State committee shall determine whether such conditions have been met and if not met, shall require that the transfer be canceled and retransferred to the original farm. Where cancellation and retransfer is required, the county committee shall issue revised notices of allotment and bases showing the reasons for cancellation of the transfer.

§ 719.15 Federally owned land under restrictive lease.

(a) *General.* It is the policy of the United States to prohibit the cultivation of crops of price-supported commodities in surplus supply on farmland leased from the United States.

(b) *Price-supported commodities in surplus supply.* It has been determined that the following price-supported commodities are in surplus supply: Cotton (upland and extra-long staple), corn, grain sorghum, rice, wheat, peanuts, dry edible beans, barley, flaxseed, soybeans, and tobacco of the kinds for which acreage allotments are in effect.

Effective date: Upon publication in the FEDERAL REGISTER (6-11-71).

Signed at Washington, D.C., on June 4, 1971.

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

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SUBCHAPTER C—SPECIAL PROGRAMS

PART 760—INDEMNITY PAYMENT PROGRAMS

Subpart—Beekeeper Indemnity Payment Program

This subpart contains the regulations which set forth the terms and conditions under which indemnity payments will be made to eligible beekeepers who suffer losses of their honeybees as a result of the application of pesticides.

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AUTHORITY: The provisions of this subpart issued pursuant to Public Law 91-524 (84 Stat. 1382).

§ 760.100 Administration.

The beekeeper indemnity payment program is administered by the Agricultural Stabilization and Conservation Service under the supervision and direction of the Deputy Administrator, State and County Operations. In the field, the program is carried out by the ASC State and County Committees.

§ 760.101 Definitions.

For the purposes of this subpart, the following terms shall have the meaning specified:

(a) "Apiary" means the place where bees are kept, commonly known as a "bee yard".

(b) "Application period" means any period with respect to which application for payment is made beginning not earlier than January 1, 1967, and ending not later than December 31, 1973.

(c) "ASCS" means the Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(d) "Bee" means the honeybee, Apis mellifera L.

(e) "Beekeeper" means a person who maintains colonies of bees.

(f) "Colony" means a community of bees living together in a hive with a queen.

(g) "Colony destroyed" means a colony in which the kill of bees by pesticides was so severe that the colony did not survive.

(h) "Colony moderately damaged" means a colony so damaged by pesticides as to destroy only the field bees.

(i) "Colony severely damaged" means a colony in which the field bees were killed by pesticides, the colony suffered damage to the brood, but the colony did survive.

(j) "County Committee" means the Agricultural Stablilzation and Conservation County Committee.

(k) "DASCO" means the Deputy Administrator, State and County Operations, ASCS.

(l) "Person" means an individual, partnership, association, corporation, trust, estate or other legal entity.

(m) "Pesticide" means an economic poison which was registered pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 135-135k), and approved for use by the Federal Government.

(n) "Queen nucleus" means a small colony of bees maintained solely for the purpose of producing queen bees.

(o) "Queen nucleus destroyed" means a queen nucleus in which the kill of bees by pesticides was so severe that the queen nucleus did not survive.

(p) "Queen nucleus severely damaged" means a queen nucleus in which the kill of bees by pesticides was so severe that the queen nucleus could not survive without additional bees or brood.

(q) "State Committee" means the Agricultural Stabilization and Conservation State Committee.

§ 760.102 Indemnity payment.

An indemnity payment computed in accordance with § 760.109 will be made under this subpart to a beekeeper who has suffered a loss of his bees as a result of the application of pesticides and who establishes to the satisfaction of the County Committee that he meets all of the requirements of this subpart.

§ 760.103 Requirements of eligibility.

A beekeeper, to be eligible for an indemnity payment, shall file an application for payment with the County Committee and establish to the satisfaction of the County Committee all of the following:

(a) That during the application period, he suffered a loss of bees;

(b) That the loss of bees was the result of the use of pesticides near or adjacent to his apiary, and occurred without his fault;

(c) That if he used pesticides, his use of pesticides in no way contributed to the loss of his bees;

(d) That if he had advance notice that pesticides were going to be used near or adjacent to his apiary, he took reasonable precautions to protect his bees from exposure to pesticides, or, if he took no such precautions, that his failure to do so was reasonable under the circumstances;

(e) That after exposure of his bees to pesticides, he took reasonable action to reduce the extent of the bee loss to the extent that such action was feasible; and

(f) That the loss of bees was not partially or entirely due to any cause other than the use of pesticides.

§ 760.104 Application for payment.

(a) The beekeeper or his legal representative shall complete, sign and file an application for payment with the ASCS County Office serving the area where the beekeeper's headquarters is located.

(b) Applications for payment on losses of bees sustained prior to the effective date of this subpart shall be filed before

December 31, 1971, or such later date as DASCO may specify.

(c) Applications for payment on losses of bees sustained after the effective date of this subpart shall be filed as promptly as practicable but not later than one year following the date of loss.

(d) The application for payment shall be accompanied by the information required by §§ 760.105–760.109, and such other information as may be reasonably required to enable the County Committee to determine the eligibility of the beekeeper to receive an indemnity payment.

§ 760.105 Proving loss of bees.

A beekeeper shall submit to the County Committee an executed Form ASCS–448 or Form ASCS–449, whichever is applicable, specifying the number of colonies destroyed, severely damaged, and moderately damaged; the number of queen nuclei destroyed and severely damaged; and evidence of the losses of bees specified in such form.

(a) With respect to any loss of bees which occurred between January 1, 1967, and the effective date of this subpart, both dates inclusive, such evidence may include, but is not limited to:

(1) Official reports of bee losses filed by the beekeeper with State or local authorities.

(2) Daybook or other regularly kept business records in which losses of bees were recorded by the beekeeper at the time of such losses.

(3) Written statements signed by disinterested persons, such as landowners, farmers, or apiary inspectors, having personal knowledge of the beekeeper's loss of bees.

(4) Photographs showing bee losses: *Provided,* That such photographs shall be authenticated as to date, location, and accuracy of what they portray.

(5) Reports of State or local apiary inspectors.

(6) The beekeeper's tax returns or other reports showing losses of bees.

(b) With respect to any loss of bees for which application for payment will be made and which occurs after the effective date of this subpart, such evidence shall include, but is not limited to:

(1) A written statement signed by a disinterested person, such as the State apiarist, ASCS personnel, or other persons familiar with beekeeping, describing losses of bees which he has observed.

(2) Full information regarding the loss, including but not limited to the following:

(i) Cause of loss;

(ii) Extent of loss;

(iii) Date of loss;

(iv) Location of apiary.

§ 760.106 Proving utilization of pesticides.

A beekeeper shall submit to the County Committee evidence that the loss of his bees occurred as a result of the utilization of pesticides near or adjacent to his apiary. Such evidence may include, but is not limited to:

(a) Reports of chemical tests performed on the bees which were killed.

(b) Records, signed statements, or official reports of pesticide applicators or farmers who either applied pesticides or contracted for their application within the normal forage range of the beekeeper's bees.

(c) Records, signed statements, or official reports of representatives of local canneries or pesticide vendors who supplied pesticides which were used within the normal forage range of the beekeeper's bees.

(d) Records, signed statements, or official reports of local, State or Federal governmental agencies or colleges and universities having verified information with respect to the application of pesticides in the locality where the beekeeper's apiaries were located.

§ 760.107 Proving nonfault.

A beekeeper shall submit to the County Committee (a) a statement signed by the beekeeper stating whether or not he used pesticides, and (b) if he did use pesticides, evidence that his use thereof in no way contributed to the loss of his bees.

§ 760.108 Proving reasonable care.

A beekeeper shall submit to the County Committee evidence that he exercised reasonable care in connection with the use of pesticides by others. Such evidence shall consist of, but is not limited to, written statements signed by the beekeeper:

(a) Stating whether or not he received advance notice that pesticides were going to be applied near or adjacent to his apiary.

(b) Describing what actions he took (if he received such notice) to protect his bees from pesticides, or why there was no suitable action he could take.

(c) Describing what steps he took, after exposure of his bees to pesticides, to improve the condition of his colonies and to reduce the extent of bee loss, or why there were no suitable steps he could take.

§ 760.109 Computation of payment.

(a) The County Committee will determine the amount of the indemnity payment due a beekeeper whom it has determined to be in compliance with the terms and conditions of this subpart. Such payment shall be in the amount of the beekeeper's net loss from losses of his bees resulting from application of pesticides, less any indemnification for the loss of his bees or payment of any nature which the beekeeper has received through insurance, legal action, or otherwise. The beekeeper may have his net loss determined by the County Committee on the basis of the following rates:

(1) $20 for each colony destroyed,

(2) $15 for each colony severely damaged,

(3) $5 for each colony moderately damaged,

(4) $7.50 for each queen nucleus destroyed, and

(5) $5 for each queen nucleus severely damaged;

or he may have his payment determined by the County Committee on the basis of evidence submitted by him to the County Committee relating to the following:

(i) The cost of bees obtained to replace those lost,

(ii) Loss of sales of honey and beeswax,

(iii) Loss of pollination fees, and

(iv) Loss of sales of queen bees and packaged bees.

§ 760.110 Appeals.

The Appeal Regulations issued by the Administrator, ASCS, Part 780 of this chapter, shall be applicable to appeals by beekeepers from determinations made pursuant to the regulations in this subpart.

§ 760.111 Assignments.

A beekeeper shall not assign any indemnity payment due or to come due under the regulations in this subpart.

§ 760.112 Instructions.

DASCO shall cause to be prepared such forms and instructions as are necessary for carrying out the regulations in this subpart. Beekeepers may obtain such forms, including the following, from the ASCS county office:

ASCS–448—Beekeeper Indemnity Payment Program Report of Loss on a Colony Basis and Application for Payment.

ASCS–449—Beekeeper Indemnity Payment Program Report of Loss on a Loss of Income Basis and Application for Payment.

§ 760.113 Limitation of authority.

(a) County executive directors and State and County Committees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) The State Committee may take any action authorized or required by the regulations in this subpart to be taken by the County Committee when such action has not been taken by the County Committee. The State Committee may also (1) correct, or require a County Committee to correct, any action taken by such County Committee which is not in accordance with the regulations in this subpart, or (2) require a County Committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or County Committee shall preclude DASCO or his designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or County Committee.

§ 760.114 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purposes of this subpart, be considered to represent an insolvent beekeeper and the beneficiaries of a trust, respectively, and the honeybee losses of the receiver or trustee shall be

considered to be the honeybee losses of the persons he represents. Program documents executed by any such person will be accepted only if such person has authority to sign the applicable documents, and such documents are otherwise legally valid.

(b) A minor who is a beekeeper shall be eligible for indemnity payments only if he meets one of the following requirements: (1) The rights of majority have been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

§ 760.115 Setoffs.

(a) If any indebtedness of the beekeeper to any agency of the United States is listed on the county claims control record, indemnity payments due the beekeeper under the regulations in this part shall be applied, as provided in the Secretary's Setoff Regulations, Part 13 of this title, to such indebtedness.

(b) Compliance with the provisions of this section shall not deprive the beekeeper of any right he would otherwise have to contest the justness of the indebtedness involved in the setoff action, either by administrative appeal or by legal action.

§ 760.116 Overdisbursement.

A beekeeper shall be personally liable for repayment of the amount by which any indemnity payment disbursed to him exceeds the amount of such payment authorized under the regulations in this subpart.

§ 760.117 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any beekeeper who is entitled to an indemnity payment, such payment may be made to the person or persons specified in the regulations contained in Part 707 of this chapter. The persons requesting such payment shall file Form ASCS–325, "Application For Payment Of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in that part.

§ 760.118 Records, and inspection thereof.

The beekeeper, and any other person who furnishes information to such beekeeper or to the County Committee to enable the beekeeper to receive an indemnity payment under this subpart, shall maintain any books, records and accounts supporting any information furnished to the County Committee, for 3 years following the end of the year during which the application for payment was filed. The beekeeper or any other person who furnishes such information to the beekeeper or to the County Committee shall permit authorized representatives of the Department of Agriculture and the General Accounting Office, during regular business hours, to inspect, examine, and make copies of such books, records, and accounts.

NOTE: The reporting and/or recordkeeping requirement contained herein has been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date: Date of publication (6–11–71).

Signed at Washington, D.C., on May 28, 1971.

CARROLL G. BRUNTHAVER,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.71–8201 Filed 6–10–71;8:51 am]

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

[Export Reg. 18, Amdt. 3]

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

Limitation of Export Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905) 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 exports of oranges, except Navel, Temple, and Murcott Honey oranges and grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this amendment until 30 days after publication 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 exportation of grapefruit and oranges grown in Florida.

The recommendations by the Growers Administrative Committee for less restrictive grade limitations on the exportation of oranges and grapefruit is consistent with the available supply of and demand for such fruits by the major export market outlets. The recommended grade regulations are necessary to insure a continuous supply of good quality fruit and to promote expansion of the export markets.

Order. In paragraph (a) of § 905.527 (Export Reg. 18; 35 F.R. 14607, 16787, 18742) the provisions of subparagraphs (1) and (5) are revised to read as follows:

§ 905.527 Export Regulation 18.

(a) * * *

(1) Any oranges, other than Navel, Temple and Murcott Honey oranges, grown in the production area, which do not grade at least U.S. No. 2 Russet;

* * * * *

(5) Any grapefruit, grown in the production area, which do not grade at least U.S. No. 2 Russet;

* * * * *

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

Dated June 8, 1971, to become effective June 8, 1971.

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

[FR Doc.71–8203 Filed 6–10–71;8:51 am]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 71–460]

PART 541—DEFINITIONS

PART 545—OPERATIONS

Participation Loan Transactions

Correction

In F.R. Doc. 71–7627 appearing at page 10722 in the issue for Wednesday, June 2, 1971, the following changes should be made:

1. In the third line of § 545.6–4(a)(1) "ticipate" should read "participate".

2. In the 16th line of § 545.6–4(a)(1) the reference to "§ 545.6X1(b)(4)" should read "§ 545.6–1(b)(4)".

3. In the third line of the authority citation in the middle column on page 10723 the reference to "7943–48 Comp." should read "1943–48 Comp."

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. C–1902]

PART 13—PROHIBITED TRADE PRACTICES

Bell & Howell Co.

Subpart—Advertising falsely or misleadingly: § 13.71 *Financing:* 13.71–10

Truth in Lending Act; § 13.73 *Formal regulatory and statutory requirements:* 13.73–92 Truth in Lending Act; § 13.155 *Prices:* 13.155–95 Terms and conditions: 13.155–95(a) Truth in Lending Act. Subpart—Misrepresenting oneself and goods—Goods: § 13.1623 *Formal regulatory and statutory requirements:* 13.1623–95 Truth in Lending Act; Misrepresenting oneself and goods—Prices: § 13.1823 *Terms and conditions:* 13.-1823–20 Truth in Lending Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* § 13.1852–75 Truth in Lending Act; § 13.1905 *Terms and conditions:* § 13.1905–60 Truth in Lending Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 82 Stat. 146, 147; 15 U.S.C. 45, 1601–1605) [Cease and desist order, Bell & Howell Co., Chicago, Ill., Docket No. C–1902, Apr. 20, 1971]

In the Matter of Bell & Howell Co., a Corporation

Consent order requiring a Chicago, Ill., seller of motion picture equipment to cease violating the Truth in Lending Act by failing to make all disclosures required by Regulation Z of said Act on one side of a page of the instrument, failing to disclose the "total of payments," and failing to state in required terms the cash price, the down payment, the number and due dates of the payments, the amount of the finance charge, and the deferred payment price.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Bell & Howell Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with any extension of consumer credit or any advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit as "consumer credit" and "advertisement" are defined in Regulation Z (12 CFR Part 226) of the Truth in Lending Act (Public Law 90–321, 15 U.S.C. 1601 et seq.), do forthwith cease and desist from:

1. Failing to make all disclosures required to be made by Regulation Z prior to consummation of the transaction, as required by § 226.8(a) of Regulation Z.

2. Failing to disclose together, either on an instrument evidencing the obligation on the same side of the page or on one side of a separate statement which identifies the transaction, all disclosures required by § 226.8 (b) and (c), as required by § 226.8(a) (1) and (2) of Regulation Z.

3. Failing, in any consumer credit transaction, to disclose accurately the sum of the payments scheduled to repay the indebtedness, and to describe that sum as the "Total of Payments", as required by § 226.8(b)(3) of Regulation Z.

4. Stating, in any advertisement, the amount of the downpayment required or that no downpayment is required, the amount of any installment payment, the dollar amount of any finance charge, the number of installments or the period of repayment, or that there is no charge for credit unless it states all of the following items, in terminology prescribed under § 226.8 of Regulation Z, as required by § 226.10(d)(2) of Regulation Z:

(a) The cash price;

(b) The amount of the downpayment required or that no downpayment is required, as applicable;

(c) The number, amount and due dates or period of payments scheduled to repay the indebtedness if the credit is extended;

(d) The amount of the finance charge expressed as an annual percentage rate; and

(e) The deferred payment price.

5. Failing, in any consumer credit transaction or advertisement, to make all disclosures, determined in accordance with §§ 226.4 and 226.5 of Regulation Z, in the manner, form and amount required by §§ 226.6, 226.7, 226.8, and 226.10 of Regulation Z, the implementing Regulation of the Truth in Lending Act, duly promulgated by the Board of Governors of the Federal Reserve System.

It is further ordered, That respondent deliver a copy of this order to cease and desist to all present and future personnel of respondent engaged in the consummation of any consumer credit transaction or in any aspect of preparation, creation, or placing of advertising as relates to any consumer credit transaction, and that respondent secure a signed statement acknowledging receipt of said order from each such person.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resultant in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist contained herein.

Issued: April 20, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71–8145 Filed 6–10–71;8:45 am]

[Docket No. C–1904]

PART 13—PROHIBITED TRADE PRACTICES

Borden, Inc.

Subpart—Advertising falsely or misleadingly: § 13.175 *Quality of product or service.* Subpart—Using deceptive techniques in advertising: § 13.2275 *Using deceptive techniques in advertising:* 13.2275–70 Television depictions.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Borden, Inc., New York, N.Y., Docket No. C–1904, Apr. 21, 1971]

In the Matter of Borden, Inc., a Corporation

Consent order requiring a New York City seller and distributor of an instant coffee designated "Kava Instant Coffee" to cease misrepresenting that its depictions or demonstrations of any food product are actual proof of the quality of that product, or using such misrepresentation to induce the purchase of such product.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That Borden, Inc., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of Kava coffee or any other coffee product or nondairy food product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination of any advertisement by means, of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents directly or by implication:

(a) That depictions or demonstrations, presented either alone or accompanied by oral or written statements, are actual proof of the quality or merits of any such food product when in fact such depictions or demonstrations contain distortions or exaggerations and do not constitute actual proof thereof.

2. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondent's preparation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondent shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That the respondent shall within sixty (60) days after service upon it of this order, file with the Commission a written report setting forth in detail the manner and form of its compliance with the order.

Issued: April 21, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71–8146 Filed 6–10–71;8:45 am]

[Docket No. C-1900]

PART 13—PROHIBITED TRADE PRACTICES

Colgate-Palmolive Co. et al.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* 13.170–16 Cleansing, purifying. Subpart—Using deceptive techniques in advertising: § 13.2275 *Using deceptive techniques in advertising:* 13.2275–70 Television depictions.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Colgate-Palmolive Co. et al., New York, N.Y., Docket No. C–1900, Apr. 12, 1971]

In the Matter of Colgate-Palmolive Co., a Corporation, and Masius, Wynne-Williams, Street & Finney, Inc., a Corporation, and Norman, Craig & Kummell, Inc., a Corporation, and William Esty Co., a Corporation

Consent order requiring a New York City seller and distributor of home laundry preparations containing enzymes to cease misrepresenting that any such product will remove all types of stains, or that any specific ingredient will remove stains, and that for a period of 1 year disclose on all consumer packages the types of stains which the product can remove and those which it cannot remove, and that such disclosures be made on appropriate radio and television advertising of the product; it is further ordered that respondent's advertising agencies cease misrepresenting that respondent's product will remove all types of stains where such representation is known to be false.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered,* That respondent Colgate-Palmolive Co., a corporation, its officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of any home laundry products containing enzymes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product will remove all types of stains. "Stains" as used herein means spots or local discolorations caused by other than dirt or body soil.

2. Representing, directly or by implication, that any specific ingredient in any such product removes any stain if such stain can reasonably be expected to be removed satisfactorily under normal washing procedures by such product without such ingredient.

3. Representing, directly or by implication, in advertising, that any such product has the ability to remove stains unless:

(A) For a period of not more than 6 months subsequent to the date this order becomes effective and until such time that respondent complies with the provisions of paragraph (B) below, respondent clearly and conspicuously discloses in each such radio, television and printed advertisement that such product will not remove all types of stains; and

(B) Beginning at a date not later than 6 months after this order becomes effective and for a period of 1 year thereafter:

(a) Respondent clearly and conspicuously discloses on all consumer packages of such product which it sells (1) the types of stains which the product can reasonably be expected to remove satisfactorily, (2) the recommended procedures for obtaining such removal, and (3) the types of stains likely to be found in fabrics subject to home laundry cleaning, which the product cannot reasonably be expected to remove satisfactorily, and

(b) Respondent clearly and conspicuously discloses in each such radio, television and printed advertisement that the types of stains the product will not remove appear on the product's package.

4. The required disclosures, as set forth above, need appear only once in the audio and once in the video of every commercial specified in paragraph 3 of the order. The audio and video portions of such disclosure, where applicable, shall be in reasonable concurrence with each other and the visual portion of the disclosure required by paragraph 3(B)(b) of the order may consist either (1) of a showing of the package disclosure simultaneously with the audio disclosure, or (2) of a superimposed statement.

II. *It is ordered,* That respondents Masius, Wynne-Williams, Street & Finney, Inc., a corporation; Norman, Craig & Kummel Inc., a corporation; and William Esty Co., Inc., a corporation, their officers, representatives, agents and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of any home laundry products containing enzymes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: Representing, directly or by implication that any such product will remove all types of stains when respondents knew or should have known that such representation was false or deceptive.

III. *It is further ordered,* That all respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions involved in the advertising, promotion, distribution, or sale of consumer products.

It is further ordered, That each respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That parts I and II of this order shall become effective ninety (90) days after the order is final.

It is further ordered, That all respondents shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon them, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Issued: April 12, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8147 Filed 6-10-71;8:46 am]

[Docket No. C–1906]

PART 13—PROHIBITED TRADE PRACTICES

Costumer et al.

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling, or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191) [Cease and desist order, The Costumer et al., Los Angeles, Calif., Docket No. C–1906, Apr. 3, 1971]

In the Matter of The Costumer, a Corporation, Trading as Travilla, and William J. Travilla and William V. Sarris, Individually and as Officers of Said Corporation

Consent order requiring a Los Angeles, Calif., manufacturer and distributor of women's apparel, including ladies' dresses, to cease violating the Flammable Fabrics Act by importing or selling any fabric which fails to conform to the standards of said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That the respondents The Costumer, a corporation, trading as Travilla, and its officers and William J. Travilla and William V. Sarris, individually and as officers of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce or selling or delivering after sale or shipment, in commerce, any product, fabric or related material; or manufacturing for sale, selling or offering for sale, any product made of fabric or related material which has been shipped or received in commerce as "commerce," "product," "fabric," and "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material

fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of said products and effect the recall of said products from such customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since April 1970, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric, or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric, or related material having a raised fiber surface. Respondents shall submit samples of not less than 1 square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries of any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Issued: April 23, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc. 71-8148 Filed 6-10-71;8:46 am]

[Docket No. C-1898]

PART 13—PROHIBITED TRADE PRACTICES

D'Arcy Advertising Co.

Subpart—Advertising falsely or misleadingly: § 13.150 *Premiums and prizes:* 13.150-35 Prizes; § 13.157 *Prize contests;* § 13.160 *Promotional sales plans.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.-1905 *Terms and conditions.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, D'Arcy Advertising Co., St. Louis, Mo., Docket No. C-1898, Apr. 12, 1971]

In the matter of D'Arcy Advertising Co., a Corporation

Consent order requiring a St. Louis, Mo., advertising agency retained by McDonald's Corp. in preparing its advertising to cease participating in any advertising promotion if it knows that all the prizes will not be awarded, failing to disclose that holders of winning coupons must submit to personal interviews, failing to disclose the number and nature of the prizes available, distributing winning numbers in States where they have been prohibited by law, and engaging in any contest or game of chance without disclosing the total number and exact nature of the prizes, and other significant details.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That D'Arcy Advertising Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with its participation in the preparation, promotion, sale, distribution, or use of any "sweepstakes," contest, game, or any other promotional device, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. (1) Participating in promotional devices if it knows, has reason to know, or should have known that all prizes of the value and type represented will not be awarded or distributed.

(2) Participating in promotional devices if it knows, has reason to know, or should have known that individuals submitting winning numbers, coupons, tickets, symbols, or other entries, will not be awarded any prize or award to which they are entitled.

(3) Failing to disclose, clearly and conspicuously, in all printed advertising that individuals who hold winning coupons will be asked to submit an affidavit and submit to a personal interview; and failing to disclose all terms or conditions which individuals will be asked to or have to comply with in order to obtain a prize.

(4) Failing to disclose, clearly and conspicuously, in all printed advertising and promotional material the exact number of prizes which will be available, the exact nature of the prizes, their approximate retail value, and the odds of winning each such prize: *Provided, however,* That in those promotional devices in which the odds cannot be determined with reasonable accuracy, respondent shall clearly and conspicuously disclose the approximate number of individuals to whom the promotional device is being disseminated.

(5) Distributing winning numbers, coupons, tickets, symbols, or other entries to States in which "sweepstakes," games, contests, or any other promotional devices have been voided or prohibited by law.

(6) Representing, directly or by implication, that prizes have been purchased unless they have in fact been purchased before or during the time the promotional device is in progress.

(7) Failing to furnish or make reasonable arrangements with others to furnish to requesting individuals a complete list of the names of winners together with the address of and prize won by each.

(8) Failing to maintain or make reasonable arrangements with others to maintain adequate records (a) which disclose the facts upon which any of the representations of the type described in paragraphs 1-7 of this order are based, and (b) from which the validity of the representations of the type described in paragraphs 1-7 of this order can be determined. Such records shall be maintained for a period of four (4) years after completion of the promotional device to which they pertain.

(9) Failing to furnish upon the request of the Federal Trade Commission:

(a) A complete list of the names and addresses of the winners of each prize, and a description of the prize, including its retail value;

(b) A list of the winning numbers or symbols, if utilized, for each prize;

(c) The total number of coupons or other entries distributed;

(d) The total number of participants in the promotion;

(e) The total number of prizes in each category or denomination which were made available; and

(f) The total number of prizes in each category or denomination which were awarded.

B. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes," contest, game, or other

promotional device unless the following are disclosed clearly and conspicuously in all printed advertising and promotional material concerning such devices:

(1) The total number of prizes to be awarded;

(2) The exact nature of the prizes, their approximate retail value and the number of each;

(3) All of the terms, conditions and obligations with which individuals will be asked to or have to comply with in order to obtain a prize; and

(4) The odds of winning each prize; *Provided, however,* That in those promotional devices in which odds cannot be determined with reasonable accuracy respondent shall clearly and conspicuously disclose the approximate number of individuals to whom the promotional device is being disseminated.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of successor corporations, the creation or dissolution of subsidiaries, or any other change in the corporations which may affect compliance with this order.

It is further ordered, That the respondent herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner in which they have complied with this order.

Issued: April 12, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8149 Filed 6-10-71;8:46 am]

[Docket No. C-1896]

PART 13—PROHIBITED TRADE PRACTICES

Howard-Gibco Corp.

Subpart—Advertising falsely or misleadingly: § 13.155 *Prices:* 13.155-85 Sales below cost. Subpart—Combining or conspiring: § 13.395 *To control marketing practices and conditions.* Subpart—Selling below cost: § 13.2180 *Selling below cost.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Howard-Gibco Corp., Texarkana, Tex., Docket No. C-1896, Apr. 8, 1971]

In the Matter of Howard-Gibco Corp., a Corporation

Consent order requiring a Texarkana, Tex., operator of retail chain stores in four southwestern States to cease selling its fluid milk at a price less than the cost thereof to respondent.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent, Howard-Gibco Corp., a corporation, its officers, directors, agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of its fluid milk in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

Selling or offering to sell its fluid milk at a price less than the cost thereof to respondent with the purpose or intent, or where the effect may be, substantially to lessen competition or tend to create a monopoly in the sale of fluid milk.

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of the managers and assistant managers of each of its retail stores.

It is further ordered, That respondent notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That respondent herein shall within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form of its compliance with this order.

Issued: April 8, 1971.

By the Commission.[1]

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8150 Filed 6-10-71;8:46 am]

[Docket No. C-1909]

PART 13—PROHIBITED TRADE PRACTICES

J.E.M. Imports, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-80 Textile Fiber Products Identification Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-80 Textile Fiber Products Identification Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-70 Textile Fiber Products Identification Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 72 Stat. 1717; 15 U.S.C. 45, 70) [Cease and desist order, J.E.M. Imports, Inc., et al., San Francisco, Calif., Docket No. C-1909, Apr. 26, 1971]

[1] Commissioner Dixon dissented, as he does not think the order is effective.

In the Matter of J.E.M. Imports, Inc., a Corporation, Also Doing Business as J. E. Mamiye Import Co., and Jack E. Mamiye, Individually and as an Officer of Said Corporation

Consent order requiring a San Francisco, Calif., importer and distributor of textile fiber products, including bedspreads, to cease misbranding such textile fiber products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents J.E.M. Imports, Inc., a corporation, also doing business as J. E. Mamiye Import Company, and its officers, and Jack E. Mamiye, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction, sale, advertising or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from misbranding such textile fiber products by:

1. Falsely or deceptively stamping, tagging, labeling, invoicing, advertising or otherwise identifying such products as to the name or amount of the constituent fibers contained therein.

2. Failing to affix a stamp, tag, label, or other means of identification to each such textile fiber product showing in a clear legible and conspicuous manner each element of information required to be disclosed by section 4(b) of the Textile Fiber Products Identification Act.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of the order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order,

file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: April 26, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8151 Filed 6-10-71;8:46 am]

[Docket No. C-1907]

PART 13—PROHIBITED TRADE PRACTICES

Kastorian Fur Corp. and Tom Papastavros

Subpart—Invoicing products falsely: § 13.1108 *Invoicing products falsely:* 13.1108-45 Fur Products Labeling Act. Subpart—Misbranding or mislabeling: § 13.1185 *Composition:* 13.1185-30 Fur Products Labeling Act; § 13.1212 *Formal regulatory and statutory requirements:* 13.1212-30 Fur Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852-35 Fur Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, sec. 8, 65 Stat. 179, 15 U.S.C. 45, 69f) [Cease and desist order, Kastorian Fur Corp. et al., New York, N.Y., Docket C-1907, Apr. 26, 1971]

In the Matter of Kastorian Fur Corp., a Corporation, and Tom Papastavros, Individually and as an Officer of Said Corporation

Consent order requiring a New York City manufacturer of fur garments to cease misbranding and falsely invoicing its fur products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondent Kastorian Fur Corp., a corporation, and its officers and Tom Papastavros, individually and as an officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or manufacture for introduction, into commerce, or the sale, advertising or offering for sale in commerce, or the transportation or distribution in commerce, of any fur product; or in connection with the manufacture for sale, sale, advertising, offering for sale, transportation or distribution, of any fur product which is made in whole or in part of fur which has been shipped and received in commerce, as the terms "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding any fur product by:

1. Representing directly or by implication on a label that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

2. Failing to affix a label to such fur product showing in words and in figures plainly legible all of the information required to be disclosed by each of the subsections of section 4(2) of the Fur Products Labeling Act.

B. Falsely or deceptively invoicing any fur product by:

1. Failing to furnish an invoice, as the term "invoice" is defined in the Fur Products Labeling Act, showing in words and figures plainly legible all the information required to be disclosed by each of the subsections of section 5(b)(1) of the Fur Products Labeling Act.

2. Representing, directly or by implication, on an invoice that the fur contained in such fur product is natural when such fur is pointed, bleached, dyed, tip-dyed, or otherwise artificially colored.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: April 26, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8152 Filed 6-10-71;8:46 am]

[Docket No. 8765o]

PART 13—PROHIBITED TRADE PRACTICES

Kennecott Copper Corp.

Subpart—Acquiring corporate stock or assets: § 13.5 *Acquiring corporate stock or assets.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 18) [Cease and desist order, Kennecott Copper Corp., New York, N.Y., Docket No. 8765, May 5, 1971]

In the Matter of Kennecott Copper Corp., a Corporation

Order requiring the Nation's largest copper mining corporation with headquarters in New York City to divest itself within 6 months of the largest coal producer in the United States with headquarters in St. Louis, Mo., and not to make further acquisitions in the coal industry for the next 10 years without prior Federal Trade Commission approval.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered,* That Kennecott Copper Corp., a corporation, and its officers, directors, agents, representatives, employees, subsidiaries, affiliates, successor, and assigns, within six (6) months from the date of service upon it of this order, shall divest, absolutely and in good faith, subject to the approval of the Federal Trade Commission, all assets, properties, rights and privileges, tangible and intangible, including, but not limited to, all plants, equipment, trade names, trademarks, and good will, acquired by Kennecott Copper Corp., as a result of the acquisition of the assets and business of Peabody Coal Co., together with all additions and improvements thereto, of whatever description, so as to restore Peabody as a going concern and effective competitor in the mining, production, and sale of coal.

II. *It is further ordered,* That none of the assets, properties, rights or privileges, described in paragraph I of this order, shall be sold or transferred, directly or indirectly, to any person who is at the time of the divestiture an officer, director, employee, or agent of or under the control or direction of, respondent or any of respondent's subsidiary or affiliated corporations, or owns or controls, directly or indirectly, more than one (1) percent of the outstanding shares of common stock of Kennecott Copper Corp., or to any purchaser who is not approved in advance by the Federal Trade Commission.

III. *It is further ordered,* That if respondent divests the assets, properties, rights and privileges, described in paragraph I of this order, to a new corporation or corporations, the stock of each of which is wholly owned by Kennecott Copper Corp., and if respondent then distributes all of the stock in said corporation or corporations to the stockholders of Kennecott Copper Corp., in proportion to their holdings of Kennecott Copper Corp.'s stock, then paragraph II of this order shall be inapplicable, and the following paragraphs IV and V shall take force and effect in its stead.

IV. *It is further ordered,* That no person who is an officer, director or executive employee of Kennecott Copper Corp., or who owns or controls, directly or indirectly, more than one (1) percent of the stock of Kennecott Copper Corp., shall be an officer, director or executive employee of any new corporation or corporations described in paragraph III, or shall own or control, directly or indirectly, more than one (1) percent of the stock of any new corporation or corporations described in paragraph III.

V. *It is further ordered,* That any person who must sell or dispose of a stock interest in Kennecott Copper Corp., or the new corporation or corporations, described in paragraph III of this order may do so within six (6) months after the date on which distribution of the

stock of the said corporation or corporations is made to stockholders of Kennecott Copper Corp.

VI. *It is further ordered,* That pending divestiture, respondent shall not make any changes in the corporate structure, business operations, or in any plants, machinery, buildings, equipment or other property of whatever description of Peabody Coal Co. other than those changes made in the ordinary course of business.

VII. *It is further ordered,* That respondent shall for a period of ten (10) years from the date of service of this order, cease and desist from acquiring, directly or indirectly, through subsidiaries or otherwise, without the prior approval of the Federal Trade Commission, all or any part of the share capital of any corporation engaged in the mining, production or sale of coal in the United States, or capital assets pertaining to such mining, production or sale of coal.

VIII. *It is further ordered,* That as used in this order, the word "person" shall include all members of the immediate family of the individual specified and shall include corporations, partnerships, associations and other legal entities as well as natural persons.

IX. *It is further ordered,* That respondent shall periodically, within sixty (60) days from the date of service of this order and every sixty (60) days thereafter until divestiture is effected, submit to the Federal Trade Commission a detailed written report of its actions, plans, and progress, in complying with the provisions of this order, and fulfilling its objectives.

X. *It is further ordered,* That respondent's request for continued in camera treatment of documents identified as CX 163, CX 164 A–H, and CX 154 V–Z7 be, and it hereby is, granted.

XI. *It is further ordered,* That the documents identified as CX 11, CX 124 A–N, CX 125 A–C, CX 196 A–H, and RX 186 be, and they hereby are, a part of the public record.

XII. *It is further ordered,* That respondent's request for reconsideration of its motion of December 31, 1968 that Commissioner Jones withdraw from participation in this proceeding, or, in the alternative, that the Commission determine that Commissioner Jones be disqualified from such participation be, and it hereby is, denied.

Issued: May 5, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8153 Filed 6-10-71;8:46 am]

[Docket No. C-1908]

PART 13—PROHIBITED TRADE PRACTICES

Lanz of California, Inc., et al.

Subpart—Importing, selling, or transporting flammable wear: § 13.1060 *Importing, selling or transporting flammable wear.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, 67 Stat. 111, as amended; 15 U.S.C. 45, 1191)

[Cease and desist order, Lanz of California, Inc., et al., Los Angeles, Calif., Docket No. C-1908, Apr. 26, 1971]

In the Matter of Lanz of California, Inc., a Corporation, and The House of a Thousand Fabrics, a Corporation, and Kurt Scharff, Frank Neustatter, Joseph Basch, Werner Scharff, Margarete Rand, and Emanuel Rand, Individually and as Officers of Said Corporations

Consent order requiring a Los Angeles, Calif., importer and distributor of textile fiber products, including silk scarves, to cease violating the Flammable Fabrics Act by importing or selling any fabric which fails to conform to the standards of said Act.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Lanz of California, Inc., a corporation, and its officers, and The House of a Thousand Fabrics, a corporation, and its officers, and Kurt Scharff, Frank Neustatter, Joseph Basch, Werner Scharff, Margarete Rand, and Emanuel Rand, individually and as officers of said corporations, and respondents' representatives, agents and employees, directly or through any corporate or other device, do forthwith cease and desist from manufacturing for sale, selling, or offering for sale, in commerce, or importing into the United States, or introducing, delivering for introduction, transporting or causing to be transported in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material; or manufacturing for sale, selling or offering for sale products made of fabric or related material which has been shipped and received in commerce, as "commerce," "product," "fabric," or "related material" are defined in the Flammable Fabrics Act, as amended, which product, fabric or related material fails to conform to an applicable standard or regulation continued in effect, issued or amended under the provisions of the aforesaid Act.

It is further ordered, That respondents notify all of their customers who have purchased or to whom have been delivered the products which gave rise to this complaint of the flammable nature of such products and effect the recall of such products from customers.

It is further ordered, That the respondents herein either process the products which gave rise to the complaint so as to bring them within the applicable flammability standards of the Flammable Fabrics Act, as amended, or destroy said products.

It is further ordered, That the respondents herein shall, within ten (10) days after service upon them of this order, file with the Commission a special report in writing setting forth the respondents' intentions as to compliance with this order. This special report shall also advise the Commission fully and specifically concerning (1) the identity of the products which gave rise to the complaint, (2) the number of said products in inventory, (3) any action taken and any further actions proposed to be taken to notify customers of the flammability of said products and effect the recall of said products from customers, and of the results thereof, (4) any disposition of said products since July 15, 1969, and (5) any action taken or proposed to be taken to bring said products into conformance with the applicable standard of flammability under the Flammable Fabrics Act, as amended, or destroy said products, and the results of such action. Such report shall further inform the Commission as to whether or not respondents have in inventory any product, fabric or related material having a plain surface and made of paper, silk, rayon and acetate, nylon and acetate, rayon, cotton or any other material or combinations thereof in a weight of 2 ounces or less per square yard, or any product, fabric or related material having a raised fiber surface. Respondents shall submit samples of not less than 1 square yard in size of any such product, fabric, or related material with this report.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: April 26, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8154 Filed 6-10-71;8:46 am]

PART 13—PROHIBITED TRADE PRACTICES

Lever Brothers Co., Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* 13.170-16 Cleansing, purifying. Subpart — Using deceptive techniques in advertising: § 13.2275 *Using deceptive techniques in advertising:* § 13.2275-10 Television depictions.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Lever Brothers Co., Inc., et al., New York, N.Y., Docket No. C-1899, Apr. 12, 1971]

In the Matter of Lever Brothers Co., Inc., a Corporation, and SSC&B, Inc., a Corporation, and J. Walter Thompson Co., a Corporation

Consent order requiring a New York City seller and distributor of home laundry preparations containing enzymes to cease misrepresenting that any such product will remove all types of stains, or that any specific ingredient will remove stains, and that for a period of 1 year disclose on all consumer packages the types of stains which the product can remove and those which it cannot remove, and that such disclosures be made on appropriate radio and television advertising of the product; it is further ordered that respondent's advertising agencies cease misrepresenting that respondent's product will remove all types of stains where such representation is known to be false.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered,* That respondent, Lever Brothers Co., a corporation, its officers, representatives, agents, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of any home laundry products containing enzymes, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product will remove all types of stains. "Stains" as used herein means spot or local discolorations caused by other than dirt or body soil.

2. Representing, directly or by implication, that any specific ingredient in any such product removes any stain if such stain can reasonably be expected to be removed satisfactorily under normal washing procedures by such product without such ingredient.

3. Representing, directly or by implication, in advertising, that any such product has the ability to remove stains unless:

(A) For a period of not more than 6 months subsequent to the date this order becomes effective and until such time that respondent complies with the provisions of paragraph (B) below, respondent clearly and conspicuously discloses in each such radio, television and printed advertisement that such product will not remove all types of stains; and

(B) Beginning at a date not later than 6 months after this order becomes effective and for a period of 1 year thereafter:

(a) Respondent clearly and conspicuously discloses on all consumer packages of such product which it sells (1) the types of stains which the product can reasonably be expected to remove satisfactorily, (2) the recommended procedures for obtaining such removal, and (3) the types of stains likely to be found in fabrics subject to home laundry cleaning, which the product cannot reasonably be expect to remove satisfactorily, and

(b) Respondent clearly and conspicuously discloses in each such radio, television and printed advertisement that the types of stains the product will not remove appear on the product's package.

4. The required disclosures, as set forth above, need appear only once in the audio and once in the video of every commercial specified in paragraph 3 of the order. The audio and visual portions of such disclosure, where applicable, shall be in reasonable concurrence with each other and the visual portion of the disclosure required by paragraph 3(B)(b) of the order may consist either (1) of a showing of the package disclosure simultaneously with the audio disclosure, or (2) of a superimposed statement.

II. *It is ordered,* That respondent SSC&B, Inc., a corporation, and J. Walter Thompson Co., a corporation, their officers, representatives, agents and employees, directly or through any corporate or other device in connection with the advertising, offering for sale, sale and distribution of any home laundry products containing enzymes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: Representing, directly or by implication, that any such product will remove all types of stains when respondents knew or should have known that such representation was false or deceptive.

III. *It is further ordered,* That all respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions involved in the advertising, promotion, distribution, or sale of consumer products.

It is further ordered, That each respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other changes in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That parts I and II of this order shall become effective ninety (90) days after the order is final.

It is further ordered, That all respondents shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon them, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Issued: April 12, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8155 Filed 6-10-71;8:46 am]

[Docket No. 8791o]

PART 13—PROHIBITED TRADE PRACTICES

Mather Hearing Aid Distributors, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.15 *Business status, advantages, or connections:* 13.15-225 Personnel or staff; § 13.170 *Qualities or properties of product or service:* 13.170-52 Medicinal, therapeutic, healthful, etc.; § 13.205 *Scientific or other relevant facts.* Subpart—Misrepresenting oneself and goods—Business status, advantages or connections: § 13.1520 *Personnel or staff;* Misrepresenting oneself and goods—Goods: § 13.170 *Qualities or properties;* § 13.1740 *Scientific or other relevant facts.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Mather Hearing Aid Distributors, Inc., et al., Spokane, Wash., Docket No. 8791. Apr. 29, 1971]

In the Matter of Mather Hearing Aid Distributors, Inc., a Corporation, and United Hearing Centers, Inc., a Corporation, and Washington Hearing Center, Inc., a Corporation, and Marion Spreeuw, Individually and as an Officer of Said Corporations

Order requiring three sellers of hearing aid "devices," two located in Spokane, Wash., and one in Great Falls, Mont., to cease misrepresenting that their hearing aids involved a new scientific principle, would be helpful regardless of the hearing disability, prevent deafness, transform high tones to lower tones, were invisible when worn, fit entirely within the ear canal, needed no batteries, and that hearing aids for both ears were more beneficial than for one; respondents also misrepresented that their sales personnel had medical or scientific training, and made other false and misleading representations.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

PART I

It is ordered, That respondents Mather Hearing Aid Distributors, Inc., a corporation, United Hearing Aid Centers, Inc., a corporation, Washington Hearing Aid Center, Inc., a corporation, or any substitute or successor organization, and their officers, and Marion Spreeuw, individually and as an officer of said corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hearing aids, do forthwith cease and desist from:

1. Disseminating, or causing the dissemination of any advertisement by means of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents, directly or by implication, that:

(a) They merchandise a hearing aid which is a new invention, or involves a new mechanical or scientific principle when such product or one involving such principle has been on a market in the United States for more than 1 year.

(b) Their hearing aids are either invisible or undiscernible when worn.

(c) They merchandise a hearing aid which will fit entirely into the ear canal.

(d) They render a service or merchandise a device, not a hearing aid, which will improve an individual's hearing.

(e) A particular model or type of hearing aid does not require batteries, when, in fact, said model or type does require batteries.

(f) They employ expertly trained individuals to repair or service hearing aids.

(g) They will clean, repair or service hearing aids, or that they provide service centers where all types of hearing aids may be cleaned, repaired or serviced, unless in all instances respondents:

(1) Make a bona fide attempt to clean, repair, or service hearing aids brought to them for that purpose, and

(2) Clearly and conspicuously disclose in immediate conjunction therewith that they do not perform major repairs and that they do not perform major service upon hearing aids.

(h) Use of two hearing aids, one in each ear, for those suffering from a hearing disability of both ears, will be more beneficial than use of one, unless in immediate conjunction therewith it is clearly and conspicuously disclosed that many individuals suffering from a hearing disability of both ears will not receive greater benefits from use of two hearing aids than from the use of one.

2. Disseminating, or causing the dissemination of any advertisement by means of the United States mails, or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which fails to clearly and conspicuously disclose that:

(a) The business of respondents is the sale of hearing aids.

(b) Persons replying to respondents' advertisements may be contacted by salesmen, or otherwise, for the purpose of inducing them to purchase a hearing aid sold by respondents.

3. Disseminating, or causing to be disseminated, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act, any advertisement which contains any of the representations prohibited in paragraph 1, Part I of this order, or fails to comply with the affirmative requirements of paragraph 2 of Part I thereof.

PART II

It is further ordered, That respondents Mather Hearing Aid Distributors, Inc., a corporation, United Hearing Aid Centers, Inc., a corporation, Washington Hearing Aid Center, Inc., a corporation, or any substitute or successor corporation and their officers, and Marion Spreeuw, individually and as an officer of said corporations, and respondents' agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of hearing aids in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that:

(a) Their sales personnel have had medical or scientific education or training which enables them to diagnose hearing disabilities or to prescribe the proper hearing aid for an individual with a hearing disability.

(b) They merchandise a hearing aid which will transform high tones into lower tones.

(c) Purchasers of hearing aids, sold by respondents, will after purchase be routinely visited in their homes by representatives of respondents for the purpose of observing the progress of such purchasers in the use of the devices, or to adjust or regulate said devices when necessary.

(d) Their hearing aids will be beneficial to individuals with hearing problems unless in immediate conjunction therewith it is clearly and conspicuously disclosed that not all individuals suffering a hearing disability will benefit from use of a hearing aid.

(e) Use of their hearing aids will restore an individual's "natural" or "normal" hearing, will prevent deterioration of an individual's hearing, will prevent an individual from becoming deaf, will physiologically improve or correct a sensorineural hearing disability.

(f) Use of their hearing aids will enable an individual with a hearing disability to distinguish and understand sounds in group situations or when background noise is present, unless in immediate conjunction therewith it is clearly and conspicuously disclosed that many individuals with a hearing disability will not receive such benefits from use of a hearing aid.

(g) Their business is other than selling hearing aids to the public for a profit.

2. Misrepresenting in any manner:

(a) The nature or purpose of their business.

(b) The education or training of their sales personnel.

(c) The efficacy of their hearing aids.

3. Failing to deliver a copy of this order to cease and desist to all operating divisions of the corporate respondents and to all officers, managers and salesmen, both present and future, and any other person now engaged or who becomes engaged in the sale of hearing aids as respondents' agent, representative or employee; and failing to secure a signed statement from each of said persons acknowledging receipt of a copy thereof.

4. Failing to notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporations which may affect compliance obligations arising out of the order.

It is further ordered, That the initial decision, as modified by the accompanying opinion, and as above modified, be, and it hereby is, adopted as the decision of the Commission.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Issued: April 29, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8156 Filed 6-10-71;8:46 am]

[Docket No. C-1897]

PART 13—PROHIBITED TRADE PRACTICE

McDonald's Corp. and McDonald's System, Inc.

Subpart—Advertising falsely or misleadingly: § 13.150 *Premiums and prizes:* 13.150-35 Prizes; § 13.157 Prize contest; § 13.160 *Promotional sales plans.* Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1905 *Terms and conditions.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, McDonald's Corp. et al., Chicago, Ill., Docket No. C-1897, Apr. 12, 1971]

In the Matter of McDonald's Corp., and McDonald's System, Inc., Corporations

Consent order requiring a major chain of hamburger restaurants with headquarters in Chicago, Ill., to cease failing to award its prizes as represented, failing to disclose that holders of winning numbers might be asked additional questions, failing to disclose the exact number, nature and value of prizes available, distributing winning numbers in States where such contests are illegal, failing to furnish lists of winners of prizes over $5, failing to maintain records, and engaging in any contest or game of chance without disclosing the total number and exact nature of the prizes, and other significant details.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That McDonald's Corp., a corporation, and McDonald's System, Inc., a corporation, and their officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the prep-

aration, promotion, sale, distribution, or use of any "sweepstakes," contests or games of chance, or similar promotional devices in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. (1) Failing to award and distribute all prizes of the value and type represented.

(2) Failing to award and distribute to individuals submitting winning numbers, coupons, tickets, symbols, or other entries, any prize or award to which they are entitled.

(3) Failing to disclose, clearly and conspicuously, in all advertising that individuals who hold winning coupons might be asked for an interview or an affidavit; and failing to disclose all terms or conditions which individuals will be asked to or have to comply with in order to obtain a prize.

(4) Failing to disclose, clearly and conspicuously, in all advertising and promotional material, the exact number of prizes in each category or denomination to be made available, the exact nature of the prizes, their approximate retail value, and the odds of winning each such prize: *Provided, however,* That in those promotional devices in which the odds cannot be determined with reasonable accuracy, respondents shall clearly and conspicuously disclose the approximate number of individuals to whom the promotional device is being disseminated.

(5) Distributing winning numbers, coupons, tickets, symbols, or other entries to States in which such sweepstakes, contests or games of chance, or similar promotional devices have been voided or prohibited by law: *Provided, however,* That this subparagraph shall not apply to those distributions the respondents have neither participated in nor directed, authorized, ratified, or condoned.

(6) Representing, directly or by implication, that prizes have been purchased unless they have in fact been purchased before or during the time the promotional device is in progress.

(7) Failing to furnish to requesting individuals a complete list of the names of winners of all prizes having a retail value of $5 or more together with the address of and prize won by each.

(8) Failing to maintain adequate records (a) which disclose the facts upon which any of the representations of the type described in paragraphs 1–7 of this order are based, and (b) from which the validity of the representations of the type described in paragraphs 1–7 of this order can be determined.

(9) Failing to furnish upon the request of the Federal Trade Commission:

(a) A complete list of the names and addresses of the winners of each prize, having a retail value of $5 or more, and a description of the prize, including its approximate retail value;

(b) A list of the winning numbers or symbols, if utilized, for each prize;

(c) The total number of coupons or other entries distributed;

(d) The total number of known participants in the promotion;

(e) The total number of prizes in each category or denomination which were made available; and

(f) The total number of prizes in each category or denomination which were awarded.

B. Engaging in the preparation, promotion, sale, distribution, or use of any "sweepstakes," contests or games of chance, or similar promotional devices unless the following are disclosed clearly and conspicuously in all advertising and promotional material concerning such devices:

(1) The total number of prizes to be awarded;

(2) The exact nature of the prizes, their approximate retail value and the number of each;

(3) All of the terms, conditions and obligations with which individuals will be asked to or have to comply with in order to obtain a prize; and

(4) The odds of winning each prize: *Provided, however,* That in those promotional devices in which odds cannot be determined with reasonable accuracy respondents shall clearly and conspicuously disclose the approximate number of individuals to whom the promotional device is being disseminated.

For the purpose of this order, the phrase "directly or through any corporate or other device," insofar as it imposes responsibility upon respondents for acts and practices engaged in by respondents' licensees and said licensees' representatives, shall be construed to impose such responsibility upon respondents for only those said acts or practices which have been participated in, or directed, authorized, ratified or condoned by respondents.

It is further ordered, That the respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That the respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of successor corporations, or any other change in the corporations which may affect compliance with this order.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner in which they have complied with this order.

Issued: April 12, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8157 Filed 6-10-71;8:47 am]

[Docket No. C-1905]

PART 13—PROHIBITED TRADE PRACTICES

Mr. Tony, Inc., et al.

Subpart—Misbranding or mislabeling: § 13.1212 *Formal regulatory and statutory requirements:* 13.1212–90 Wool Products Labeling Act. Subpart—Neglecting, unfairly or deceptively, to make material disclosure: § 13.1852 *Formal regulatory and statutory requirements:* 13.1852–80 Wool Products Labeling Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2–5, 54 Stat. 1128–1130; 15 U.S.C. 45, 68) [Cease and desist order, Mr. Tony, Inc., et al., New York, N.Y., Docket No. C-1905, Apr. 22, 1971]

In the Matter of Mr. Tony, Inc., a Corporation, Formerly Trading Under Its Own Name and as Mr. Tony of Park Avenue, Inc., Mr. Tony Contracting, Inc., Mr. Tony of Madison Avenue, Inc., Mr. Tony of Third Avenue, Inc., Mr. Tony of Second Avenue, Inc., Mr. Tony of Fifth Avenue, Inc., and Mr. Tony of First Avenue, Inc., and Irving Lieberman, David Leboni, and Richard W. Baker, Individually and as Officers of the Said Corporation, and Ann Lieberman, Individually and as a Former Officer of the Aforesaid Corporations

Consent order requiring a New York City manufacturer and seller of men's suits to cease misbranding its wool products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

It is ordered, That respondents Mr. Tony, Inc., a corporation, and its officers, formerly trading as Mr. Tony of Park Avenue, Inc., Mr. Tony Contracting, Inc., Mr. Tony of Madison Avenue, Inc., Mr. Tony of Third Avenue, Inc., Mr. Tony of Second Avenue, Inc., Mr. Tony of Fifth Avenue, Inc., and Mr. Tony of First Avenue, Inc., and Irving Lieberman, Richard W. Baker, and David Leboni, individually and as officers of the said corporation, and Ann Lieberman, individually and as a former officer of the aforesaid corporations, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by section 4(a)(2) of the Wool Products Labeling Act of 1939.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondent corporation shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.

Issued: April 2, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8160 Filed 6-10-71;8:47 am]

[Docket No. 1901]

PART 13—PROHIBITED TRADE PRACTICES

Procter & Gamble Co. et al.

Subpart—Advertising falsely or misleading: § 13.170 *Qualities or properties of product or service:* 13.170-16 Cleansing, purifying. Subpart—Using deceptive techniques in advertising: § 13.2275 *Using deceptive techniques in advertising:* 13.2275-70 Television depictions.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, The Procter & Gamble Co. et al., Cincinnati, Ohio, Docket No. 1901, Apr. 12, 1971]

In the Matter of The Procter & Gamble Co., a Corporation, and Tatham-Laird & Kudner, Inc., a Corporation, and Grey Advertising, Inc., a Corporation, and Compton Advertising, Inc., a Corporation

Consent order requiring a Cincinnati, Ohio, seller and distributor of home laundry preparations containing enzymes to cease misrepresenting that any such product will remove all types of stains, or that any specific ingredient will remove stains, and that for a period of 1 year disclose on all consumer packages the types of stains which the product can remove and those which it cannot remove, and that such disclosures be made on appropriate radio and television advertising of the product; it is further ordered that respondent's advertising agencies cease misrepresenting that respondent's product will remove all types of stains where such representation is known to be false.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered,* That respondent The Proctor & Gamble Co., a corporation, and its officers, agents, representatives, and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale and distribution of any home laundry products containing enzymes, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that any such product will remove all types of stains. "Stains" as used herein means spots or local discolorations caused by other than dirt or body soil.

2. Representing, directly or by implication, that any specific ingredient in any such product removes any stain if such stain can reasonably be expected to be removed satisfactorily under normal washing procedures by such product without such ingredient.

3. Representing, directly or by implication, in advertising, that any such product has the ability to remove stains unless:

(A) For a period of not more than six (6) months subsequent to the date this order becomes effective and until such time that respondent complies with the provisions of paragraph (B) below, respondent clearly and conspicuously discloses in each such radio, television and printed advertisement that such product will not remove all types of stains; and

(B) Beginning at a date not later than six (6) months after this order becomes effective and for a period of 1 year thereafter:

(a) Respondent clearly and conspicuously discloses on all consumer packages of such product which it sells (1) the types of stains which the product can reasonably be expected to remove satisfactorily, (2) the recommended procedure for obtaining such removal, and (3) the types of stains likely to be found in fabrics subject to home laundry cleaning, which the product cannot reasonably be expected to remove satisfactorily, and

(b) Respondent clearly and conspicuously discloses in each such radio, television and printed advertisement that the types of stains the product will not remove appear on the product's package.

4. The required disclosures, as set forth above, need appear only once in the audio and once in the video of every commercial specified in paragraph 3 of the order. The audio and visual portions of such disclosure, where applicable, shall be in reasonable concurrence with each other and the visual portion of the disclosure required by paragraph 3(B)(b) of the order may consist either (1) of a showing of the package disclosure simultaneously with the audio disclosure or (2) of a superimposed statement.

II. *It is ordered,* That respondents Tatham-Laird & Kudner, Inc., a corporation; Grey Advertising, Inc., a corporation; and Compton Advertising, Inc., a corporation, their officers, representatives, agents, and employees, directly or through any corporate or other devices, in connection with the advertising, offering for sale, sale, and distribution of any home laundry products containing enzymes in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from: Representing, directly or by implication, that any such product will remove all types of stains when respondents knew or should have known that such representation was false or deceptive.

III. *It is further ordered,* That all respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions involved in the advertising, promotion, distribution, or sale of consumer products.

It is further ordered, That each respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other changes in corporation which may affect compliance obligations arising out of the order.

It is further ordered, That parts I and II of this order shall become effective ninety (90) days after the order is final.

It is further ordered, That all respondents shall, within sixty (60) days and at the end of six (6) months after the effective date of the order served upon them, file with the Commission a report, in writing, signed by such respondents, setting forth in detail the manner and form of their compliance with the order to cease and desist.

Issued: April 12, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8158 Filed 6-10-71;8:47 am]

[Docket No. C-1903]

PART 13—PROHIBITED TRADE PRACTICES

Rhodes Pharmacal Co., Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.170 *Qualities or properties of product or service:* 13.170-24 Cosmetic or beautifying; § 13.265 *Tests and investigations.* Subpart—Misrepresenting oneself and goods—Goods: § 13.1710 *Qualities or properties;* § 13.1762 *Tests, purported.*

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Rhodes Pharmacal Co., Inc., et al., Chicago, Ill., Docket No. C-1903, Apr. 21, 1971]

In the Matter of Rhodes Pharmacal Co., Inc., a Corporation, J. Sanford Rose, Individually and as Officer of Said Corporation, and Elan Corp., a Corporation, and James S. Rose, Individually and as Officer of Said Corporation

Consent order requiring a Chicago, Ill., seller and distributor of cosmetic and beauty aid products to cease misrepresenting that tests or experiments are proof of any feature of its beauty aid products or using such misrepresentations to induce purchase of respondents' products.

The order to cease and desist, including further order requiring report of compliance therewith, is as follows:

I. *It is ordered,* That respondents Rhodes Pharmacal Co., Inc., a corporation, and its officers and J. Sanford Rose, individually and as officer of said corporation, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution, of "Donnatelli" Honey and Egg Creme Facial, or other beauty aid products do forthwith cease and desist from directly or indirectly:

1. Disseminating or causing the dissemination of any advertisement by means of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which represents directly or by implication:

(a) That tests, experiments or demonstrations, or the results thereof, presented either alone or accompanied by oral or written statements, or any other evidence, are proof of any fact or product feature of any such beauty aid products, when in fact such tests, experiments, or demonstrations, or the results thereof, or other evidence do not constitute actual proof of such fact or product feature.

2. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in paragraph 1 hereof.

II. *It is ordered,* That respondent Elan Corp., a corporation and its officers, and James S. Rose, individually, and as officer of said corporation, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution, of "Renascene" Honey and Egg Creme Facial, and Couvert Make-Up, or other beauty aid products, do forthwith cease and desist from directly or indirectly.

1. Disseminating or causing the dissemination of any advertisement by means of the U.S. mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act which represents directly or by implication:

(a) That tests, experiments or demonstrations, or the results thereof, presented either alone or accompanied by oral or written statements, or any other evidence, are proof of any fact or product feature of any such beauty aid products, when in fact such tests, experiments or demonstrations or the results thereof, or other evidence do not constitute actual proof of such fact or product feature.

2. Disseminating, or causing the dissemination of any advertisement by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase of respondents' preparation, in commerce, as "commerce" is defined in the Federal Trade Commission Act, which contains any of the representations prohibited in paragraph 1 hereof.

It is further ordered, That the respondents shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered, That respondents notify the Commission at least 30 days prior to any proposed change in the corporate respondents such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That the respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a written report setting forth in detail the manner and form of their compilance with this order.

Issued: April 21, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

[FR Doc.71-8159 Filed 6-10-71;8:47 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 148b—AMPHOTERICIN

Amphotericin B for Injection; Correction

In F.R. Doc. 70-15180 appearing at page 17324 in the FEDERAL REGISTER of November 11, 1970, the first sentence in § 148b.2(b)(4) is corrected by changing "§ 141.4(b)" to read "§ 141.4(e)".

Date: May 28, 1971.

H. E. SIMMONS, *Director, Bureau of Drugs.*

[FR Doc.71-8162 Filed 6-10-71;8:47 am]

PART 148k—NYSTATIN

Nystatin Oral Suspension

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357) and under authority delegated to the Commissioner (21 CFR 2.120), the following new section is added to Part 148k to provide for certification of the subject antibiotic:

§ 148k.12 Nystatin oral suspension.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Nystatin oral suspension is a suspension containing nystatin and one or more suitable preservatives, suspending agents, surfactants, flavorings, and colorings in purified water. Each milliliter contains 100,000 units of nystatin. Its potency is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of units of nystatin that it is represented to contain. Its pH is not less than 4.5 and not more than 6.0. The nystatin used conforms to the standards prescribed by § 148k.1(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 148.3 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The nystatin used in making the batch for potency, safety, loss on drying, pH, and identity.

(*b*) The batch for potency and pH.

(ii) Samples required:

(*a*) The nystatin used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 5 immediate containers.

(b) *Tests and methods of assay—*(1) *Potency.* Proceed as directed in § 141.110 of this chapter, preparing the sample for assay as follows: Place an accurately measured representative aliquot of the sample into a high-speed glass blender jar containing sufficient dimethylformamide to give a convenient concentration. Blend for 3 to 5 minutes. Dilute an aliquot with sufficient dimethylformamide to give a stock solution containing 400 units of nystatin per milliliter (estimated). Remove an aliquot of the stock solution and further dilute with 10 percent potassium phosphate buffer, pH 6.0 (solution 6), to the reference concentration of 20 units of nystatin per milliliter (estimated).

(2) *pH.* Proceed as directed in § 141.503 of this chapter, using the undiluted suspension.

Data supplied by the manufacturer concerning the subject antibiotic have been evaluated. Since the conditions prerequisite to providing for its certification have been complied with and since it is in the public interest not to delay in so providing, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (6-11-71).

(Sec. 507, 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: May 25, 1971.

H. E. SIMMONS, *Director, Bureau of Drugs.*

[FR Doc.71-8161 Filed 6-10-71;8:47 am]

Chapter III—Environmental Protection Agency

PART 420—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

2,4,5,6-Tetrachloroisophthalonitrile

A petition (PP 1F1024) was filed by the Diamond Shamrock Chemical Co., 300 Union Commerce Building, Cleveland, Ohio 44115, proposing establishment of tolerances for combined residues of the fungicide 2,4,5,6-tetrachloroisophthalonitrile and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on peanut vine hay, sugar beet tops, and sweet corn forage at 20 parts per million; celery at 15 parts per million; snap beans, broccoli, brussels sprouts, cabbage, carrots, cauliflower, cucumbers, melons, pumpkins, squash (summer and winter), and tomatoes at 5 parts per million; lima beans (pods removed), and sweet corn (kernels plus cob with husks removed) at 1 part per million; and peanuts and sugar beets at 0.1 part per million (negligible residue).

Subsequently the petitioner amended the petition by withdrawing the request for tolerances on peanut vine hay, sugar beet tops, and sweet corn forage at 20 parts per million; on snap beans at 5 parts per million; and by changing the proposed tolerance on carrots from 5 parts per million to 1 part per million and the proposed tolerance on peanuts from 0.1 part per million (negligible residue) to 0.3 part per million. Lima beans and sugar beets were also withdrawn.

Prior to December 2, 1970, the Secretary of Agriculture certified that the pesticide chemical is useful for the purposes for which the proposed tolerances are being established. The Fish and Wildlife Service, Department of the Interior, advised that it has no objections to the proposed tolerances.

Part 120, Chapter I, Title 21 was redesignated Part 420 and transferred to Chapter III (36 F.R. 424).

Based on consideration of the data submitted in the petition and other relevant material, it is concluded that:

1. Since label restrictions against feeding sweet corn forage and peanut vine hay to livestock have been proposed and since no prime feed items containing residues of fungicide are involved in this petition, the proposed uses are not reasonably expected to result in residues in meat, milk, poultry, and eggs. The uses are classified in the category specified in § 420.6(a)(3).

2. The tolerances established by this order will protect the public health.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs of the Environmental Protection Agency (36 F.R. 9038), § 420.275 is revised to read as follows:

§ 420.275 2,4,5,6-Tetrachloroisophthalonitrile; tolerances for residues.

Tolerances are established for the combined residues of the fungicide 2,4,5,6-tetrachloroisophthalonitrile and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile in or on raw agricultural commodities as follows:

15 parts per million in or on celery.

5 parts per million in or on broccoli, brussels sprouts, cabbage, cauliflower, cucumbers, melons, pumpkins, squash (summer and winter), and tomatoes.

1 part per million in or on carrots and sweet corn (kernels plus cob with husks removed).

0.3 part per million in or on peanuts.

0.1 part per million (negligible residue) in or on potatoes.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Objections Clerk, Environmental Protection Agency, 1626 K Street NW., Washington, DC 20460, written objections thereto in quintuplicate. 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. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (6-11-71).

(Sec. 408(d)(2), 68 Stat. 512; 21 U.S.C. 346a(d)(2))

Dated: June 7, 1971.

LOWELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-8183 Filed 6-10-71;8:49 am]

Title 49—TRANSPORTATION

Chapter X—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Ex Parte No. 246]

PART 1002—FEES

Services Performed in Connection With Licensing and Related Activities

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 19th day of May 1971.

It appearing, that the Commission, on June 6, 1966, issued its report in this proceeding, and therein prescribed fees and regulations pertaining thereto for application to various activities of the Commission, which fees and regulations were revised and modified by the Commission's supplemental report and order of August 21, 1967;

If further appearing, that the Commission, on May 20, 1969, issued a notice of proposed rule making reopening this proceeding, under authority of the Independent Offices Appropriations Act of 1952 (32 U.S.C.A. 483a) Budget Bureau Circular No. A-25 of September 23, 1959, and 5 U.S.C. 553 (the Administrative Procedure Act) for the purpose of determining (1) whether the tentative schedule of fees which accompanied the said notice is reasonable, and if not, what fees would be reasonable, and (2) what other basis of assessing fees, other than cost to the Commission might be more equitable to the general public and to the recipient of the benefit or service;

If further appearing, that the said notice of proposed rule making invited the representations of all interested parties setting forth their views with respect to the tentative fees and the questions set forth above; and that notice to all interested parties was given through publication of the said notice in the FEDERAL REGISTER of June 4, 1969 (34 F.R. 6508);

And it further appearing, that various parties submitted their views and suggestions on the proposed fees and that the Commission has considered such representations and, on the date hereof, has made and filed its report setting forth its conclusions and findings and its reasons therefor, which report is hereby referred to and made a part hereof:

It is ordered, That the revised fees and regulations pertaining thereto set forth below be, and they are hereby, prescribed for application as set forth therein and in the said report;

It is further ordered, That the fees and regulations prescribed hereby shall supersede those previously prescribed and that this order shall become effective on August 19, 1971, and shall remain in effect until modified or revoked in whole or in part by further order of the Commission;

And it is further ordered, That notice of this order shall be given to the general public by depositing a copy thereof in the office of the secretary of the Interstate Commerce Commission, Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

(65 Stat. 290, 5 U.S.C. 140)

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

Section 1002.2 of Chapter X, Subchapter A of Title 49 of the Code of Federal Regulations, is amended to read as follows:

§ 1002.2 Filing fees.

(a) *Manner of payment.* All filing fees will be payable at the time and place the application, petition, notice, tariff, contract, or other document is tendered for filing. Fees will be payable to the Interstate Commerce Commission by check drawn upon funds deposited in a bank in the United States or money order payable in U.S. currency.

(b) *Fees not refundable.* Fees will be assessed for every filing in the types of proceedings listed in the schedule of fees contained in paragraph (d) of this section. After the application, petition, notice, tariff, contract, or other document has been accepted for filing by the Commission, the filing fee will not be refunded, regardless of whether the application, petition, notice, tariff, contract, or other document is granted or approved, denied, dismissed, or withdrawn. If an application, petition, notice, tariff, contract, or other document is rejected by the Commission as incomplete or for some other reason, the fee will be returned.

(c) *Related or consolidated proceedings.* (1) Separate fees need not be paid on related applications filed by the same applicant which would be the subject of one proceeding, such as a single petition for modification of more than one certificate or permit held by the same person; a related plan of track relocation, joint use, purchase of trackage rights, and issuance of securities; a section 5 motor common carrier acquisition application combined with a related section 207 application for a certificate of public convenience and necessity; or the like. In such instances, the only fee to be assessed will be that applicable to the embraced proceeding which carries the highest filing fee as listed in paragraph (d) of this section:

(2) Separate fees will be assessed for the filing of temporary authority applications as provided in paragraph (d) (6) of this section, regardless of whether such applications are related to an application for corresponding permanent authority.

(3) The Commission may reject concurrently filed applications, petitions, notices, contracts, or other documents asserted to be related and refund the filing fee if, in its judgment, they embrace two or more severable matters which should be the subject of separate proceedings.

(d) *Schedule of filing fees.*[1]

Type of Proceeding	Fee
PART I: APPLICATION FOR OPERATING AUTHORITY OR EXEMPTIONS	
(1) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad. Section 1 (18)–(20)	$700
(2) A motor carrier exemption application. Section 204a(4a)	350
(3) An application for motor common carrier authority, including an application for a certificate of registration. Sections 206 and 206(a)(6)	350
(4) An application for motor contract carrier authority. Section 209	350
(5) A petition to renew authority to transport explosives under section 206 or 209	5
(6) An application for motor carrier temporary authority. Sections 210a (a) and (b)	60
(7) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 CFR 1131.1(b)(1); may continue	10
(8) A petition to modify permits of motor carriers by the addition of a shipper or shippers for whom service may be performed under section 209	50
(9) An application for a broker's license. Section 211	350
(10) A water carrier exemption application. Section 302 or 303	350
(11) An application for water common carrier authority. Section 309 (a)	350
(12) An application for water contract carrier authority. Section 309(f)	350
(13) An application for water carrier temporary authority. Section 311(a)	60
(14) An application for freight forwarder authority. Section 410	350
(15) A petition to remove or alter an operating restriction contained in a certificate or permit and petitions seeking modification, clarification, or interpretation of a certificate or permit. "No fee is required for a request seeking the modification of a certificate or permit only to the extent of making a correction or a change in the name presently appearing therein of (a) a shipper or owner of a plantsite, or (b) a geographical point or highway"	200
(16) An application for authority to deviate from authorized regular route, 49 CFR Part 1042	15
PART II: APPLICATIONS TO DISCONTINUE TRANSPORTATION SERVICE	
(17) An application for authority to abandon all or a portion of a line of railroad or the operation thereof. Section 1(18)	200
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PART III: APPLICATIONS TO ENTER UPON A PARTICULAR FINANCIAL TRANSACTION OR JOINT ARRANGEMENT	
(19) An application for use of terminal facilities. Section 3(5)	150
(20) An application for the pooling or division of traffic. Section 5(1)	100
(21) An application of two or more carriers to consolidate or merge their properties or franchises, or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership. Section 5(2)	700
(22) An application of a noncarrier to acquire control of two or more carriers through ownership of stock or otherwise. Section 5(2)	700
(23) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto. Section 5(2)	700
(24) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. Section 5(2)	700
(25) An application for a determination of fact of competition. Section 5(15)	100
(26) An application for approval of, or to amend, a rate association agreement. Section 5a	300
(27) All applications for authority to hold a position as officer or director. Section 20a(12)	10
(28) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for exemption from competitive bidding requirements of Ex Parte No. 158, 49 CFR. 1115.25. Sections 20a, 20b, or 214	200
(29) An application for temporary authority to operate a motor or water carrier. Section 210a(b) or 311(b)	60
(30) An application for transfer or lease of a certificate or permit, including a certificate of registration, and a broker license or change of control of companies holding broker's licenses. Sections 212(b), 312, or 410(g)	100
(31) A petition to transfer a water carrier exemption authorized under sections 302 and 303 to the successor	100
(32) An application for approval of a motor vehicle rental contract. 49 CFR 1057.6(b)	30
PART IV: OTHER PROCEEDINGS	
(33) An application for relief from the long-and-short-haul and aggregate-of-intermediate provisions, including applications for relief with respect to additional commodities, origins or destinations, but not including petitions for modification of conditions, effective or not yet effective of outstanding orders, or amendments to applications not yet disposed of. Section 4	250
(34) An application for authority to establish released value rates or ratings, except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other calamitous visitation under section 22(1) of the act. Sections 20(11), 219, 413	200
(35) An application for special permission for short notice or the waiver of tariff-publishing requirements, including applications to extend or eliminate the scheduled expiration date of an outstanding special permission or to broaden the application thereof to additional territory or tariffs, except amendments to pending applications not yet disposed of, and	

[1] Except as noted, statutory references are to the Interstate Commerce Act. The proceedings for which fees are assessed are arranged in four major categories.

applications to postpone the effectiveness of suspended schedules, when carrier or agent is requested to do so, in order to afford the Commission more time for disposition of the proceeding or to postpone the scheduled effective date of protested schedules or those for which a fourth-section application has been filed, in order to afford the boards more time within which to process the protests or applications 20

(36) Application for basic (original) valuation of a pipeline carrier's operating property. Section 19a 10/hour

(37) Application for each annual valuation of a pipeline carrier's operating property as of the close of any calendar year following the carrier's basic valuation. Section 19a[2].

(38) Freight forwarder contracts and amendments thereto. Section 409 ..... ([3])

(39) An application for original qualification as an insurer, surety, or self-insurer 65

(40) An annual qualification service fee for insurer, surety, or self-insurer accepted certificate of insurance or surety bond ($50 minimum) ..... ([4])

(41) A petition for waiver of any provision of the lease and interchange regulations, 49 CFR Part 1057.

(42) A petition for reinstatement of revoked operating authority 60

(43) A request that the Commission amend its records to reflect a change in the name of a motor carrier, water carrier, or freight forwarder, not involving a change in ownership, management, or control, that is subject to the jurisdiction of the Commission 15

(44) A petition to define or redefine a commercial zone, or to remove the exemption applicable to commercial zone movements and a petition for individual determination of the exempt areas within which air cargo pickup and delivery service or transportation of air passengers may be performed. Sections 203(b)(7a), 203(b)(8); 49 CFR 1047.40(c) and 1047.45(c) 150

(45) A complaint seeking or a petition requesting institution of an investigation seeking the prescription of divisions of joint rates, fares, or charges. Section 15(6) 200

[FR Doc.71-8199 Filed 6-10-71;8:50 am]

[2] The following fees are based on the carrier's size:

Cost of reproduction (millions)	*Fee*
Under 10	$50
10-29.9	200
30-49.9	500
50-74.9	700
75-99.9	1,000
100-14.9	1,300
150-199.9	1,850
200-299.9	2,500
Over 300	4,300

[3] $1 per contract.

[4] $10 per accepted certificate of insurance or surety bond ($50 minimum).

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER D—GRANTS

PART 54—GRANTS FOR SPECIALIZED SERVICE FACILITIES

Subpart D—Grants for Initial Cost of Professional and Technical Personnel of Community Mental Health Centers

PRIORITY OF PROJECTS

Notice of proposed rule making, public rule making procedures and postponement of effective date have been omitted in the issuance of the following amendment to Subpart D—Grants for Initial Cost of Professional and Technical Personnel of Community Mental Health Centers. The subject regulations relate solely to grants; furthermore, it is in the public interest that the amendment be made effective immediately upon publication in the FEDERAL REGISTER so that initial grants for the cost of professional and technical personnel of community mental health centers may be awarded in accordance with the amended regulations before the expiration of the current fiscal year.

The purpose of the amendment is to enable the Secretary of Health, Education, and Welfare to give special consideration in the award of initial grants under Part B of the Community Mental Health Centers Act (42 U.S.C. 2688-2688d) to those community mental health centers with respect to which construction grants have been made under Part A of the Community Mental Health Centers Act (42 U.S.C. 2681-2687).

The following amendment to Subpart D shall become effective on the date of publication in the FEDERAL REGISTER (6-11-71).

Section 54.304 is amended to read as follows:

§ 54.304 **Priority of projects.**

In determining the priority of projects, the Secretary will give special consideration to those applications for an initial grant with respect to which a grant has been made under Part A of the Act to assist in financing the construction of the center, and will take into account the factors enumerated in section 220(c) of the Act.

(Sec. 223, Community Mental Health Centers Act as amended, 79 Stat. 429; 42 U.S.C. 2688c)

Dated: June 1, 1971.

VERNON E. WILSON,
Administrator, Health Services and Mental Health Administration.

Approved: June 9, 1971.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc.71-8334 Filed 6-10-71;10:01 am]

Proposed Rule Making

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[8 CFR Parts 211, 242]

ALIEN REGISTRATION RECEIPT CARDS AND ORDERS TO SHOW CAUSE

Withdrawal of Notice of Proposed Rule Making

Reference is made to the notice of proposed rule making which was published in the FEDERAL REGISTER on May 21, 1971 (36 F.R. 9251), pursuant to section 553 of title 5 of the United States Code (80 Stat. 383) and in which there were set out the terms of proposed amendments to §§ 211.1(b) (1) and (2) and 242.1 (b) and (c) pertaining to the invalidation and surrender of alien registration receipt cards in certain instances and to the issuance of orders to show cause. Several representations concerning the proposed rule making have been received and considered. In light of the representations received, it has been determined that no further action will be taken with regard to those proposed rules.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

Dated: June 7, 1971.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[FR Doc.71-8175 Filed 6-10-71;8:48 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[24 CFR Part 8]

[Docket No. R-71-111]

EQUAL EMPLOYMENT OPPORTUNITY UNDER HUD CONTRACTS AND HUD ASSISTED CONSTRUCTION CONTRACTS

Notice of Proposed Rule Making

The Department of Housing and Urban Development is considering amending Title 24 of the Code of Federal Regulations to include a new Part 8 entitled "Equal Employment Opportunity under HUD Contracts and HUD Assisted Construction Contracts." The proposed amendment, issued pursuant to 41 CFR 60-1.6(c) and Executive Order No. 11246, Equal Employment Opportunity, 31 F.R. 12319, establishes procedures for HUD administration of the equal employment opportunity policy in cases where HUD funds are involved.

Generally, under the proposed regulations, HUD would adopt the applicable provisions of 41 CFR Part 60-1 promulgated by the Department of Labor. However, in addition, § 8.25 *Award of contracts* sets forth specific steps to be followed by HUD with respect to the award of construction contracts in excess of $100,000, and nonconstruction contracts in excess of $50,000. Also, § 8.35 requires the filing of written affirmative action compliance programs in connection with construction contracts of $1 million or more. Section 8.100 sets the effective date as 60 days after publication in the FEDERAL REGISTER, applicable to all contracts which have not been executed as of that date.

Accordingly, interested persons are invited to participate in the making of the proposed rule by submitting written data, views, or statements with regard to the proposed regulations. Communications should identify the proposed rule by the above docket number and should be filed in triplicate with the Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. 20410, not later than July 16, 1971. All relevant material will be considered before adoption of a final rule. Copies of comments submitted will be available for examination during business hours, both before and after the specified closing date, at the above address.

The proposed rule is issued pursuant to section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

The proposed Part 8 reads as follows:

PART 8—EQUAL EMPLOYMENT OPPORTUNITY UNDER HUD CONTRACTS AND HUD ASSISTED CONSTRUCTION CONTRACTS

Sec.

8.1 Purpose.
8.5 Definitions.
8.10 Responsibilities.
8.15 Equal opportunity clause.
8.20 Exemptions.
8.25 Award of contracts.
8.30 Affirmative action compliance programs—nonconstruction contracts.
8.35 Affirmative action compliance programs—construction contracts.
8.40 Pre-bid requirements and conferences.
8.45 Participation in areawide equal employment opportunity program.
8.50 Reports and other required information.
8.55 Compliance reviews.
8.60 Complaint procedure.
8.65 Hearings and sanctions.
8.70 Intimidation and interference.
8.75 Segregated facilities certificate.
8.80 Solicitations or advertisements for employees.
8.85 Access to records of employment.
8.90 Notices to be posted.
8.95 Program directives and instructions.
8.100 Effective date.

AUTHORITY: The provisions of this Part 8 issued under sec. 201, Executive Order 11246, 30 F.R. 12319; and 41 CFR 60-1.6(c).

§ 8.1 Purpose.

This part prescribes standards and procedures for the Department of Housing and Urban Development in the implementation of its responsibilities as a compliance agency under Executive Order 11246; the rules and regulations of the Secretary of Labor, codified in 41 CFR Part 60, prescribed thereunder; and other rules, orders, instructions, designations, and directives issued by the Office of Federal Contract Compliance, Department of Labor.

§ 8.5 Definitions.

(a) "Administering agency" means any department, agency, and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving federally assisted construction contracts.

(b) "Agency" means any contracting or any administering agency of the Government.

(c) "Applicant" means an applicant for Federal assistance from the Department involving a construction contract, or other participant in a program involving a construction contract as determined by the Department. The term also includes such persons after they became recipients of such Federal assistance.

(d) "Compliance Agency" means the agency designated by the Director on a geographical, industry, or other basis to conduct compliance reviews and to undertake such other responsibilities in connection with the administration of the order as the Director may determine to be appropriate. In the absence of such a designation, the Compliance Agency will be determined as follows:

(1) In the case of a prime contractor not involved in construction work, the Compliance Agency will be the agency whose contracts with the prime contractor have the largest aggregate dollar value;

(2) In the case of a subcontractor not involved in construction work, the Compliance Agency will be the Compliance Agency of the prime contractor with which the subcontractor has the largest aggregate value of subcontracts or purchase orders for the performance of work under contracts;

(3) In the case of a prime contractor or subcontractor involved in construction work, the Compliance Agency for each construction project will be the agency providing the largest dollar value for the construction projects; and

(4) In the case of a contractor who is both a prime contractor and subcontractor, the Compliance Agency will be

determined as if such contractor is a prime contractor only.

(e) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

(f) "Contract" means any Government contract or any federally assisted construction contract.

(g) "Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

(h) "Department" means the Department of Housing and Urban Development.

(i) "Director" means the Director, Office of Federal Contract Compliance, U.S. Department of Labor, or any person to whom he delegates authority under the regulations of the Secretary of Labor.

(j) "Equal opportunity clause" means the contract provisions set forth in § 8.15 (a) or (b), as appropriate.

(k) "Facilities" as used in § 8.75, includes, but is not limited to waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees.

(l) "Federally assisted construction contract" means any agreement or modification thereof between any applicant and any person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Department for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(m) "Government" means the Government of the United States of America.

(n) "Government contract" means any agreement or modification thereof between any contracting agency and any person for the furnishing of supplies or services or for the use of real or personal property, including lease arrangements. Services, as used in this section includes, but is not limited to, the following services: Utility, construction, transportation, research, insurance, and fund depository. Government contract does not include (1) agreements in which the parties stand in the relationship or employer and employee, and (2) federally assisted construction contracts.

(o) "Hearing officer" means the individual or board of individuals designated to conduct hearings.

(p) "Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

(q) "Order" means Parts II, III, and IV of Executive Order 11246, dated September 24, 1965 (30 F.R. 12319), as amended by Executive Order 11375 dated October 13, 1967 (32 F.R. 14303), and any Executive Order amending or superseding such orders.

(r) "Person" means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(s) "Prime contractor" means any person holding a contract, and for the purposes of Subpart B (General Enforcement, Compliance Review, and Complaint Procedure) of the "rules and regulations", any person who has held a contract subject to the order.

(t) "Recruiting and training agency" means any person who refers workers to any contractor or subcontractor, or who provides or supervises apprenticeship or training for employment by any contractor or subcontractor.

(u) "Rules, regulations, and relevant orders" of the Secretary of Labor used in paragraph (4) of the equal opportunity clause means rules, regulations, and relevant orders of the Secretary of Labor or his designee issued pursuant to the order.

(v) "Secretary" means the Secretary of Housing and Urban Development.

(w) "Site of construction" means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility at which a contractor, subcontractor, or other participating party meets a demand or performs a function relating to the contract or subcontract.

(x) "Subcontract" means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the furnishing of supplies or services or for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

(y) "Subcontractor" means any person holding a subcontract and, for the purposes of Subpart B (General Enforcement; Compliance Review, and Complaint Procedure) of the "rules and regulations," any person who has held a subcontract subject to the order. The term "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor.

(z) "United States" as used herein shall include the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.

§ 8.10 Responsibilities.

(a) *General.* The Department of Housing and Urban Development is responsible for: (1) Implementing the requirements of the order, the "rules and regulations," OFCC directives and all other rules, regulations, and orders issued pursuant thereto, and (2) obtaining the compliance of all contractors for which the Department is the Compliance Agency.

(b) *Contract Compliance Officer (CCO).* The Assistant Secretary for Equal Opportunity has been designated the Contract Compliance Officer (CCO) for the Department by the Secretary (35 F.R. 7138, May 6, 1970), and is responsible for developing and administering the Department's program under the order.

(c) *General Deputy Contract Compliance Officer (GDCCO).* The Deputy Assistant Secretary for Equal Opportunity has been designated the General Deputy Contract Compliance Officer (GDCCO) for the Department by the Secretary (35 F.R. 7138, May 6, 1970), to assist the Contract Compliance Officer in the performance of his duties. He is authorized to exercise the authority delegated to the Contract Compliance Officer.

(d) *Deputy Contract Compliance Officer (DCCO).* Each Assistant Regional Administrator for Equal Opportunity has been designated by the Contract Compliance Officer as Deputy Contract Compliance Officer (DCCO) for the Region in which he serves. Deputy Contract Compliance Officers are responsible for field administration of programs of contract compliance in conformity with directives and guidelines promulgated by the Contract Compliance Officer.

(e) *Heads of Program Areas.* Assistant Secretaries of the Department who are authorized to extend Federal financial assistance which involves construction work shall be responsible for effectuating the Order, "rules and regulations," OFCC directives, this Part 8, directives of the Department and all other rules, regulations, and orders issued pursuant thereto as they relate to construction contracts financially assisted by the Department.

§ 8.15 Equal opportunity clause.

(a) *Government contracts.* Except as otherwise provided, the following equal opportunity clause contained in section 202 of the Order shall be included in each Government contract entered into by the Department (and modification thereof if not included in the original contract):

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated

during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or repesentative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Department's contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 25, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

(b) *Federally assisted construction contracts.* Except as otherwise provided, the following language shall be included as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided,* That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the Department and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish the Department and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist the Department in the discharge of its primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the Department or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the Department may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(c) *Subcontracts.* Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) *Incorporation by reference.* The equal opportunity clause may be incorporated by reference in Government bills of lading, transportation requests, contracts for deposit of Government funds, contracts for issuing and paying U.S. savings bonds and notes, contracts and subcontracts less than $50,000 and such other contracts as the Director may designate.

(e) *Incorporation by operation of the order and departmental regulations.* By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order, the "rules and regulations" and these regulations to include such a clause whether or not it is physically incorporated in such contracts. The clause is applicable to every nonexempt contract where there is no written contract between the Department and the contractor.

(f) *Adaptation of language.* Such necessary changes in language may be made in the equal opportunity clauses as shall be appropriate to identify properly the parties and their undertakings.

§ 8.20 Exemptions.

(a) *General—(1) Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000, other than Government bills of lading, are exempt from the requirements of the equal opportunity clause. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern. The Department, applicants, contractors, and subcontractors shall not procure supplies or services in less than usual quantities to avoid applicability of the equal opportunity clause.

(2) *Contracts and subcontracts for indefinite quantities.* With respect to contracts and subcontracts for indefinite quantities (including, but not limited to, open-end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements), the equal opportunity clause shall be included unless the purchaser has reason to believe that the amount to be ordered in any year under such contract will not exceed $10,000. The applicability of the equal opportunity clause shall be determined by the purchaser at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the equal opportunity clause shall be applied to such contract whenever the amount of a single order exceeds $10,000. Once the equal opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration, regardless of the amounts ordered, or reasonably expected to be ordered in any year.

(3) *Work outside the United States.* Contracts and subcontracts are exempt from the requirements of the equal opportunity clause with regard to work performed outside the United States by employees who were not recruited within the United States.

(4) *Contracts with State or local governments.* The requirements of the equal opportunity clause in any contract or subcontract with a State or local government (or any agency, instrumentality or subdivision thereof) shall not be applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract or subcontract. In addition, State and local governments are exempt from the requirements of filing the annual compliance report provided for by § 8.50 and maintaining a written affirmative action compliance program prescribed in §§ 8.30 and 8.35.

(b) *Specific contracts and facilities not connected with contracts.* The equal opportunity clause will not be required to be included in any contract or subcontract exempted by the Director under the provisions of 41 CFR 60–1.5(b) (1) or (2) provided such exemption has not been withdrawn under the provisions of 41 CFR 60–1.5(d).

(c) *National security.* Any requirement set forth in the regulations in this part shall not apply to any contract or subcontract whenever the Secretary determines that such contract or subcontract is essential to the national security and that its award without complying with such requirement is necessary to the national security. Upon making such a determination, the Secretary will notify the Director in writing within 30 days.

§ 8.25 Award of contracts.

(a) All Contracting Officers and all officers who approve applications for Federal financial assistance involving a construction contract, shall prior to approval follow either of the procedures in subparagraphs (1) or (2) of this paragraph:

(1) Notify the Contract Compliance Officer or appropriate Deputy as soon as practicable of the impending award of each nonexempt construction contract in excess of $100,000, the name and address of the prime contractor, anticipated time of performance, name and address of each known subcontractor and whether the prime contractor and known subcontractors have:

(i) Participated in any previous contract subject to the equal opportunity clause, and

(ii) Filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) Consult a list (supplied by the Contract Compliance Officer) of contractors who have previously been found to be in noncompliance with equal opportunity requirements. In the event of an impending award to any contractor on such list, the Contract Compliance Officer or appropriate Deputy shall be advised and the procedures of paragraph (b), (c), and (d) of this section shall be followed.

(b) The Contract Compliance Officer or appropriate Deputy shall review the available information relative to the prospective prime contractor's equal opportunity compliance status and notify the Contracting Officer or Approving Officer of any deficiencies found to exist. A copy of such report shall be forwarded to the Director.

(c) Contracting Officers or Approving Officers shall: (1) Notify the bidder, offeror, or applicant of any deficiencies found to exists by the Contract Compliance Officer or appropriate Deputy, and (2) direct any bidder, offeror, or applicant so notified to negotiate with the Contract Compliance Officer and to take such actions as the Contract Compliance Officer may require.

(d) The award of any such contract shall be conditioned upon the Contract Compliance Officer's notification to the Contracting Officer or Approving Officer that the bidder, offeror, or applicant has taken action or has agreed to take action satisfactory to the Contract Compliance Officer, appropriate Deputy, or the head of the agency as provided in § 8.55(a). Any such agreement to take action shall be stated in the contract, if the Contract Compliance Officer so requires.

(e) In the case of nonconstruction contracts, all Contracting Officers shall:

(1) Notify the Contract Compliance Officer as soon as practicable of the impending award of each nonexempt, nonconstruction Government contract in excess of $50,000, the name and address of the prime contractor, anticipated time of performance, name and address of each known subcontractor and whether the prime contractor and known subcontractors have:

(i) Participated in any previous contract or subcontract subject to the equal opportunity clause;

(ii) Filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements; and

(iii) Developed and have on file at each establishment affirmative action programs pursuant to Part 60–2 of the "rules and regulations."

(2) The Contract Compliance Officer shall notify the Compliance Agency (designated pursuant to the Director's Order No. 1 and 41 CFR 60–1.3(d)) of the impending award of each contract covered by subparagraph (1) of this paragraph. Based upon the information furnished by the Compliance Agency, the Contract Compliance Officer shall advise the Contracting Officer to take such action with respect to the impending award as may be appropriate pursuant to the rules, regulations, and relevant orders of the Secretary of Labor and this Part 8.

(f) The invitation for bids for each formally advertised nonconstruction contract, shall include a notice, and Department officials shall state at the outset of negotiations for each negotiated contract, that if the award, when let, should exceed the amount of $1 million, the prospective contractor and his known first-tier subcontractors with subcontracts of $1 million or more will be subject to a compliance review before the award of the contract. No such contract shall be awarded unless a preaward compliance review of the prospective contractor and his known first-tier $1 million subcontractors has been conducted by the Compliance Agency within 12 months prior to the award. If an agency other than the Department is the Compliance Agency, the Department will

notify the Compliance Agency and request appropriate action and findings in accordance with this paragraph. In order to qualify for the award of a contract, a contractor and such first-tier subcontractors must be found to be in compliance pursuant to Part 60–2 of the "rules and regulations."

(g) A preaward compliance review may be conducted prior to award of contracts in any case where the CCO has reasonable grounds, based on a complaint, the Department's own investigation, or otherwise, to believe that the contractor or subcontractor is unable or unwilling to comply with the requirements of the equal opportunity clause. (Such reviews are in addition to those required pursuant to paragraph (f) of this section.)

§ 8.30 Affirmative action compliance programs—nonconstruction contracts.

Order No. 4 (41 CFR Part 60–2), issued by the Secretary of Labor, sets forth requirements for the development of affirmative action compliance programs for nonconstruction contractors.

§ 8.35 Affirmative action compliance programs—construction contracts.

(a) *Requirements of programs.* The Department or the applicant shall require each Federal or federally assisted construction prime contractor on projects costing $1 million or more, regardless of the number of employees, and each Federal or federally assisted construction prime contractor and subcontractor shall require each subcontractor on projects costing $1 million or more with a subcontract of $100,000 or more, regardless of the number of employees, to develop a written affirmative action compliance program.

(b) *Purposes.* The purposes of the written affirmative action program are:

(1) To identify areas of employment, employment policies and practices which require action by the contractor or subcontractor to assure equal employment opportunity to all employees and applicants for employment without regard to race, color, religion, sex, or national origin;

(2) To analyze these areas, policies, and practices to determine what actions by the contractor or subcontractor will be most effective in assuring equal opportunity; and

(3) To establish a plan to achieve employment opportunity through those actions identified as potentially most effective.

§ 8.40 Prebid requirements and conferences.

(a) In any area or for any class of contracts designated by the Director, or by the CCO, no bid invitations will be issued for any Federal or federally assisted construction contract unless such bid invitation contains definite minimum standards for affirmative action and a statement that contractors and subcontractors must meet such minimum standards to be eligible for award.

(b) Whenever the submission of a written affirmative action program is required before the award of a contract, definite minimum standards for such program shall be incorporated in the bid invitations or requests for proposal issued in connection with such contracts.

(c) When the Director or CCO so requires, a prebid conference will be held in which the minimum standards for affirmative action will be explained to those in attendance. All known prospective bidders will be notified of the date, time, and place of the prebid conference.

(d) Bids which fail to meet the standards prescribed shall be deemed nonresponsive and will not be considered for award.

§ 8.45 Participation in areawide equal employment opportunity programs.

Any contractor who is a participant in, or is a member of an organization or association which participates in, an areawide equal employment opportunity program which is approved by the Department and the Office of Federal Contract Compliance for the purpose of effectuating the goals of Executive Order 11246, may be deemed to be in compliance with the order by virtue of such participation and shall be exempt from the requirement of developing and maintaining a written affirmative action program, unless required to do so under the areawide equal employment opportunity program.

§ 8.50 Reports and other required information.

(a) *Requirements for prime contractors and subcontractors.* (1) Each prime contractor shall file, and each prime contractor and subcontractor shall cause its subcontractors to file annually, on or before the 31st day of March, complete and accurate reports on Standard Form 100 (EEO–1) promulgated jointly by the Office of Federal Contract Compliance, the Equal Employment Opportunity Commission and Plans for Progress or such form as may hereafter be promulgated in its place if such prime contractor or subcontractor (i) is not exempt from the provisions of the "rules and regulations" in accordance with 41 CFR 60–1.5; (ii) has 100 or more employees; (iii) is a prime contractor or first-tier subcontractor; and (iv) has a nonexempt contract, subcontract or purchase order, serves as a depository of Government funds, or is a financial institution which is an issuing and paying agent for U.S. savings bonds and savings notes: *Provided,* That any subcontractor below the first tier which performs construction work shall be required to file such a report if it meets requirements of subdivisions (i), (ii), and (iv) of this subparagraph.

(2) Each person required by subparagraph (1) of this paragraph to submit reports shall file such a report with the Department within 30 days after the award to him of a contract or subcontract, unless such person has submitted such a report within 12 months preceding the date of the award. Subsequent reports shall be submitted annually in accordance with subparagraph (1) of this paragraph, or at such other intervals as the CCO or the Director may require. The Department, with the approval of the Director, may extend the time for filing any report.

(3) The Director, the CCO, or the applicant, on his own motion, may require a prime contractor or subcontractor to keep employment or other records and to furnish, in the form requested, within reasonable limits, such information as the Director, CCO or the applicant deems necessary for the administration of the order.

(4) Failure to file timely, complete and accurate reports as required constitutes noncompliance with the prime contractor's or subcontractor's obligations under the equal opportunity clause and is grounds for the imposition by the Department, the Director, an applicant, prime contractor or subcontractor, of any sanctions as authorized by the order and the "rules and regulations." Any such failure shall be reported in writing to the Director by the CCO as soon as practicable after it occurs.

(b) *Requirements for bidders or prospective contractors*—(1) *Previous reports.* Each bidder or prospective prime contractor and proposed subcontractor, where appropriate, shall state in the bid or in writing at the outset of negotiations for the contract: (i) Whether it has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60–2; (ii) whether it has participated in any previous contract or subcontract subject to the equal opportunity clause and (iii) if so, whether it has filed with the Joint Reporting Committee, the Director, an agency, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements.

(2) *Additional information.* A bidder or prospective prime contractor or proposed subcontractor shall be required to submit such information as the CCO, the Deputy CCO, or the Director requests prior to the award of the contract or subcontract. When a determination has been made to award the contract or subcontract to a specific contractor, such contractor shall be required, prior to award, or after the award, or both, to furnish such other information as the Department, the applicant, or the Director requests.

(c) *Use of reports.* Reports filed pursuant to this section shall be used only in connection with the administration of the order and the Civil Rights Act of 1964, or in furtherance of the purposes of the order and said Act.

§ 8.55 Compliance reviews.

(a) *General.* The purpose of a compliance review is to determine if the prime contractor or subcontractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed,

trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. It shall consist of a comprehensive analysis and evaluation of each aspect of the aforementioned practices, policies, and conditions resulting therefrom. Where necessary, recommendations for appropriate sanctions shall be made. Where deficiencies are found to exist, reasonable efforts shall be made to secure compliance through conciliation and persuasion. Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the Contract Compliance Officer, the appropriate Deputy, or the Secretary of such commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

(b) *Regular compliance reviews.* Each Deputy Contract Compliance Officer shall institute a program of regular compliance reviews of those contractors and subcontractors for which he is assigned responsibility.

(c) *Special compliance review.* The special compliance review of bidders, applicants, offerors, contractors, or subcontractors will be conducted at the request of the CCO or the Director, OFCC to determine compliance or ability to comply with the order, the "rules and regulations," these rules and regulations and directives issued pursuant thereto.

(d) *Reports*—(1) *Special compliance review reports.* A special compliance review report shall be provided to the CCO or the Director, OFCC, as directed.

(2) *Regular compliance review reports.* A report of each compliance review shall be forwarded to the CCO within 30 days after the regular review is conducted unless otherwise provided.

(3) *Preaward compliance review report.* A written report of every preaward compliance review required by the "rules and regulations," or otherwise required by the Director including findings, will be forwarded to the Director by the CCO within 10 days after the award for a postaward review.

(4) *Additional reports.* A written report of every other compliance review or any other matter processed by the Department involving an apparent violation of the equal opportunity clause shall be submitted to the Director. Such report shall contain a brief summary of the findings, including a statement of conclusions regarding the contractor's compliance or noncompliance with the requirements of the order, and a statement of the disposition of the case, including any corrective action taken or recommended and any sanctions or penalties imposed or recommended.

§ 8.60 Complaint procedure.

(a) *Who may file complaints.* Any employee of any contractor or applicant for employment with such contractor may, by himself or by an authorized representative, file in writing a complaint of alleged discrimination in violation of the equal opportunity clause. Such complaint is to be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the CCO or the Director upon good cause shown.

(b) *Where to file.* Complaints may be filed with the Director of OFCC or at any HUD Regional or Area Office, FHA Insuring Office or with the CCO. Any HUD employee receiving a complaint shall forward the complaint directly to the CCO or his designee. The CCO shall transmit a copy of the complaint to the Director within 10 days after the receipt thereof.

(c) *Contents of complaint.* (1) The complaint should include the name, address, and telephone number of the complainant, the name and address of the prime contractor or subcontractor committing the alleged discrimination, a description of the acts considered to be discriminatory, and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant or his authorized representative.

(2) Where a complaint contains incomplete information, the CCO shall seek promptly the needed information from the complainant. In the event such information is not furnished to the CCO within 60 days of the date of such request, the case may be closed.

(d) *Investigations.* For each complaint filed against a prime contractor or subcontractor for which HUD is the Compliance Agency, the CCO shall institute a prompt investigation and shall be responsible for developing a complete case record. A complete case record consists of the name and address of each person interviewed, and a summary of his statement, copies or summaries of pertinent documents, and a narrative summary of the evidence disclosed in the investigation as it relates to each violation revealed. When a complaint is filed against a prime contractor or subcontractor for which the Department is not the compliance agency, the CCO shall transmit the complaint to the Director for disposition.

(e) *Resolution of complaints.* (1) If the complaint investigation by the CCO shows no violation of the equal opportunity clause, he shall so inform the Director. The Director may request further investigation by the CCO.

(2) If any complaint investigation or compliance review indicates a violation of the equal opportunity clause, the matter should be resolved by informal means whenever possible. Such informal means may include the holding of a compliance conference. Each prime contractor and subcontractor shall be advised that the resolution is subject to review by the Director, and may be disapproved if he determines that such resolution is not sufficient to achieve compliance.

(3) Where any complaint investigation or compliance review indicates a violation of the equal opportunity clause and the matter has not been resolved by informal means, the CCO with the approval of the Director shall afford the contractor an opportunity for a hearing. If the final decision reached in accordance with the provisions of § 60–1.26 of the "rules and regulations" is that a violation of the equal opportunity clause has taken place, the CCO with the approval of the Director, may cause the cancellation, termination, or suspension of any contract or subcontract, cause a contractor to be debarred from further contracts or subcontracts, or may impose such other sanctions as are authorized by the order.

(4) When a prime contractor or subcontractor, without a hearing, shall have complied with the recommendations or orders of the CCO or the Director and believes such recommendations or orders to be erroneous, he shall, upon filing a request therefor within 10 days of such compliance, be afforded an opportunity for a hearing and review of the alleged erroneous action by the CCO or the Director.

(5) For reasonable cause shown, the CCO may reconsider or cause to be reconsidered any matter on his own motion or pursuant to a request.

(f) *Report to the Director.* Within 60 days from receipt of a complaint or within such additional time as may be allowed by the Director for good cause shown, the CCO shall process a complaint and submit to the Director the case record and summary report containing the following information:

(1) Name and address of the complainant.

(2) Brief summary of findings, including a statement as to the CCO's conclusions regarding the contractor's compliance or noncompliance with the requirements of the equal opportunity clause.

(3) A statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed or, whenever appropriate, the recommended corrective action and sanctions or penalties.

§ 8.65 Hearings and sanctions.

(a) The Secretary with the approval of the Director may convene formal or informal hearings as he may deem appropriate for inquiring into the status of compliance by any prime contractor or subcontractor with the terms of the equal opportunity clause.

(b) The Secretary may propose or apply sanctions in the event of noncompliance by a contractor or subcontractor

with the requirements of the equal opportunity clause, subject to the limitations of the "rules and regulations," particularly § 60–1.27.

(c) The conduct of hearings and the proposal and application of sanctions shall be in accordance with the requirements of the order and of the "rules and regulations."

§ 8.70 Intimidation and interference.

The sanctions and penalties contained in Subpart D of the order may be exercised by the CCO or the Director against any prime contractor, subcontractor or applicant who fails to take all necessary steps to ensure that no person intimidates, threatens, coerces, or discriminates against any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in an investigation, compliance review, hearing, or any other activity related to the administration of the order or any other Federal, State, or local laws requiring equal employment opportunity.

§ 8.75 Segregated facilities certificate.

Prior to the award of any nonexempt Government contract or subcontract or federally assisted construction contract or subcontract, the Department or the applicant shall require the prospective prime contractor, and each prime contractor and subcontractor shall require each subcontractor, to submit a certification, in the form approved by the Director, that the prospective prime contractor or subcontractor does not and will not maintain any facilities he provides for his employees in a segregated manner, or permit his employees to perform their services at any location under his control where segregated facilities are maintained; and that he will obtain a similar certification in the form approved by the Director, prior to the award of any nonexempt subcontract.

§ 8.80 Solicitations or advertisements for employees.

In solicitations or advertisements for employees placed by or on behalf of a prime contractor or subcontractor, the requirements of paragraph (2) of the equal opportunity clause shall be satisfied whenever the prime contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Director. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, color, religion, sex, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§ 8.85 Access to record of employment.

Each prime contractor and subcontractor shall permit access during normal business hours to his books, records, and accounts pertinent to compliance with the order, and all rules and regulations promulgated pursuant thereto, by the Department or the Director for purposes of investigation to ascertain compliance with the equal opportunity clause of the contract or subcontract. Information obtained in this manner shall be used only in connection with the administration of the order and the administration of the Civil Rights Act of 1964, and in furtherance of the purposes of the order and that Act.

§ 8.90 Notices to be posted.

Contractors and subcontractors required to do so by paragraphs (1) and (3) of the equal opportunity clause shall post notices to be provided by the CCO. Such notices shall be in compliance with the requirements of § 60–1.42 of the "rules and regulations."

§ 8.95 Program directives and instructions.

Appropriate program officials may issue such directives, procedures, and instructions as they consider necessary to achieve equal employment opportunity in programs administered by them, provided such issuances are not inconsistent with the provisions of the order, the rules, regulations, and directives of the Secretary of Labor or the Director, and these regulations. A copy of such directives, procedures, and instructions shall be submitted to the CCO for approval prior to issuance.

§ 8.100 Effective date.

The regulations contained in this part shall become effective _____ (60 days after publication in the FEDERAL REGISTER) for all contracts, solicitations, invitations for bids, or requests for proposals which shall be sent by the Department or an applicant on or after said effective date and for all negotiated contracts which have not been executed as of said effective date.

GEORGE ROMNEY,
Secretary of Housing and Urban Development.

[FR Doc.71–8205 Filed 6–10–71;8:51 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 146]

[CGFR 71–53]

CORROSIVE LIQUIDS

Notice of Proposed Rule Making

The Coast Guard is considering amending the regulations governing corrosives to prescribe a new definition that contains a testing criteria for damage to living tissue and other materials, to change the phrase "corrosive liquid" to "corrosive materials" wherever it appears except in those requirements concerning glass carboys and to add requirements for "Corrosive Solid N.O.S.".

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commandant (MHM), U.S. Coast Guard, Washington, D.C. 20591. Each person submitting comments should include his name and address, identify the notice (CGFR 71–53), and give reasons for any recommendations. Comments received will be available for examination by interested persons in Room 8306, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC.

The Coast Guard will hold an informal hearing on September 21, 1971, at 9:30 a.m. in Conference Room 2230, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, DC. Interested persons are invited to attend the hearing and present oral or written statements on this proposal. There will be no cross examination of persons presenting statements.

The Commandant will evaluate all communications received before September 28, 1971, and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

By a separate document published at page 11304 of this issue of the FEDERAL REGISTER, the Hazardous Materials Regulations Board of the Department of Transportation proposed certain amendments to Part 173 of Title 49. The reason for these amendments is fully stated in the Board's notice. The hazardous materials regulations of the Department of Transportation in Title 49 apply to shippers by water, air, and land, and to carriers by air and land. The adoption of this proposed amendment to Title 46 would make the substance of the amendments of the Hazardous Materials Regulations Board applicable to carriers by water.

In consideration of the foregoing, the Coast Guard proposes to amend Part 146 of Title 46 of the Code of Federal Regulations (1) by amending § 146.23–1 to adopt the definition of corrosive liquids contained in the proposed amendment to 49 CFR 173.240; (2) by changing the words "corrosive liquids" to "corrosive materials" wherever they appear in Part 146, except in § 146.23–15 which concerns corrosive liquids in glass carboys; (3) by amending § 146.04–5 by adding the article "Corrosive Solid N.O.S." and the requirements contained in the proposed change to 49 CFR 172.5(a); (4) by changing the classification "Cor. L" to "Cor." and the label "white" to "corrosive" to conform to the proposed change to 49 CFR 172.5; and (5) by amending § 146.23–100 by adopting the requirements of the proposed amendment to 49 CFR 173.245b.

This proposal is made under authority of R.S. 4405, as amended, R.S. 4417a, as

amended, R.S. 4462, as amended, R.S. 4472, as amended, sec 6(b)(1), 80 Stat. 937; 46 U.S.C. 375, 391a, 416, 170, 49 U.S.C. 1655(b)(1)); 49 CFR 1.46(b).

Dated: June 3, 1971

W. F. REA III,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc.71-8103 Filed 6-10-71;8:45 am]

Federal Aviation Administration

[14 CFR Part 39]

[Docket No. 71-CE-6-AD]

BEECH MODELS B90 AND 65-A90 AIRPLANES

Proposed Airworthiness Directive

Correction

In F.R. Doc. 71-6515 appearing at page 8695 in the issue of Tuesday, May 11, 1971, in the fourth line of the proposed airworthiness directive the figure "50-610000-340" should read "50-610000-349".

Federal Railroad Administration

[49 CFR Part 228]

[Docket No. HS-1; Notice No. 1]

HOURS OF SERVICE OF RAILROAD EMPLOYEES

Notice of Proposed Rule Making

The Federal Railroad Administration (FRA) of the Department of Transportation is considering a revision of Part 228 of Title 49, Code of Federal Regulations. The proposed revision modifies Part 228 in accordance with Public Law 91-169, 45 U.S.C.A. 61, 83 Stat. 463, which became effective December 26, 1970. It also prescribes recordkeeping and reporting requirements and sets forth the statutory penalties for violations.

The principal modification of Part 228 is the removal of the present requirement that rail carriers use specific recordkeeping forms and methods. This change will permit rail carriers to develop improved systems of recording data the FRA requires for administrative and enforcement purposes. Under the proposed rule, each carrier may develop a recordkeeping system tailored to its own needs.

Interested persons are invited to participate in making the proposed rule by submitting written data, views, or arguments. Communications should be submitted to the Docket Clerk, Office of Hearings and Proceedings, Federal Railroad Administration, Attention: Docket No. HS-1, 400 Seventh Street SW., Washington, DC 20591. All comments received on or before July 14, 1971, will be considered by the Administrator before taking action on the proposed rule. All written comments received will be available for examination by interested persons. The docket may be examined at any time during regular business hours, at Room 5100, 400 Seventh Street SW., Washington, DC 20591.

In consideration of the foregoing, it is proposed to amend Title 49 of the Code of Federal Regulations by revising Part 228 as set forth below.

Issued in Washington, D.C., on June 8, 1971.

CARL V. LYON,
Acting Administrator.

PART 228—HOURS OF SERVICE OF RAILROAD EMPLOYEES

Sec.
228.1 Scope.
228.3 Application.
228.5 Definitions.
228.7 Hours of duty.
228.9 Railroad records; general.
228.11 Hours of duty records.
228.13 Train delay records.
228.15 Record of train movements kept at reporting station.
228.17 Dispatcher's record of train movements.
228.19 Monthly reports of excess service.
228.21 Civil penalty.
228.23 Criminal penalty.

AUTHORITY: The provisions of this Part 228 issued under sec. 12, 24 Stat. 383, as amended, sec. 20, 24, Stat. 386, as amended, 49 U.S.C. 12, 20; sec. 6, 80 Stat. 937, 49 U.S.C. 1655; and sec. 1-4, 34 Stat. 1415, as amended, 45 U.S.C. 61-64; and § 1.49(d) of the Regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(d).

§ 228.1 Scope.

This part prescribes reporting and recordkeeping requirements with respect to the hours of service of railroad employees.

§ 228.3 Application.

This part applies to each common carrier engaged in the transportation of passengers or property by railroad—

(a) In the District of Columbia or any territory of the United States;

(b) From a State or territory of the United States or the District of Columbia to another State or territory of the United States or the District of Columbia;

(c) From any place in the United States to an adjacent foreign country; or

(d) From any place in the United States through a foreign country to another place in the United States.

§ 228.5 Definitions.

In this part—

"Administrator" means the Administrator of the Federal Railroad Administration or any person to whom he has delegated authority in the matter concerned.

"Employee" means an individual actually engaged in or connected with the movement of any train or who dispatches, reports, transmits, receives, or delivers orders pertaining to train movements by the use of telegraph, telephone, radio, or any other electrical or mechanical device.

"Railroad" includes all bridges, ferries, and roads, whether owned or operated under a contract, agreement, or lease, used in connection with that railroad.

§ 228.7 Hours of duty.

(a) For purposes of this part, an employee's time on duty begins when he reports for duty and ends when he is finally released from duty, and includes—

(1) Time engaged in or connected with the movement of any train;

(2) Any interim period available for rest at a location that is not a designated terminal;

(3) Any interim period less than four hours available for rest at a designated terminal;

(4) Time spent in deadhead transportation enroute to a duty assignment; and

(5) Time engaged in any other service for the carrier.

(b) Time spent in deadhead transportation by an employee returning from duty to his point of final release may not be counted in computing time off duty or time on duty.

§ 228.9 Railroad records; general.

Records maintained under this part shall be—

(a) Signed by the employee whose time on duty is being recorded or, in the case of train and engine crews, signed by the ranking crew member;

(b) Retained for 2 years; and

(c) Available for inspection and copying by the Administrator during regular business hours.

§ 228.11 Hours of duty records.

Each carrier shall keep a record of the following information concerning the hours of duty of each employee:

(a) Identification of employee.

(b) Place, date, and beginning and ending times for hours of duty in each occupation.

(c) Total time on duty in all occupations.

(d) Number of consecutive hours off duty prior to going on duty.

§ 228.13 Train delay records.

Each carrier shall keep a record of time delays of 10 or more minutes experienced at a single location by train and engine service crews. The location, date, beginning and ending times, and cause of the delay shall be set forth in the record.

§ 228.15 Record of train movements kept at reporting station.

Each carrier shall keep a record of train movements at each station, tower, office, or other place where information about the movement of trains is reported or relayed by employees through the use of telegraph, telephone, radio, or any other electrical or mechanical device. The direction of travel and time of passing, or times of arrival and departure, shall be set forth in the record.

§ 228.17 Dispatcher's record of train movements.

Each carrier shall keep, for each dispatching district, a record of train movements made under the direction and control of a dispatcher who uses telegraph,

telephone, radio, or any other electrical or mechanical device to dispatch, report, transmit, receive, or deliver orders pertaining to train movements. The following information shall be included in the record:

(a) Identification of timetable in effect.

(b) Location and date.

(c) Identification of dispatchers and their times on duty.

(d) Weather conditions at 6-hour intervals.

(e) Identification of enginemen and conductors and their times on duty.

(f) Identification of trains and engines.

(g) Station names and office designations.

(h) Distances between stations.

(i) Direction of movement and the time each train passes all reporting stations.

(j) Arrival and departure times of trains at all reporting stations.

(k) Unusual events affecting movement of trains and identification of trains affected.

§ 228.19 Monthly reports of excess service.

(a) Each carrier shall report to the Administrator each of the following instances within 30 days after the calendar month in which the instance occurs:

(1) Members of a train or engine crew or other employees engaged in or connected with the movement of trains are on duty for more than 14 consecutive hours (12 hours after December 25, 1972).

(2) Members of a train or engine crew or other employees engaged in or connected with the movement of trains return to duty after 14 hours of continuous service (12 hours after December 25, 1972) without at least 10 consecutive hours off duty.

(3) Members of a train or engine crew or other employees engaged in or connected with the movement of trains continue on duty without at least 8 consecutive hours off duty during the preceding 24 hours.[1]

(4) Members of a train or engine crew or other employees engaged in or connected with the movement of trains return to duty without at least 8 consecutive hours off duty during the preceding

(5) Employees who transmit, receive, or deliver orders affecting train movements are on duty for more than 9 hours in any 24-hour period at an office where two or more shifts are employed.

(6) Employees who transmit, receive, or deliver orders affecting train movements are on duty for more than 12 hours in any 24-hour period at an office where one shift is employed.

(b) Reports required by paragraph (a) of this section shall be filed in writing on FRA Form F-6180-3[2] with the Bureau of Railroad Safety, Federal Railroad Administration, Washington, D.C. 20591. A separate form shall be used for each instance reported.

§ 228.21 Civil penalty.

A carrier that fails or refuses to keep records or file reports as required by this part, or to make records available to the Administrator for inspection or copying, is liable to a civil penalty of $500 for each offense as prescribed by section 20 of the Interstate Commerce Act, 49 U.S.C. 20. Each day a failure or refusal continues is a separate offense.

§ 228.23 Criminal penalty.

Whoever knowingly and willfully—

(a) Makes, causes to be made, or participates in the making of a false entry in reports required to be filed or records required to be kept by this part;

(b) Destroys, mutilates, alters, or otherwise falsifies such records;

(c) Neglects or fails to make full, true, and correct entries in such records; or

(d) Keeps a record contrary to the requirements of this part;

is subject to a $5,000 fine and 2 years' imprisonment as prescribed by section 20 of the Interstate Commerce Act, 49 U.S.C. 20.

[FR Doc.71-8174 Filed 6-10-71;8:48 am]

[1] Instances involving tours of duty that are broken by 4 or more consecutive hours off duty time at a designated terminal and do not contain more than a total of 14 hours time on duty (12 hours after December 25, 1972), are not required to be reported, provided such tours of duty are immediately preceded by 8 or more consecutive hours off duty time. Instances involving tours of duty that are broken by less than 8 consecutive hours off duty and contain more than a total of 14 hours time on duty (12 hours after December 25, 1972), must be reported.

Hazardous Materials Regulations Board

[49 CFR Parts 171, 172, 173, 174, 175, 177]

[Docket No. HM-57; Notice No. 71-17]

TRANSPORTATION OF HAZARDOUS MATERIALS

Proposed Classification of Corrosive Hazards

On August 31, 1970, the Director, Office of Hazardous Materials, published Docket No. HM-57, an advance notice of proposed rule making on classification of corrosive hazards (35 F.R. 14090). That document noted that the present definition for corrosives does not prescribe any testing criteria for damage to living tissue or to materials, and that present regulations may be subject to varied interpretation.

The Director suggested establishment of two corrosive classifications, Class A and Class B, with definite benchmarks for each classification. The notice suggested that the Class A designation cover potential damage to living tissue, and that the Class B designation cover potential damage to other material.

The Hazardous Materials Regulations Board has thoroughly reviewed all of the comments received and concludes that the following changes in the classification system presented in the advance notice have merit.

Hazard degrees. The Board recognizes that some materials are considerably more corrosive than others, e.g., hydrofluoric acid as compared to formic acid. A differentiation in hazard degree classification would appear justified. However, the Board agrees with many of the commenters that a dual classification system for corrosives would include only a relatively small number of compounds in the suggested Class B category, and would appear to complicate the regulations unnecessarily without a significant contribution to the improvement of safety. The Board also believes that some hazardous materials now classed as corrosive liquids should be otherwise classified. They will be the subject of future regulatory proposals.

Test methods—1. *Damage to living tissue.* The Board concludes that the proposed 24-hour duration rabbit test, specified by § 191.11 of the HEW Regulations, may be too stringent. However, exposure times of from 10 minutes to 4 hours as suggested by some commenters would not provide a sufficient safety factor. The corrosive effect on the skin may not be apparent immediately, and an exposed individual may delay washing off the corrosive material. Based upon these considerations, the Board is proposing to reduce the specified HEW test duration from 24 to 8 hours. The Board also concludes that the suggested scoring number criteria are not sufficiently reliable and should be eliminated as an evaluation of skin destruction. The Board proposes, therefore, to adopt the definition of tissue destruction given in 21 CFR 191.1(h), but with the 24-hour exposure prescribed in that section reduced to 8 hours.

2. *Damage to materials.* The Board does not agree with some of the comments that claimed the suggested corrosion rate of 0.05 inch per year (IPY) is too stringent and went so far as to suggest a minimum regulated rate of 0.05 inch per week. The Board considers a minimum corrosion rate of 0.05 IPY necessary in order to provide sufficient flexibility to account for the many and varied factors encountered under transportation conditions. For example, one of the lighter steel drums used as a shipping container has a wall thickness of 0.024 inch. Small steel pails can be as thin as 0.015 inch. A corrosion rate of 0.050 IPY would result in a 0.008 inch loss during a 60-day transportation period. This is a severe decrease in wall thickness of such containers. Allowing a corrosion rate greater than 0.050 IPY would be unduly hazardous for materials shipped in these thin-walled containers. Therefore, 0.050 IPY is being proposed as the corrosion rate benchmark.

[2] Form may be obtained from the Bureau of Railroad Safety, Federal Railroad Administration, Washington, D.C. 20591. Reproduction is authorized.

In view of these considerations, the Board is proposing new definition and test criteria for the corrosive effects of materials on human tissue and on two basic packaging materials—steel and aluminum.

The adoption of these criteria and standard test methods will enable a shipper to determine the proper classification for his product much more readily than is now possible. This new definition and the subsequently outlined criteria are not intended in themselves to alter the present packaging requirements as described in the Department's Hazardous Materials Regulations. The Board does recognize, however, that some materials formerly not considered subject to the regulations may come under these packaging requirements; therefore, it might be necessary for different packagings to be introduced by a shipper for certain products. Substantive changes to packaging requirements, where appropriate, may be the subject of future rule making. The only exception is packaging for solid materials for which there are no present requirements, and this is being covered in this notice.

The Board believes the effect of corrosion on commonly used packaging materials, steel and aluminum, also must be considered. The Board recognizes that plastics, wood, and paper composites are also used in the packaging of hazardous materials. The deterioration of these nonmetallics cannot be expressed in the same manner as the corrosion of metals. However, practical experience indicates that with the exception of organic solvents, products which severely attack the nonmetallics generally would be corrosive to aluminum or steel. The Board concludes that present regulatory test criteria relating to the definition should be limited to the corrosion data determined for these two commonly used metals. Primary concern involves the severe effect of a product leaking from its shipping container onto other containers which are not resistant to its corrosiveness, thus causing damage within the limited period of transportation.

A maximum temperature of 130° F. was selected as the basis for corrosion rate determination. This temperature is often used to represent the nominal upper limit of the normal transport environment.

In addition to corrosive liquids, the Board also considered the potential corrosiveness of solid products such as sodium hydroxide pellets, chromic fluoride, and aluminum chloride. When spilled from a container on human tissue or other packaging or lading, and in the presence of moisture, solid corrosive products may have an effect similar to that of a concentrated solution of the product. For this reason, the Board believes that corrosive solids should be classified according to the most severe effect of a concentrated solution of the commodity.

In order for the Department to obtain exact corrosion values of regulated commodities on steel and aluminum, considerable experimental work would be required. Few data are available in the literature or from the manufacturers of the products, especially data covering the desired concentration and temperature range as well as severe corrosion attack rates. However, the data presented in "Corrosion Data Survey," 1967 edition, published by the National Association of Corrosion Engineers, provides a useful basis for suggested corrosion criteria. The information presented in "Corrosion Data Survey" appears to cover the general conditions of a relatively severe attack during the period of transportation.

In Docket No. HM–8; Notice No. 70–13 (35 F.R. 11742), on page 11764, a new label was proposed for corrosive liquids. If the regulations proposed herein are adopted, the Board would delete the word "Liquid" on the label.

Based on the above considerations, it is proposed to amend 49 CFR Parts 171, 172, 173, 174, 175, 177 as follows:

I. Part 171:

In § 171.7, paragraphs (c)(12) and (d)(7) would be added to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(c) * * *

(12) National Association of Corrosion Engineers, 2400 West Loop South, Houston, TX 77027.

(d) * * *

(7) National Association of Corrosion Engineers' report entitled, "Corrosion Data Survey", 1967 edition.

II. Part 172:

(A) In § 172.4, Class 8 of the table as shown in Docket No. HM–8; Notice No. 70–13 paragraph (a) would be amended to read as follows:

§ 172.4 Classifications, abbreviations, labels, terms, and symbols.

(a) * * *

Class 8:

Corrosive materials---- Cor---- Corrosive.

* * * * *

(B) In § 172.5 paragraph (a), the Commodity List would be amended from that proposed in Docket No. HM–8; Notice 70–13 to change all entries in the column "Classed as" from "Cor. L." to "Cor."; in the column "Label required if not exempt", all entries "Corrosive Liquid" would be changed to read "Corrosive"; the commodity list would be further amended as follows:

§ 172.5 List of hazardous materials.

(a) * * *

(1)	(2)	(3)	(4)	(5)		
				Maximum quantity in one package		
Article	Classed as—	Exemptions and packaging (see sec.)	Label required if not exempt	(a) Rail express	(b) Passenger carrying aircraft	(c) Cargo only aircraft
(add)						
Corrosive solid, n.o.s----	Cor----	173.244, 173.245b	Corrosive----	100 pounds	25 pounds	100 pounds.
* * *	* * *	* * *	* * *	* * *	* * *	* * *

III. Part 173:

(A) In Part 173, Table of Contents, the heading of Subpart E and §§ 173.240, 173.242, 173.244, 173.245 would be amended; § 173.245b would be added to read as follows:

Subpart E—Corrosive Materials; Definition and Preparation

Sec.

173.240 Corrosive materials; definition.
173.242 Bottles containing corrosive liquids.
173.244 Exemptions for corrosive materials.
173.245 Corrosive liquids not specifically provided for.
173.245b Corrosive solids not specifically provided for.

(B) The heading of Subpart E would be amended to read as follows:

Subpart E—Corrosive Materials; Definition and Preparation

(C) Section 173.240 would be amended to read as follows:

§ 173.240 Corrosive materials; definition.

(a) A corrosive material for the purpose of Parts 170 to 189 of this chapter is a liquid or solid that causes visible destruction or irreversible alterations in the skin tissue at the site of contact, or that has a severe corrosion rate on materials of packaging. For solids, this determination must be made on the basis of the properties of the solid in concentrated solution.

(1) A material is considered to be destructive or cause irreversible alterations in tissue if when tested on the intact skin of the albino rabbit by the technique described in 21 CFR 191.11, the structure of the tissue at the site of contact is destroyed or changed irreversibly in 8 hours or less.

(2) Damage to materials of packing is considered severe if the corrosion rate of a liquid or of a solid in concentrated solution exceeds 0.050 inch per year on steel or aluminum. Data published in the "Corrosion Data Survey" may be used as an acceptable guideline for classification purposes. In cases where no data are available in this survey, an acceptable corrosion test is described in NACE Standard TM–01–69.

(D) In § 173.242, the heading would be amended to read as follows:

§ 173.242 Bottles containing corrosive liquids.

* * * * *

(E) In § 173.244, the heading would be amended; paragraph (c) would be added to read as follows:

§ 173.244 Exemptions for corrosive materials.

* * * * *

(c) Corrosive solids, except those for which no exemptions are provided as indicated by the "No exemption" statement in § 172.5 of this chapter, in inside earthenware, glass, metal, or compatible plastic receptacles of not more than 5 pounds capacity each, in wooden or fiberboard outside containers not exceeding 25 pounds net weight each are, unless otherwise provided, exempt from specification packaging, marking, and labeling requirements, except that marking name of contents on outside container is required for shipments via carrier by water. Shipments for transportation by highway carriers are exempt also from Part 177 of this chapter, except § 177.817 of this chapter.

(F) In § 173.245, the heading would be amended to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

* * * * *

(G) Section 173.245b would be added to read as follows:

§ 173.245b Corrosive solids not specifically provided for.

(a) Corrosive solids, as defined in § 173.240, other than those for which special requirements are prescribed, must be packaged in containers fully complying with § 173.24, as follows:

(1) Wooden boxes with inside containers which must be earthenware, glass, metal, or compatible plastic receptacles of not more than 10 pounds net weight capacity each.

(2) Fiberboard boxes with inside containers which must be earthenware, glass, metal, or compatible plastic receptacles of not more than 10 pounds net weight capacity each.

(3) Fiberboard boxes with one inside compatible plastic bag not over 25 pounds net weight capacity.

(4) Metal drums not over 55 gallons capacity.

(5) In multiwall paper bags not exceeding 110 pounds net weight, of at least four-ply construction including moisture-barrier ply, and made tight against sifting and moisture. Completed package, filled to weight with product and closed for shipment, must be able to withstand six drops from a height of 4 feet onto a solid surface, one drop on each end, one drop on each face, and one drop on each side (edge), without sifting or rupture.

(H) In § 173.257, paragraph (c) would be amended to read as follows:

§ 173.257 Electrolyte (acid) or corrosive battery fluid.

* * * * *

(c) Electrolyte acid or corrosive battery fluid contained in polyethylene containers not over 2 quarts capacity each and packaged not more than three containers in specification 15A, 15B, 15C, 16A, or 19A (§§ 178.168, 178.169, 178.170, 178.185, 178.190 of this chapter) wooden boxes or packaged as prescribed in paragraph (a) (6) of this section and bearing a corrosive label may be securely attached to self-propelled vehicles or mobile agricultural machinery or securely braced on a rail car floor.

* * * * *

(I) In § 173.399, paragraph (b) (2) would be amended to read as follows:

§ 173.399 Labeling of packages of radioactive materials.

* * * * *

(b) * * *

(2) Packages containing nitric acid solutions of radioactive materials must bear both a "radioactive" label and a "corrosive" label.

(J) In § 173.402, paragraph (a) (11) as shown in Docket No. HM–8; Notice No. 70–13 would be amended to read as follows:

§ 173.402 Labeling hazardous materials.

(a) * * *

(11) For corrosive liquids or corrosive solids, the "CORROSIVE" label as described in § 173.412.

* * * * *

(K) § 173.412 as shown in Docket No. HM–8; Notice No. 70–13 would be amended to read as follows:

§ 173.412 Corrosive label.

(a) Labels for packages of corrosive materials must be white on the top half of the label, and black on the bottom half. Printing of the symbol on the top half must be in black inside of a black line border. Printing on the bottom half must be in white.

(b) "Corrosive" label for packages of corrosive materials (liquid or solid).



IV. Part 174:

(A) In Part 174, Table of Contents, § 174.541 would be amended to read as follows:

Sec.
174.541 "Dangerous" placards; "Dangerous—Radioactive material" placards; or "Caution—Residual phosphorus" placards.

(B) In § 174.532, paragraph (c) (3) as shown in Docket No. HM–8; Notice No. 70–13 would be amended to read as follows:

§ 174.532 Loading other hazardous materials.

* * * * *

(c) * * *

(3) Packages with "yellow," "peroxide," or "red striped" labels must not be loaded in the same end of a car containing packages with "Corrosive" labels. However, shippers who have obtained prior approval of the Bureau of Explosives may load carload shipments of such articles together when it is known that the mixture of contents would not cause a dangerous evolution of heat or gas.

* * * * *

(C) In § 174.541, the heading and paragraph (a) (1) as shown in Docket No. HM–8; Notice No. 70–13 would be amended; paragraph (a) (3) as now shown in the Code would be amended to read as follows:

§ 174.541 "Dangerous" placards; "Dangerous—Radioactive material" placards; or "Caution—Residual phosphorus" placards.

(a) * * *

(1) Cars containing one or more packages bearing "red," "red gas," "red striped," "red bottom," "blue," "yellow," "peroxide," "etiologic," "poison B," or "corrosive" labels, as required by §§ 173.402 and 173.403 of this chapter.

* * * * *

(3) Tank cars containing flammable liquids, flammable solids, oxidizing materials, corrosive liquids, poisonous liquids or solids, class B, flammable compressed gases, or nonflammable compressed gases.

* * * * *

(D) In § 174.586, paragraph (g) would be amended to read as follows:

§ 174.586 Handling hazardous materials.

* * * * *

(g) Corrosive liquid carboys should be handled so as not to spill the contents. "Empty" carboys, so called, should be handled with necks up, and with sufficient care to prevent burns to clothing or person from leaking corrosive liquid.

V. Part 175:

In § 175.655, paragraph (h) as shown in Docket No. HM–8; Notice No. 70–13 would be amended to read as follows:

§ 175.655 Protection of packages.

* * * * *

(h) Carriers shall prevent contact of contents of packages bearing "yellow," "peroxide," "corrosive," or "red bottom" labels with combustible substances, such as sawdust, shavings, or sweepings, that may be present in express cars. The space should be swept or cleaned.

* * * * *

VI. Part 177:

(A) In Part 177, Table of Contents, § 177.858 would be amended to read as follows:

Sec.
177.858 Accidents; corrosive materials.

(B) In § 177.858, the heading would be amended to read as follows:

§ 177.858 Accidents; corrosive materials.

* * * * *

VII. Parts 173, 174, 177:

(A) The word or phrase "acids," "acids or corrosive liquids," "acids or other corrosive liquids," "acid or other corrosive liquid" would be deleted, and the phrase "corrosive liquid" or "corrosive liquids," as appropriate, would be inserted in place thereof, in the following: §§ 173.25(a), 173.29(d), 173.241 (a), (a)(4), 173.242 (a), (b), (c), 173.244(a), 173.245(a), 173.286(c), 174.532(h), and 177.839(b).

(B) The word or phrase "acid," "acids," "acids or corrosive liquids," "acid or corrosive liquid," "acids or corrosive liquids, white label," "corrosive liquid," or "corrosive liquids" would be deleted, and the phrase "corrosive materials" would be inserted in place thereof, in the following sections: §§ 173.28(i), 173.286(a), (b)(1), 173.401(a), 174.538 (a), note (b), 174.597, heading and phrase "acid or other corrosive liquid" in paragraph (a), 177.823(a)(1), 177.834 (a), (g), (k), 177.848 (a), note (b), 177.854(f), and 177.858(a).

Interested persons are invited to give their views on this proposal. Communications should identify the docket number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, DC 20590. Communications received on or before September 28, 1971, will be considered before final action is taken on the proposal. All comments received will be available for examination by interested persons at the Office of the Secretary, Hazardous Materials Regulations Board, both before and after the closing date for comments.

This proposal is made under the authority of sections 831–835 of title 18, United States Code, section 9 of the Department of Transportation Act (49 U.S.C. 1657), and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421–1430 and 1472(h)).

Issued in Washington, D.C., on June 7, 1971.

W. J. BURNS,
Chairman, Hazardous Materials Regulations Board.

[FR Doc.71-8102 Filed 6-10-71;8:45 am]

Notices

DEPARTMENT OF STATE

[Public Notice 341]

DOME PETROLEUM CORP.

Notice of Application for Pipeline Permit

The Department of State has received an application, dated March 29, 1971, from the Dome Petroleum Corp., a North Dakota corporation having its main office at Bismarck, N. Dak., for a permit to construct, operate, and maintain a pipeline for petroleum, petroleum products and other liquid hydrocarbons from Burke County, N. Dak., to the international boundary line between the United States and Canada.

Notice is hereby given pursuant to section 2(a) of Executive Order 11423 of August 16, 1968, that copies of this application are available to the public and that written comments thereon will be received by the Department of State for 30 days from the date of publication of this notice in the FEDERAL REGISTER.

Dated: June 2, 1971.

For the Secretary of State.

JOHN B. RHINELANDER,
Deputy Legal Adviser.

[FR Doc.71-8167 Filed 6-10-71;8:48 am]

DEPARTMENT OF THE TREASURY

Bureau of Customs

LARGE POWER TRANSFORMERS FROM FRANCE

Antidumping Proceeding Notice

JUNE 9, 1971.

A question has arisen regarding the scope of the Antidumping Proceeding Notice with respect to large power transformers from France published in the FEDERAL REGISTER of June 17, 1970 (35 F.R. 9934, F.R. Doc. 70-7526).

The purpose of this amendment is to make it clear that the notice applies to all types of transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power, including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

The Antidumping Proceeding Notice relating to large power transformers from France, referred to above, accordingly is amended by inserting a comma followed by the words "including all transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power (including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers)," after the word "transformers" in the first paragraph.

[SEAL] ROBERT V. MCINTYRE,
Acting Commissioner of Customs.

[FR Doc.71-8280 Filed 6-10-71;8:51 am]

LARGE POWER TRANSFORMERS FROM ITALY

Antidumping Proceeding Notice

JUNE 9, 1971.

A question has arisen regarding the scope of the Antidumping Proceeding Notice with respect to large power transformers from Italy published in the FEDERAL REGISTER of June 17, 1970 (35 F.R. 9934, F.R. Doc. 70-7527).

The purpose of this amendment is to make it clear that the notice applies to all types of transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power, including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

The Antidumping Proceeding Notice relating to large power transformers from Italy, referred to above, accordingly is amended by inserting a comma followed by the words "including all transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power (including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers)," after the word "transformers" in the first paragraph.

[SEAL] ROBERT V. MCINTYRE,
Acting Commissioner of Customs.

[FR Doc.71-8279 Filed 6-10-71;8:51 am]

LARGE POWER TRANSFORMERS FROM JAPAN

Antidumping Proceeding Notice

JUNE 9, 1971.

A question has arisen regarding the scope of the Antidumping Proceeding Notice with respect to large power transformers from Japan published in the FEDERAL REGISTER of June 17, 1970 (35 F.R. 9934, F.R. Doc. 70-7528).

The purpose of this amendment is to make it clear that the notice applies to all types of transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power, including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

The Antidumping Proceeding Notice relating to large power transformers from Japan, referred to above, accordingly is amended by inserting a comma followed by the words "including all transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power (including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers)," after the word "transformers" in the first paragraph.

[SEAL] ROBERT V. MCINTYRE,
Acting Commissioner of Customs.

[FR Doc.71-8276 Filed 6-10-71;8:51 am]

LARGE POWER TRANSFORMERS FROM SWEDEN

Antidumping Proceeding Notice

JUNE 9, 1971.

A question has arisen regarding the scope of the Antidumping Proceeding Notice with respect to large power transformers from Sweden published in the FEDERAL REGISTER of June 17, 1970 (35 F.R. 9934, F.R. Doc. 70-7529).

The purpose of this amendment is to make it clear that the notice applies to all types of transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power, including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

The Antidumping Proceeding Notice relating to large power transformers from Sweden, referred to above, accordingly is amended by inserting a comma followed by the words "including all transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power (including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers)," after the word "transformers" in the first paragraph.

ROBERT V. MCINTYRE,
Acting Commissioner of Customs.

[FR Doc.71-8277 Filed 6-10-71;8:51 am]

LARGE POWER TRANSFORMERS FROM SWITZERLAND

Antidumping Proceeding Notice

JUNE 9, 1971.

A question has arisen regarding the scope of the Antidumping Proceeding

Notice with respect to large power transformers from Switzerland published in the FEDERAL REGISTER of June 17, 1970 (35 F.R. 9934, F.R. Doc. 70-7530).

The purpose of this amendment is to make it clear that the notice applies to all types of transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution and utilization of electrical power, including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transfomers.

The Antidumping Proceeding Notice relating to large power transformers from Switzerland, referred to above, accordingly is amended by inserting a comma followed by the words "including all transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power (including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers)," after the word "transformers" in the first paragraph.

[SEAL] ROBERT V. MCINTYRE,
Acting Commissioner of Customs.

[FR Doc.71-8275 Filed 6-10-71;8:51 am]

LARGE POWER TRANSFORMERS FROM UNITED KINGDOM

Antidumping Proceeding Notice

JUNE 9, 1971.

A question has arisen regarding the scope of the Antidumping Proceeding Notice with respect to large power transformers from the United Kingdom published in the FEDERAL REGISTER of June 17, 1970 (35 F.R. 9935, F.R. Doc. 70-7531).

The purpose of this amendment is to make it clear that the Notice applies to all types of transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power, including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers.

The Antidumping Proceeding Notice relating to large power transformers from United Kingdom, referred to above, accordingly is amended by inserting a comma followed by the words "including all transformers rated 10,000 KVA or above, by whatever name designated, used in the generation, transmission, distribution, and utilization of electrical power (including but not limited to shunt reactors, autotransformers, rectifier transformers, and power rectifier transformers)," after the word "transformers" in the first paragraph.

[SEAL] ROBERT V. MCINTYRE,
Acting Commissioner of Customs.

[FR Doc.71-8278 Filed 6-10-71;8:51 am]

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

ENVIRONMENTAL STATEMENTS

Proposed Guidelines on Preparation and Coordination

In order to facilitate and promote compliance with the requirements of the National Environmental Policy Act of 1969 (83 Stat. 852), and particularly section 102(2) thereof (42 U.S.C. 4332); Guidelines for Statements on Proposed Federal Actions Affecting the Environment, Council on Environmental Quality (36 F.R. 7724, Apr. 23, 1971); and Executive Order 11514, Protection and Enhancement of Environmental Quality, March 5, 1970 (35 F.R. 4247, Mar. 7, 1970), particularly section 2(b) thereof regarding the preparation and coordination of environmental statements, the Office, Chief of Engineers has prepared guidance to be used by all elements of the Corps of Engineers with civil works responsibilities in preparing and processing environmental statements as required by the Act.

Interested persons are invited to submit such written comments and suggestions concerning the proposed Engineer Regulation as they may desire. Communications should identify the subject matter by the above title and should be submitted in duplicate to the Office, Chief of Engineers, Attention: ENGCW-PV, 1000 Iedependence Avenue SW., Forrestal Building, Department of the Army, Washington, DC 20314. All communications received on or before July 9, 1971, will be considered before issuing the Engineer Regulation. The proposed Engineer Regulation contained in this notice may be changed in light of the comments received. A copy of each submittal will be available for public inspection during business hours, both before and after the closing date set forth above, in the OCE Public Affairs Office at the above address.

The proposed Engineer Regulation on Preparation and Coordination of Environmental Statements reads as follows:

1. *Purpose.* This regulation provides guidance for preparation and coordination of Environmental Statements as required by section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-190). The procedures described in this regulation are consistent with the Council on Environmental Quality Guidelines for Statements on Proposed Federal Actions Affecting the Environment, dated April 23, 1971.

2. *Applicability.* This regulation applies to all elements of the Corps of Engineers with civil works responsibilities for planning, development, and management of water resource developments and is applicable to both preauthorization and postauthorization project activities.

3. *References.* a. ER 1165-2-500, "Environmental Guidelines for the Civil Works Program of the Corps of Engineers," November 30, 1970.

b. National Environmental Policy Act of 1969 (Public Law 91-190) (83 Stat. 852).

c. Executive Order 11514, "Protection and Enhancement of Environmental Quality," March 5, 1970 (35 F.R. 4247, Mar. 7, 1970) (copy inclosed as Appendix A).

d. Guidelines for Statements on Proposed Federal Actions Affecting the Environment, Council on Environmental Quality (36 F.R. 7724, Apr. 23, 1971) (inclosed as Appendix B).

4. *Policy.* In formulating water resource development or management plans, impact on the environment will be fully considered from the initiation of preauthorization planning through postauthorization planning, construction, and project operation and management. Early and continuing efforts in cooperation with appropriate local, State and Federal agencies and the interested public, will be undertaken to develop alternatives and measures which will enhance, protect, preserve, and restore the quality of the environment or, at least, minimize and mitigate unavoidable deleterious effects. Preparation of the environmental statement required by the Act will constitute an integral part of the preauthorization process. The statement will serve as a summation of evaluations of the effects that alternative actions would have on the environment and as an explanation and objective evaluation of the finally recommended plan.

a. *Compliance and review.* Prior to forwarding, environmental statements (including comments and views of agencies, groups, and the public) will be carefully reviewed by District and Division Engineers to insure that:

(1) The statement fully satisfies the requirements of this regulation and the references cited herein.

(2) The project or proposal described in the statement is fully consistent with the policies enunciated in the National Environmental Policy Act, ER 1165-2-500, and other pertinent directives which have implemented the Act.

b. *Further guidance.* If after taking all measures within his authority, the District or Division Engineer is unable to satisfy the requirements of paragraph 4a "Compliance and review," above, he will report the matter to the Chief of Engineers, Attention: ENGCW, and request the necessary authority or guidance.

c. *Operation, maintenance, and management.* In the development of plans for operation, maintenance, and management activities, all possible significant effects on the environment will be considered. Such consideration will include alternative uses of available resources when the proposed O&M activity will de-

grade the quality of the environment, curtail the beneficial uses of the environment, or serve short-term purposes to the disadvantage of long-term environmental goals. Typical examples of these activities which could have an adverse impact on the environment are as follows:

(1) Disposal of dredged material in wetlands or marshlands.

(2) Disposal of polluted dredged material in unconfined or open water areas.

(3) Debris collection and disposal activities.

(4) Resource management programs involving the cutting, sale and/or disposal of forest resources; extensive plant disease eradication; predator or vector control; and aquatic plant control.

(5) Reservoir regulation in which some environmental benefits must be sacrificed in the interest of other environmental benefits or economic considerations, e.g. undesirable drawdown to provide water for power and for downstream water quality control.

(6) Leases, licenses, rights-of-way, administrative permits, and other actions involving use by others of project resources.

d. *Regulatory permits.* In evaluating permit applications, the responsible Federal officer will carefully evaluate the impact on the environment of the proposed action considering environmental information provided by the applicant, all advice received from Federal, State, and local agencies, and comments of the public. If the Federal officer believes that granting the permit may be warranted but could lead to significant environmental degradation, an environmental statement will be prepared.

5. *Agency actions requiring statements.* The following types of Corps of Engineers actions will require the preparation of an environmental statement by reporting officers. For those actions not identified in this paragraph, reporting officers should request further guidance from the Chief of Engineers, Attention: ENGCW. Where environmental statements have been previously filed and are older than 3 years or have significant changes in the proposal or associated environment, the statement will be updated, coordinated, and transmitted to the CEQ.

a. *Legislation.* Recommendations or reports to the Congress on proposals for legislation affecting Corps of Engineers programs including proposals to authorize projects (survey, review, and comprehensive reports and legislation).

b. *Continuing authorities.* Recommendations or reports on proposals for authorization of projects by the Chief of Engineers or the Secretary of the Army under special authorities, including detailed Project Reports prepared under the following special continuing authorities:

(1) Section 205, 1948 FCA, as amended (33 U.S.C. 701s).

(2) Section 107, 1960 R&HA, as amended (33 U.S.C. 577).

(3) Section 103, 1962 R&HA, as amended (33 U.S.C. 426g).

(4) Section 2, 1937 FCA, as amended (33 U.S.C. 701g).

(5) Section 3, 1945 R&HA, as amended (33 U.S.C. 603a).

(6) 1909 R&HA, as amended (33 U.S.C. 5).

c. *Construction or land acquisition not started.* Initiation of construction of land acquisition on projects which are not yet started but for which funds have been appropriated or are provided by the current fiscal year Appropriation Act.

d. *Requests for initiation of construction or land acquisition.* Budget submissions requesting funds for the initiation of construction or land acquisition on authorized projects.

e. *Continuing construction and land acquisition, and operation and maintenance.* The National Environmental Policy Act of 1969 requires an environmental statement in those instances where a major Federal action has a significant impact upon the environment. It is the desire of the Chief of Engineers, though not required by the Act, to conduct a systematic review of all Corps projects and to have environmental statements prepared for all projects with impacts that may be considered significant for any reason. In recognition of the heavy workload immediately imposed upon District Engineers through this requirement, it is proposed that statements on these projects be submitted over a span of 3 years. This program contemplates the early submission of statements on those projects of highest priority and so graduated that those of lowest priority will be the last to be submitted. In determination of the priority ranking of projects under this requirement, those projects having the greatest impact upon the environment and those projects where scheduled actions are such as to preclude the possible adoption of alternative plans will be considered highest in priority. A project can be exempted from this 3-year schedule requirement if a statement has already been filed that is less than 3 years old by the time of the President's budget submission and no significant changes have taken place in the proposal or the associated environment.

f. *Regulatory permits.* Issuance of permits for structures, dumping, or other actions in navigable waters of the United States whenever any of the Federal, State, or local agencies which are authorized to develop and enforce environmental standards certify, or the District Engineer determines, that the action which it is proposed to permit would have a significant and adverse effect on the quality of the environment. This regulation does not apply to requirements for environmental statements of Federal leases for oil drilling to be done on the outer continental shelf; Corps permits for such drilling are confined to findings on the effect of this activity on navigation and on national security; inquiries concerning environmental considerations will be referred to the Federal leasing agency. See 33 CFR 209.131 *Permits for Discharges or Deposits Into Navigable Waters.*

g. *Cooperative shore protection projects.* Where the non-Federal agency will accomplish the construction, a final environmental statement will be on file with CEQ prior to advertisement of the work. The statement will be prepared by the District Engineer, following the guidance provided by this regulation. In the event the non-Federal agency desires to prepare the draft environmental statement, copies will be furnished the District Engineer, who will review the statement and, if it is suitable, proceed with coordination and further processing.

h. *Regulatory control of project resources.* Certain administrative actions regarding utilization of Corps of Engineers project resources have the potential of significantly affecting the environment. These actions are normally initiated by outside parties and involve a lease, license, permit, easement, or other entitlement for use. An environmental statement will be prepared for these actions which may include: leasing of project lands for industrial uses, airports, etc.; requests for rights-of-way for overhead utilities, pipelines, roads and highways; mineral extractions such as sand, gravel, rock, etc., or any other proposed use of project resources which could degrade the quality of the environment. Where an environmental statement is deemed not necessary because there will be no adverse effects, this finding will be included in the transmitting report to higher authority.

i. *Disposal of lands for port and industrial uses.* For disposal of surplus project lands for development of port and industrial facilities pursuant to section 108 of River and Harbor Act of 1960 (Public Law 86-645) (74 Stat. 487) (33 U.S.C. 578), District Engineers will prepare an environmental statement and process it with the proposed action to higher authority.

j. *Exclusions.* Specifically excluded from the required preparation of environmental statements are the emergency flood control, shore protection, and disaster recovery actions performed by the Corps of Engineers pursuant to its statutory authority under Public Law 99—84th Congress (69 Stat. 186), Emergency Bank Protection for Highways, Highway Bridge Approaches and Public Works (sec. 14, 1946 Flood Control Act) (60 Stat. 641) (33 U.S.C. 701r), or as directed by the Office of Emergency Preparedness under the provisions of Public Law 91-606 (84 Stat. 1744).

6. *Budget submission data.* The time requirements for submission of environmental statements as set forth below, have been established with a view to meeting, to the maximum extent, the requirements specified by the Council on Environmental Quality. (See paragraph 10(c) of the CEQ "Guidelines.")

a. *Requests for initiation of construction and land acquisition.* For budget

recommendations in this category, final environmental statements must have been transmitted to CEQ by September 1 of the calendar year in which the budget is being submitted by Division and District Engineers.

b. *Requests for continuing construction and land acquisition and operation and maintenance activities.* With reference to paragraph 5e, for those projects on whch environmental statements are selected for submission under the first year of the 3-year schedule, final statements will have been submitted to CEQ not later than January 1, 1972, with the statements scheduled for the second and third years being planned for submission by September 1, 1972, and 1973, respectively.

c. *Listings.* The annual budget recommendations of Division Engineers will provide a listing of projects recommended in each budget category indicating the time of actual or scheduled submission of the final environmental impact statements to the CEQ.

7. *General considerations*—a. *Environmental statements.* The environmental statement is an independent report summarizing the direct and indirect environmental impacts of a proposed water resources development project or other proposal, taking into consideration the detailed appraisal and analysis of Federal and State agencies with jurisdiction by law or special expertise with respect to environmental impacts and public concerns with particular emphasis on conservation and environmental action groups. Environmental statements will be based on the considerations discussed below, the CEQ "Guidelines," Appendix B and the guidance contained in Appendix C. Statements will:

(1) Describe environmental impacts sufficiently to permit evaluation and independent appraisal of the favorable and adverse environmental effects of the recommended proposal and each alternative. They will be simple and concise, yet include all pertinent facts. In no case will possible adverse effects be ignored or slighted in an attempt to justify an action previously recommended or currently supported. Similarly, care must be taken to avoid overstating either favorable or unfavorable effects.

(2) Discuss significant relationships between the proposal and other existing and anticipated developments. This will include not only Corps proposals but actions by others, either public or private, which will affect the impact of the project or will be affected by the project. These will include both specific proposals and general trends.

(3) Discuss the significance of the regional and national environmental impact of the project, as applicable. Conclusions should be supported with information indicating the relative scarcity or abundance of the environmental resources in question and other factors bearing on regional and national significance.

(4) Be submitted as separate documents, not as inclosures or appendices to other documents such as preauthorization survey reports or design memoranda. However, statements will bring together and summarize the various findings of other documents with respect to environmental considerations.

(5) Not be used to resolve conflicts or to present unsupported conclusions, but should demonstrate that the Corps has fully considered the potential impact of the proposal upon the environment. The statement will summarize information and cite sources of overall appraisals and responsible judgments of complex environmental matters and interrelationships (e.g., water quality by EPA, fish and wildlife resources by BSF&WL or other authoritative sources).

(6) Contain objective analyses and normally avoid the use of project cost figures but should include approximate monetary or other cost comparisons of alternatives which illustrate different environmental impacts and economic or social trade-offs necessary to achieve environmental objectives.

(7) Summarize comments and/or recommendations of an environmental nature by appropriate Governmental agencies.

(8) Summarize formal views and recommendations received from organizations and individuals with an environmental resource interest. Presentation will be in a subsection under "Coordination With Others."

(9) Be reviewed by District Counsel to assure legal responsiveness to the Act.

(10) Be prepared in simple and concise terms with the understanding that they are—or will be—public documents and may receive broad exposure in the news media and careful public scrutiny. Where the use of technical terms is necessary, they should be adequately defined. Length would depend upon the nature of the impacts and the environmental setting of a particular proposal.

(11) Contain the comments of the Environmental Protection Agency with respect to water quality aspects of the proposed action, which have been previously certified by the appropriate State or interstate organization as being in substantial compliance with applicable water quality standards.

(12) Contain a description of the proposed action including information and technical data adequate to permit a careful assessment of environmental impacts by commenting agencies. Project maps will be included.

b. *Planning relationships.* (1) In the development of new projects or proposals, environmental considerations will be integrated into the planning process from the beginning. Preliminary identification and assessment of possible environmental impacts and effects will be made and fully discussed at early stages in the study. Consultation and coordination with Federal, State, and local agencies which have jurisdiction by law or special expertise and the interested public with respect to the environmental impacts involved will be started as soon as these impacts are tentatively identified and will continue throughout the planning process. Reporting officers will insure that such consultation has been sufficient to identify all significant impacts prior to circulation of environmental statements, including preliminary drafts.

(2) On projects which were recommended, authorized or under construction prior to the National Environmental Policy Act of 1969, the opportunity to study and evaluate a full range of alternatives may be more limited. However, to the maximum extent feasible, alternative solutions and opportunities for environmental enhancement, preservation, restoration, and mitigation will be investigated prior to preparation of the statement. Regardless of the level at which formal coordination is to take place, reporting officers will carefully examine and evaluate the environmental impact of all reasonable alternatives in coordination with appropriate Federal, State, and local agencies and the public prior to preparing a recommendation or an environmental statement, whether preliminary draft, draft, or final.

8. *Public participation*—a. *Policy.* Public participation will be incorporated into the conduct of the Corps water resources program and must be viewed as an integral part of the planning process. Public participation is a continuous two-way communication process which involves: Keeping the public fully informed about the status and progress of studies and findings of plan formulation and evaluation activities; and actively soliciting from all concerned citizens their opinions and perceptions of objectives and needs, and their preferences regarding resources use and alternative development or management strategies, and any other information and assistance relevant to plan formulation and evaluation. Specific guidance on the implementation of public participation is being developed.

b. *Preauthorization project studies.* In each project study, all possible means (formal and informal) will be emphasized to establish and maintain effective two-way communications with interested citizens and conservation and environmental groups. Public meetings, informal meetings and workshops with the project area and the use of news media are means to develop this free-flowing dialog to assist in the identification of the environmental concerns and develop appropriate measures within the proposed plan to mitigate, eliminate, or reduce environmental impacts. Unresolved environmental conflicts must be clearly set forth with a full and complete discussion of both sides of the issue. The general public and participating conservation environmental groups should be kept fully and continuously informed about impacts and be provided with opportunities to make inputs.

(1) During the second public meeting or formulation stage meeting, all anticipated environmental impacts and effects of each solution under consideration will be identified and discussed. There will be prepared an environmental information section or inclosure to the

public meeting announcement in order to generate meaningful and thorough discussion during the meeting. Views of interested citizens and conservation and environmental groups will be sought and considered.

(2) A preliminary draft environmental statement will be prepared for the third or late stage public meeting and will be summarized in the notice of public meeting and with reference to how copies may be obtained. The environmental discussion regarding the proposal and alternatives will be specific and thorough regarding the environmental impacts and effects. Views of interested citizens and conservation and environmental groups will be sought and considered.

c. *Post-authorization project studies.* Public participation will be developed for post-authorization planning studies whenever there are substantive changes from the authorized plan.

d. *Public review.* During the review of the environmental statement by Federal, State, and local agencies, copies of the preliminary draft and draft statement will be made available to groups which actively participated in the study, to citizen and conservation and environmental groups with known interests in the environmental considerations of the project, and in response to requests from the general public. To insure public awareness during this process, action offices will prepare and publish a news release on the proposed action, stating that a copy of the preliminary draft or draft environmental statement has been prepared and is available upon request. This news release should be given as wide a coverage as deemed sufficient to accomplish the purpose of this directive and the intent of paragraph 6a(vii) and 10 of the "Guidelines" of the CEQ. When significant environmental impacts or public concern have become apparent subsequent to the last public meeting, reporting officers will notify the Division Engineer of the facts and issues involved and request a decision as to whether a public meeting should be held prior to or during coordination of the statement.

9. *Coordination.* Existing coordination procedures will be utilized in obtaining the views of Federal, State, and local agencies to the maximum extent practicable concerning the review of preliminary draft and draft environmental statements.

a. *Time limits.* Reporting officers should establish time limits of not less than 45 days for reply, after which it may be presumed, unless the agency requests a specific extension of time, that the agency consulted has no comment to make. In exceptional cases, where time is a very critical factor, time limits of 30 days may be established. To the fullest extent possible, no administrative action will be taken, regarding the proposal, sooner than 90 days after a draft environmental statement has been circulated for comment, or sooner than 30 days after a final environmental statement has been made available to CEQ.

b. *Federal agencies.* (1) Appendix 2, CEQ "Guidelines" will be used to determine the Federal agencies with jurisdiction by law or special expertise to whom the statement is to be sent for comment on the environmental impacts.

(2) Section 8 of CEQ Guidelines, reference d, requires that, in addition to normal coordination procedures, the following rules apply to coordination with the Environmental Protection Agency (EPA):

(a) Comments of the Administrator or his designated representative will accompany each final statement on matters related to air or water quality, noise control, solid waste disposal, radiation criteria and standards, or other provisions of the authority of EPA.

(b) Copies of basic proposals (studies, proposed legislation, rules, leases, permits, etc.) will be furnished to EPA with each statement. For actions for which statements are not being prepared but which involve the authority of EPA, EPA will be informed that no statement will be prepared and that comments are requested on the proposal.

(c) A period of 45 days will be allowed for EPA review of statements and/or proposals; however, it will be presumed that the agency has no comments to make only when the impacts or matters related to the authorities of EPA are minor or the agency has indicated that it does not desire to comment.

c. *State and local agencies.* Coordination of the environmental statement with State and local agencies authorized to develop and enforce environmental standards may be obtained directly with the agencies and with the appropriate State, regional, or metropolitan clearinghouse unless the Governor has designated some other point for obtaining this review. For additional guidance see ER 1120-2-112, "Coordination of Investigations and Reports with Clearinghouses."

10. *Availability of environmental statements.* Draft and final environmental statements including comments received during review will be made available to the public to the greatest extent practicable in accordance with paragraph 8 of this regulation, section 2(b) of Executive Order 11514, "Protection and Enhancement of Environmental Quality," paragraph 10 of the CEQ "Guidelines" and the following:

a. *Draft environmental statements.* The District Engineer will furnish copies of draft environmental statements in response to requests from the public and will furnish public information file copies to the Division office and the appropriate State, regional, and metropolitan clearinghouses. Copies will also be on file in the Office of the Chief of Engineers.

b. *Final environmental statements.* After the final environmental statement has been filed with CEQ, the District Engineer will furnish copies, including comments, in response to requests from the public and furnish on an expedited basis, public information file copies to the appropriate State, regional, and metropolitan clearinghouses. Information copies will also be provided to all Federal, State, and local agencies and conservation/environmental groups with which the statement was coordinated. This is to enable the public or government agency to comment on the final statement to CEQ if they so desire, within the 30-day period prior to the administrative actions being taken. Copies will also be on file in the Office of the Chief of Engineers.

c. *Number of copies.* In order to comply with paragraph 10(b) of CEQ "Guidelines" reporting officers will provide 30 copies of all draft environmental statements to OCE at the time formal coordination with responsible Federal, State, and local agencies is initiated. When significant or controversial environmental issues are raised during the draft review process, 20 copies of the letters discussing the issues will be furnished OCE for transmittal to CEQ in advance of furnishing the final coordinated environmental statement. Thirty copies of the final coordinated statement will be furnished OCE for further processing to CEQ. OCE will notify Division and District Engineers when final statements are filed and will provide each with copies of the filed final statement.

11. *Preparation and processing.* Statements will be prepared by the officer initially preparing the recommendation or report (normally the District Engineer). The initiating officer is recognized as the responsible Federal official within the meaning of section 102(2)(C) of Public Law 91-190, except for such changes as reviewing authorities may deem necessary in the original proposal and covering statement, to be consistent with the policies of the Secretary of the Army. Agency comments and the views expressed should be directed at the environmental impacts and should be no older than 12 months for new proposals nor older than 3 calendar years for previously authorized projects. More recent coordination will be required if significant changes in the proposal or in the associated environment have occurred in the meantime.

a. *Survey reports.* (1) An assessment of the environmental resources in the project area will be prepared by the environmental planners and presented at the Checkpoint I Conference. This assessment will be based on the results of the environmental inventory (App. C, paragraphs 2 and 3) and will be the continuing reference document for the environmental planning in the survey report and the preparation of the environmental statement.

(2) The environmental assessment and an anlysis of probable environmental impacts of the considered project alternatives will be presented at the formulation stage public meeting. The environmental presentation at this meeting will be made in a way that will: (a) Lead to public understanding of the environmental setting in the proposed project area, and the environmental trade-offs under consideration; (b) be

deserving of confidence that Corps planning is environmentally knowledgeable and responsive; and (c) obtain the reviews and comments of interested citizen and conservation and environmental groups.

(3) A preliminary draft statement (PDS) will be prepared before the late stage public meeting. The PDS will objectively present the anticipated impacts of the selected plan which may be recommended, but will also present in clear and concise terms the probable impacts of alternative plans considered during the study.

(4) The PDS, perhaps revised after the final public meeting, will be circulated to the agencies noted in paragraph 9, "Coordination", for review and comment. The review period will be not less than 30 days. If any agency does not respond within the time specified, a comment to that effect will be included in the attached coordination letters section. Copies of the PDS will be furnished to groups which actively participated in the study, to citizen and conservation and environmental groups with known interests in the environmental considerations of the project. At the time of the circulation of the PDS for field level review the District Engineer will prepare and issue a news release stating that a copy of the preliminary draft environmental statement may be obtained from the District Engineer.

(5) After the return of field level review comments the District will prepare a final version of the PDS and this statement will accompany the District report to the Division Engineer. Review comments of all agencies together with a summary of comments received from the public, will be attached to the PDS.

(6) The Division Engineer will give appropriate coverage to the PDS in the Public Notice and will review and comment on the PDS when he submits his report and statement to the Board of Engineers for Rivers and Harbors (BERH).

(7) BERH will review the PDS at the time it reviews the project report. BERH will note in the Board report that it has reviewed the PDS of a certain data and has considered the impacts discussed therein when developing the views and recommendations contained in the Board report.

(8) After the review of the PDS at BERH and by OCE elements, the PDS will be converted into the draft statement at OCE. The draft statement will be circulated for review and comment to the appropriate State or States and the affected Federal agencies at the Washington level and known interested citizen, conservation and environmental groups, and response to requests from the general public. The draft statement, together with all field level coordination comments, the Chief of Engineers Report, and the Board of Engineers for Rivers and Harbors report will be provided CEQ by OCE at this time. The review period will be 90 days. The public Affairs Office, OCE, will prepare and issue a news release stating that a copy of the draft environmental statement is available from the Office of the Chief of Engineers. Copies of the draft environmental statement will be furnished the Division and District Engineers. District Engineers will provide public information file copies to the appropriate State, regional, and metropolitan clearinghouses.

(9) After termination of the review period the final environmental statement incorporating all comments received, will be prepared at OCE in consultation with field offices and accompany the Chief's report on the project to Office, Secretary of Army (OSA) for transmittal to Office of Management and Budget (OMB).

(10) After receipt of the OMB comments, OSA will transmit the final environmental statement to CEQ and Congress together with the project report. The Public Affairs Office, OCE, will prepare and issue a news release stating that a final environmental statement has been filed with CEQ and a copy is available from the Office of the Chief of Engineers. Mention in this news release should be made that copies are available at the Division and District Engineers' offices.

(11) Copies of final environmental statement will be furnished the agencies and organizations with whom the draft environmental statement was coordinated. Copies of the final environmental statement will be furnished the Division and District Engineers. District Engineers will provide public information copies to the appropriate State, regional, and metropolitan clearinghouses.

b. *Special projects and continuing authorities.* It is contemplated that all required consultation with Federal, State, and local agencies, and the public concerning the environmental aspects will be accomplished at field level by District Engineers without further referral to any of these agencies by the Chief of Engineers.

(1) An assessment of the environmental resources in the project area will be prepared by the environmental planners and will be the continuing reference document for the environmental planning in the project report and the preparation of the environmental statement.

(2) A draft statement will be prepared before the public meeting. The draft statement will objectively present the anticipated impacts of the selected plan which may be recommended but will also present in clear and concise terms the probable impacts of alternative plans considered during the study. The content of the draft statement will be summarized in the Notice of Public Meeting and discussed at the meeting.

(3) The draft statement, revised as applicable, after the public meeting, together with draft report, will be forwarded to OCE through the Division Engineer for concurrence of proposed action prior to coordination of report and statement.

(4) Appropriate comments on the report and draft statement will be made by OCE and the District Engineer requested to make the appropriate changes.

(5) After the changes in the report and draft statement are made, the District Engineer will circulate the draft statement for formal review and comment to appropriate Federal, State, and local agencies, clearinghouses and known interested citizen, conservation and environmental groups and response to requests from the general public. Thirty copies of the draft statement will be furnished OCE for transmittal to CEQ. The review period may be as short as 30 days except 45 days will be allowed for EPA comment. This coordination starts the 90-day period before the administrative action can be taken. At the same time the District Engineer will prepare and issue a news release stating that a copy of the draft environmental statement may be obtained from the District Engineer.

(6) After other agency review comments and comments of the interested public are received, the District will prepare the final environmental statement and attach copies of all comments received. Thirty copies of the final environmental statement will be sent to the Division Engineer for further action.

(7) The Division Engineer will review and comment on the final environmental statement when he submits the report and statement to OCE.

(8) OCE will review and have revised the final environmental statement where necessary. Office, Secretary of Army will transmit the final environmental statement to the CEQ. This action will start the 30-day period before the action can be taken. The Public Affairs Office, OCE, will prepare and issue a news release stating that a final environmental statement has been filed with CEQ and a copy is available from the Office, Chief of Engineers and District Engineer.

(9) Copies of the final environmental statement will be furnished the Division and District Engineers. District Engineers will furnish copies of the final environmental statement to the agencies and organizations with whom the draft environmental statement was coordinated. District Engineers will also provide public information copies to the appropriate State, regional, and metropolitan clearinghouses.

c. *Authorized projects not started.* It is contemplated that all required consultation with Federal, State, and local agencies and the public concerning the environmental aspects will be accomplished at field level by District Engineers without further referral to any of these agencies by the Chief of Engineers. See paragraph 8, Public Participation, for guidance on holding public meetings in connection with preparation of statements for authorized projects.

(1) Prior to submittal of the General Design Memorandum, the District Engineer will update the environmental statement prepared when the project was authorized or prepare one if none has been prepared. For projects for which statements are required (paragraph 5,

"Agency actions requiring environmental statements") and for which the GDM has been previously submitted, draft statements will be prepared as soon as possible. Preparation should be started at least 9 months prior to the proposed action for which the statement is required in order to allow time for consultation with appropriate agencies prior to preparing the draft, preparation of the draft, and processing as indicated in the following subparagraphs.

(2) The updated statement or new draft will be circulated for formal review and comment to the appropriate Federal, State, and local agencies, clearinghouses, and known interested citizen, conservation and environmental groups and response to requests from the general public. Thirty copies of the draft statement will be furnished OCE for transmittal to CEQ. This review period may in exceptional cases be as short as 30 days, except that 45 days will be allowed for EPA comments. This coordination starts the 90-day period before the administrative action can be taken. At the same time, the District Engineer will issue a news release stating that a copy of the draft environmental statement may be obtained from the District Engineer.

(3) After other agency review comments and comments of the interested public are received, the District will prepare the final environmental statement and attach copies of all comments received. Thirty copies of the final environmental statement will be sent to the Division Engineer for further action.

(4) The Division Engineer will review and comment on the final environmental statement when he submits the GDM (if appropriate) and statement to OCE.

(5) OCE will review and revise the final environmental statement where necessary. Office, Secretary of Army will transmit the final environmental statement to the CEQ. This action will start the 30-day period before the administrative action can be taken. The Public Affairs Office, OCE, will prepare and issue a news release stating that a final environmental statement has been filed with CEQ and a copy is available from the Office, Chief of Engineers and the District Engineer.

(6) Copies of the final environmental statement will be furnished the Division and District Engineers. District Engineers will furnish copies of the final environmental statement to the agencies and organizations with whom the draft environmental statement was coordinated. District Engineers will also provide information copies to the appropriate State, regional, and metropolitan clearinghouses.

d. *Operation and maintenance and continuing construction.* It is contemplated that all required consultation with Federal, State, and local agencies, and the public concerning the environmental aspects will be accomplished at field level by District Engineers without further referral to any of these agencies by the Chief of Engineers.

(1) Paragraph 5e, page 4, establishes the requirements for preparation of environmental statements regarding Operation and Maintenance and Continuing Construction projects.

(2) The updated statement or new draft will be circulated for formal review and comment to the appropriate Federal, State, and local agencies, clearinghouses, and known interested citizen, conservation and environmental groups and response to requests from the general public. Thirty copies of the draft statement will be furnished OCE for transmittal to CEQ. This review period may in exceptional cases be as short as 30 days, except that 45 days will be allowed for EPA comments. This coordination starts the 90-day period before the administrative action can be taken. At the same time, the District Engineer will issue a news release stating that a copy of the draft environmental statement may be obtained from the District Engineer.

(3) After other agency review comments and comments of the interested public are received, the District will prepare the final environmental statement and attach copies of all comments received. Thirty copies of the final environmental statement will be sent to the Division Engineer for further action.

(4) The Division Engineer will review and comment on the final environmental statement when he submits the statement to OCE.

(5) OCE will review and revise the final environmental statement where necesary. Office, Secretary of Army will transmit the final environmental to the CEQ. This action will start the 30-day period before the action can be taken. The Public Affairs Office, OCE, will prepare and issue a news release stating that a final environmental statement has been filed with CEQ and a copy is available from the Office, Chief of Engineers and the District Engineer.

(6) Copies of the final environmental statement will be furnished the Division and District Engineers. District Engineers will furnish copies of the final environmental statement to the agencies and organizations with whom the draft environmental statement was coordinated. District Engineers will also provide information copies to the appropriate State, regional and metropolitan clearinghouses.

e. *Permit applications.* For permit actions on which statements are required by paragraph 5f above, the preparation and coordination of an environmental statement will be accomplished at field level.

(1) The District Engineer will require the applicant to furnish information and an assessment of the environmental impacts of the proposed action.

(2) If a Public Hearing is required, an environmental assessment of the proposed action will be included in the Public Notice of Hearing and the environmental issues will be fully discussed by the applicant at the hearing.

(3) The District Engineer will prepare a draft environmental statement utilizing the information obtained from the various agencies and the public in response to the original public notice, the information provided by the applicant and the public hearing, if one was held.

(4) The draft statement will be circulated for formal review and comment to the appropriate Federal, State, and local agencies, and known interested citizen, conservation and environmental groups and response to requests from the general public. Thirty copies of the draft statement will be furnished OCE for transmittal to CEQ. This review period may be as short as 30 days, except that 45 days will be allowed for EPA comments. This coordination starts the 90-day period before the administrative action can be taken. At the same time the District Engineer will issue a news release stating that a copy of the draft environmental statement may be obtained from the District Engineer.

(5) After other agency review comments and comments of the interested public are received, the District will prepare the final environmental statement and attach copies of all comments received. Thirty copies of the final environmental statement together with the District Engineer's report and recommendations on the application as required by ER 1145–2–303 will be transmitted to higher authority for further action.

(6) If higher authority decision is favorable to the application, the Office, Secretary of Army will transmit the final environmental statement to the CEQ at least 30 days prior to approval of the application. The Public Affairs Office, OCE, will prepare and issue a news release stating that a final environmental statement has been filed with CEQ and a copy is available from the Office, Chief of Engineers and the District Engineer.

(7) Copies of the final environmental statement will be furnished the Division and District Engineers. District Engineers will furnish copies of the final environmental statement to the agencies and organizations with whom the draft environmental statement was coordinated. District Engineers will also provide information copies to the appropriate State, regional, and metropolitan clearinghouses.

(8) If higher authority decision is unfavorable to the application, the application together with the reasons for denial will be returned to the applicant. CEQ will be informed of the denial and that a final environmental statement will not be filed.

f. *Disposal of land for port and industrial uses.* When District Engineers determine that surplus project property may be disposed of for development of public port or industrial facilities is in the public interest, he will prepare an environmental statement to accompany his report and recommendation. It is contemplated that all required consultation with Federal, State, and local agen-

cies, and the public concerning the environmental aspects will be accomplished at field level by District Engineers without further referral to any of these agencies by the Chief of Engineers.

(1) The District Engineer will prepare a draft environmental statement utilizing information obtained from appropriate Federal, State, and local agencies and probably new owners. A public meeting may be used to obtain information and views from the interested public. The statement will set forth, among other things, what the new owner intends to develop on the property and the possible uses to be made of it. Also, state what constraints will be placed on the owner, such as reversionary clause, uses, need for permits for structures or discharges into navigable waters.

(2) The draft statement will be circulated for formal review and comment to the appropriate Federal, State, and local agencies, and known interested citizen, conservation, and environmental groups and response to requests from the general public. Thirty copies of the draft statement will be furnished OCE for transmittal to the CEQ. This review period may be as short as 30 days, except that 45 days will be allowed for EPA comments. This coordination starts the 90-day period before the administrative action can be taken. At the same time, the District Engineer will issue a news release stating that a copy of the draft environmental statement may be obtained from the District Engineer.

(3) After other agency review comments and comments of the interested public are received, the District will prepare the final environmental statement and attach copies of all comments received. Thirty copies of the final environmental statement together with the District Engineer's report and recommendations, as required by ER 405–1–909, will be transmitted to higher authority for further action.

(4) If higher authority decision is favorable to the request for disposal of project lands, the Office, Secretary of Army will transmit the final environmental statement to the CEQ at least 30 days prior to the issuance of the Public Notice of Disposal as required by paragraph 32c(2) of ER 405–1–909. The Public Affairs Office, OCE, will prepare and issue a news release stating that a final environmental statement has been filed with the CEQ and a copy is available from the Office, Chief of Engineers and the District Engineer.

(5) Copies of the final environmental statement will be furnished the Division and District Engineers. District Engineers will furnish copies of the final environmental statement to the agencies and organizations with whom the draft environmental statement was coordinated. District Engineers will also provide information copies to the appropriate State, Regional, and metropolitan clearinghouses.

(6) If higher authority decision is unfavorable to the request, the CEQ will be informed of the denial and that a final environmental statement will not be filed.

12. *Implementation.* Officers in charge of elements described in paragraph 2 above, will modify planning and other procedures to insure compliance and implementation in a timely manner.

APPENDIX A—EXECUTIVE ORDER 11514, PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY, MARCH 5, 1970

See 35 F.R. 4247, March 7, 1970.

APPENDIX B—REVISED CEQ GUIDELINES ON ENVIRONMENTAL IMPACT STATEMENTS PREPARED UNDER SECTION 102(2)(C) OF THE NATIONAL ENVIRONMENTAL POLICY ACT

See 36 F.R. 7724, May 28, 1971.

APPENDIX C—PREPARATION OF ENVIRONMENTAL STATEMENTS

1. *General.* Preparation of environmental statements will be based on considerations discussed in the CEQ Interim Guidelines and the detailed guidance to follow. These directions are intended to assure consistency of effort in preparing statements and are not proposed to induce unthinking uniformity or limit flexibility when preparing the statements. These statements have several levels of importance with reference to the decision-making process, Corps relations with the public, and internal project planning activities. A careful, objective detailing of environmental impacts, alternatives, and implications of a proposed project should give reviewers both within and outside the Corps insight into the particular trade-offs and commitments associated with the action. The general public, environmental action groups, trade and special interest associations, governmental agencies, and congressional committees will all expect the statements to be a valid source of information on project effects, as well as a reflection of how the agency views environmental factors and seeks to accommodate them. Since the statements will be made available to the public and may receive broad exposure in the media, it can be assumed that they will receive careful scrutiny. Most importantly, preparation of the statements should cause systematic consideration of environmental impacts. An imaginative evaluation of alternatives and their implications should begin in the earliest stages of project formulation, with planners contemplating the criteria and range of information to be employed in preparation of final statements.

2. *Working papers.* In order to assure a comprehensive treatment of environmental concerns, a check list of pertinent environmental elements should be compiled by the environmental planners. A discussion of these elements should establish their importance, placing emphasis on whether they are unique, endangered, old, popular, etc.—in essence, explore the ecological, aesthetic, cultural, and other values which appear to make the elements environmentally significant. The manner in which economic considerations affect those values should also be discussed. For projects on which initial formulation has been completed, much of the information needed to characterize the elements may already be contained in existing survey documents, design memoranda and project files. Conversely, the organization of working papers at an early stage in the planning process will assist in subsequent survey studies and postauthorization design. Planners should keep abreast of current literature and information sources to aid in compiling environmental data. Two such information sources are: "Perspectives in Environmental Planning," OCE publication, April 1970; and "Environment Reporter," BNA publication (each field office has a subscription).

3. *Environmental elements.* Logical categories and sample elements for the working papers follow.

a. Geological elements: Land forms (mountains, canyons), rock and mineral features, paleontologic items (fossils), structures (faults, synclines).

Related: Soils, erosion, strip mined areas, caves.

b. Hydrological elements: Lakes, reservoirs, estuaries, rivers, subsurface water, mashes, valley storage, springs.

Related: Turbidity, pollutants, aquifer recharge areas, surf.

c. Botanical elements: Trees, shrubs, aquatic plants, microflora.

Related: seasonal colors, virgin forests.

d. Zoological elements: Mammals, birds, amphibians, fish, shellfish, microfauna.

Related: migration routes, breeding characteristics.

e. Archeological/historical/cultural elements: Ruins, artifact sites, ghost towns, battlefields, cemeteries, festival sites, ethnic colonies.

f. Economic conditions, social relationships, human well-being.

g. Miscellaneous elements: scientific areas, National parks or forests, hunting clubs, wildlife refuges, contemporary human features (buildings, transportation systems).

It should be noted that the elements under the last three categories are relevant to the human environment and their consideration is essential to assure treatment responsive to the full concern of the NEPA.

4. *Format.* Environmental statements will constitute a document separate from other Corps papers and consist of the cover sheet, summary sheet, statement, and letters of coordinations. All information will be typed single spaced on one side of the page only. To facilitate review, draft statements may be prepared in double space format. Appendix D includes samples of format for draft and final statements.

a. *Cover sheet.* This will be prepared on plain bond and will contain the following:

(1) Date.

(2) Type of statement: Draft/Final Environmental Statement.

(3) Official project name and associated water feature and State.

(4) Preparing office.

b. *Summary sheet.* This will be prepared on plain bond and will follow exactly the format prescribed by Appendix I of the CEQ "Guidelines." See Appendix D for samples of draft and final summary sheets. For the dates required in item 6 use the following: Draft statements use date of ENGCW letter to CEQ, final statements use date of OSA letter to CEQ.

5. *Content of statement.* The body of the environmental statement will contain the following eight separate sections (and attachment containing coordination letters) with the length of each being adequate to identify and develop the required information and a one page map of the proposed project. Artist's sketches and selected photos may be incorporated, if they will be particularly helpful in describing the environmental setting or environmental impacts.

a. *Project description.* Describe the proposal by name, specific location, purposes, authorizing document (if applicable), current status, and benefit-cost ratio. Generally delineate the project purpose and what the plan of the proposal entails. It is most important that a clear word picture be presented. If reservoir, give dimensions: surface acres of conservation pool; flood control pool; acres of total project; length; miles of shoreline, etc.; however, leaving out the technical

specifications unless these are important to the understanding of just what the project is.

b. *Environmental setting without the project.* Describe the area, the present level of economic development, existing land and water uses, and other environmental determinants. Discuss in detail the environmental setting without focusing only on the immediate area at the risk of ignoring important regional aspects critical to the assessment of environmental impacts. Include appropriate information on topography, vegetation, animal life, historical, archeological, geological features, and social and cultural habits and customs. Discuss population trends and trends of agriculture and industry and describe what the future environmental setting is likely to be in the absence of the proposed project. It is possible and often desirable to treat the project setting in relation to river basins, watersheds or functional ecosystems. Discuss the interrelations of projects and alternatives proposed, under construction or in operation by any agency or organization.

c. *The environmental impact of the proposed action.* (1) Identify environmental impacts, viewed as changes or conversions of environmental elements which result from the direct or indirectly from; include land loss and land use changes which could be expected downstream from and adjacent to the project such as urbanization, changes in water features and characteristics, etc. Discuss impact upon the economy and social conditions and identify environmental elements which may be modified or lost. Such impacts shall be detailed in a dispassionate manner to provide a basis for a meaningful treatment of the trade-offs involved. Quantitative estimates of losses or gains (e.g. acres of marshland, number of ducks nesting or harvested) will be set forth whenever practicable. Discuss both the beneficial and detrimental impacts of the environmental changes or conversions placing some relative value on the impacts described. Discuss these effects not only with reference to the project area, but in relation to any applicable region, basin, watershed, or ecosystem. Relate the impact to the river basin or regional entity in which the action is proposed; and discuss the interrelationship of projects and alternatives proposed, under construction, or in operation by other agencies or organizations. A thoughtful assessment of the environmental elements should aid in determining impacts. For example, the filling of a portion of the wetlands of an estuary would involve the obvious conversion of aquatic/marsh areas to terrestrial environments, the loss of wetland habitats and associated organisms, a gain in area for terrestrial organisms, a change in the nutrient regime of the runoff water entering that portion of the estuary, alteration of the hydrology of some given area, perhaps the introduction of buildings or roads, curtailment of certain commercial uses, disruption of water-based recreational pursuits, conversion of wildland aesthetics to less-pristine attributes, perhaps the removal of some portion of popular duck hunting grounds or unique bird nesting area, etc.

(2) Discuss both the beneficial and detrimental aspects of the environmental changes or conversions placing some relative value on the impacts described. A distinction should be observed here, whereby the impacts (changes) were initially detailed without making value judgments while at this point are discussed in terms of their effects (who or what is affected by the changes). Identify the recipient (environmental element, interest group, industry, agency) of these effects and the nature and extent of the impacts on them. Discuss these effects not only with reference to the project area, but in relation to any applicable region, basin, watershed, or ecosystem. In the example given, the loss of wetland might have relevance to different areas depending on the uniqueness of the filled area, the developmental plans and state of adjacent and regional wetlands, and the extent of the secondary effects of the filling (alteration of estuarine salinity wedge, sedimentation effects on adjacent shellfish, the modification of the surficial and groundwater hydrology of contiguous marsh and upland areas, etc.).

(3) Identify remedial, protective, and mitigation measures which would be taken as a part of the proposed action by the Corps or others, to eliminate, or compensate for, any detrimental aspects of the proposed action. Such measures taken for the minor or short-lived negative aspects of the project will be discussed in this section. The adverse effects which cannot be satisfactorily dealt with will be considered in greater detail along with their abatement and mitigation measures in the following section.

d. *Any adverse environmental effects which cannot be avoided should the proposal be implemented.* Discuss only those detrimental aspects of the proposed action which cannot be eliminated either within the framework of responsibility of those agencies or groups who identified the problem, or by alternative measures as a part of the proposed action. The discussion will identify the nature and extent of the adverse effects and the parties affected. It should include a discussion of adverse effects or objections raised by others. The loss of a given acreage of wetland by filling may be mitigated by purchase of a comparable land area, but this does not eliminate the adverse effect. Certainly the effects on the altered elements will not disappear simply because additional land is purchased. Identify the nature and extent of the principal adverse effects and the parties affected. For example, the effects of the filled wetland might include the loss of shellfish through sedimentation actions (turbidity and burial), the loss of organisms through the leaching of toxic substances from polluted marsh sediments used in the fill, the loss of a popular/valuable waterfowl census site in the estuary or the burial of ancient Indian midden sites of indeterminate archeological value. Present and comment on the objections of all concerned parties.

e. *Alternatives to the proposed action.* Describe the various alternatives considered, their general environmental impact, and the reason(s) why each was not recommended. Identify alternatives as to their beneficial and detrimental effects on the environmental elements, specifically taking into account the alternative of no action. This latter alternative requires a projection of the future environmental setting if the project is not accomplished (includes both natural and man-induced changes). Discuss economically justified alternatives predicated upon standard evaluation methods, but additionally, insofar as possible, identify and evaluate other ways of providing functions similar to those provided by the proposed project but which were specifically formulated with environmental quality objectives in mind. For example, the environmental trade-offs involved in filling the marsh would be different for alternatives such as: utilizing an inland site rather than filling in the marsh, hauling fill material from an upland borrow pit rather than dredging it from the estuary, or providing construction on piles or floats rather than on fill material. Discuss other possible solutions which may be outside Corps authorities.

f. *The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.* Assess the cumulative and long-term impacts of the proposed action with the view that each generation is a trustee of the environment for succeeding generations. Give special attention to considerations that would narrow the range of beneficial uses of the environment or pose long-term risks to health or safety. The propriety of any action should be weighed against the potential for damage to man's life support system—the biosphere—thereby guarding against the short-sighted foreclosure of future options or needs. It is appropriate to make such evaluations on land-use patterns and development, alterations in the organic productivity of biological communities and ecosystems and modifications in the proportions of environmental components (water, uplands, wetland, vegetation, fauna) for a region or ecosystem. For example, if a coastal marsh is extensively filled, the ability of an associated estuary to support its normal biota might be seriously impaired. Altered sediment, nutrient, and biocide additions to the waters might well affect the inherent biological productivity of the estuary. In other words, if the estuary's marshes are modified enough to affect basic estuarine processes, certain of the amenities, biota, products, industry, and recreation opportunities could be lost. The long-term implications of these changes are directly related to the degree that the losses are sizeable or unique.

g. *Any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.* Discuss irrevocable uses of resources, changes in land use, destruction of archeological or historical sites, unalterable disruptions in the ecosystems, and other effects that would curtail the diversity and range of beneficial uses of the environment should the proposal be implemented. For example, in filling a marsh there could be a number of potential irreversible or irretrievable effects. The particular aquatic habitat filled in the marsh would be permanently lost for aquatic organisms and fill would be removed from one area and deposited in another. Include possible indirect actions—those made economically feasible, as a result of the proposed action—that would cause changes in land and water use could not be halted or reversed under free enterprise principles.

h. *Coordination with others.* The coordinations and public participation efforts will be summarized in this section under three subheadings: Public participation, Government agencies, and Citizen Groups.

(1) Public participation. This section will briefly summarize the public participation efforts accomplished during the conduct of the study, indicating number of public meetings, informal meetings and workshops conducted, and a brief discussion of environmental issues identified, if any. For an authorized project or other administrative action, discuss measures taken to involve or inform the public of the actions and the environmental issues.

(2) Government agencies. Each government agency with whom coordination of the environmental statement has been accomplished will be listed. Relevant and appropriate comments will be included in the revised statements incorporating changes where necessary. Additionally, each separate view expressed concerning the environmental effects of the proposal will be summarized in a comment and appropiately discussed in a response. If an agency did not provide comments on the statement, "No comments received" will be placed under the agency name.

(3) Citizen groups. The objective of this section is to clearly set forth the magnitude and breadth of concerns of private citizens and conservation groups regarding specific identifiable environmental impacts related to the project. The environmental issues or impacts identified by citizens and conservation groups will be incorporated in the statement where appropriate. All views expressed, concerning the environmental effects of the proposal will be set forth in a *comment* and appropriately discussed in a response, as are those from government agencies. To give appropriate coverage and avoid duplication of response to the same environmental concern, District Engineers may consolidate or combine the environmental issues raised into appropriate groupings. Source of the comments should be clearly identified.

(4) Copies of all correspondence from governmental agencies, citizens and conservation interests received concerning the proposal will be attached to the statement.

(5) The reporting officer will make every effort to reconcile areas of discrepancy or disagreement, where comments or reviewing agencies pose significant objection to or recommend modification of the statement. Where agreement cannot be reached within a reasonable period of time, subsequent to receipt of comments, the comments will be discussed (in (2) and (3) above) and a subsection entitled "Unreconciled Conflicts" will be added to this section of the statement. This subsection will contain a brief, but complete and thorough discussion of the problem(s). The discussion will be a concise and objective analysis of the environmental issues, presenting both sides of the issue.

APPENDIX D

The following are samples of the format for cover and summary sheets to be followed in preparing environmental statements. Pages D–2 and D–3 are for a draft statement, pages D–4 and D–5 are for a final statement, and pages D–6 through D–8 show format for the section on "Coordination with others."

Samples of final environmental statements, selected to give a broad exposure to the many and varied problems and conditions, will be made available to field offices. These should be used to build a working reference in each office.

FORT MYERS BEACH CHANNEL, FLA.

(X) Draft. ( ) Final Environmental Statement.

Responsible office: U.S. Army Engineer District, Jacksonville, Fla.

1. *Name of action:* (X) Administrative. ( ) Legislative.

2. *Description of action:* This is a channel extension 11 feet by 125 feet by 2,000 feet with a turning basin. Dredged material will be used as beach nourishment. Located in Lee County, Fla.

3. a. *Environmental impacts:* Dredging of 40,000 cubic yards of material used as beach nourishment on Estero Island, increased channel and turning basin will decrease chances of vessel damage by collision or grounding.

b. *Adverse environmental effects:* Loss of 7 acres of bottom biota and temporary turbidity during construction.

4. *Alternatives:* "No-development."

5. *Comments requested:*

Florida Department of Natural Resources.
Florida Department of Air and Water Pollution Control.
U.S. Department of Transportation.
Fish and Wildlife Service, USDI.
Florida Department of Transportation.
U.S. Department of Housing and Urban Development.
Geological Survey, USDI.
Environmental Protection Agency.

6. Draft statement to CEO ----------.

SOUTH ELLENVILLE RONDOUT CREEK BASIN, N.Y.

( ) Draft. (X) Final Environmental Statement.

Responsible office: U.S. Army Engineer District, New York, N.Y.

1. *Name of action:* (X) Administrative. ( ) Legislative.

2. *Description of action:* Flood control protection project consisting of a system of levees, concrete chute, stilling basin, debris barrier, floodwalls and transition walls, bridge replacements, and associated interior drainage facilities in Ulster County, N.Y.

3. a. *Environmental impacts:* Provide flood proofing of unprotected flood plains; accelerate development of flood plain; loss of natural stream section and natural vegetation, and loss of recharging underground aquifers.

b. *Adverse environmental effects:* Concrete chute will replace natural stream and act as barrier to restrict circulation and may diminish water for recharging underground aquifers.

4. *Alternatives:* Reservoir control; stream diversion; and "no-development."

5. *Comments received:*
Water Quality Office, EPA.
Soil Conservation Service, USDA.
New York Department of Environmental Conservation.
Village of Ellenville, N.Y.
Bureau of Water Hygiene, EPA.
Bureau of Sport Fisheries and Wildlife, USDI.
County of Ulster, N.Y.
Town of Wararsing, N.Y.

6. Draft statement to CEO ----------.
Final statement to CEO ----------.

8. *Coordination with others*—a. *Public participation.* Two public meetings were held on this project. This first on September 1, 1969, for the initiation of the study and the second on February 23, 1971, to discuss the proposed plan. The environmental aspects of the proposed plan were thoroughly discussed. News releases were issued concerning the public meetings and that the draft environmental statement had been prepared and was available from the District Engineer.

b. *Government agencies.* The draft environmental statement was sent to the following governmental agencies requesting their views and comments. Their comments are summarized below and copies of the replies attached to the environmental statement.

(1) *Water Quality Office, USEPA.*

Comment: No comments to offer in connection with the project.

(2) *Bureau of Water Hygiene, USEPA.*

Comment: Concurred with the project and the Environmental Statement since the health aspects of recreation are not a factor nor are there any water supply facilities involved with the project.

Comment: Requested that the phrase: "bearing little value scenically" be excluded from the statement.

Response: The comment was considered valid and the phrase was eliminated from the present statement.

(3) *Soil Conservation Service, USDA.*

Comment: No comments to offer in connection with the project.

(4) *U.S. Fish and Wildlife Service, USDI.*

Comment: Project will have no adverse effects upon fish and wildlife and it offers no opportunity to benefit these resources.

Response: The comment was considered valid and incorporated into the present statement.

Comment: The "no-development" alternative fails to deal squarely with the intent of the National Environmental Policy Act of 1969.

Response: It is believed that the method selected would best lend itself to the mountainous terrain and other topographic and geologic characteristics of the area from a design point of view and still accomplish the purpose of the project with the least environmental disruption. As indicated in the statement, the plan of improvement would provide for beautification measures to enhance the scenic attractiveness of the area and would also improve the economic conditions of landowners, both necessary to an improved environmental condition. On the other hand, a "no-development" alternative would allow periodic flooding to continue, and as previously experienced, would cause extensive damage to the surrounding lands which would adversely affect the environment, and may also result in environmental losses equivalent to about $250,000 annually during the life of the project. On this basis, it appears that project implementation of the plan selected would be a more favorable course of action than the selection of a "no-development" alternative.

(5) *Department of Environmental Conservation, New York State.*

Comment: The project will be a desirable addition to the area as it now exists.

Comment: Statement should make reference to construction precautions which are normally undertaken to minimize surficial disturbance and consequent erosion.

Response: The comment was considered valid and was incorporated into the present statement.

Comment: The phrase: "bearing little value scenically" is subjective.

Response: Concur in this comment, and the phrase was eliminated from the present statement.

Comment: A section of natural stream will be destroyed; natural vegetation bordering this section will be removed; and a concrete chute will prevent infiltration in the vicinity of Route 52 bridge.

Response: The additional environmental impacts, regarding the replacement of a portion of the natural stream with a concrete chute and the removal of natural vegetation, and the effect of the proposed chute on the existing infiltration process have been incorporated into the present statement.

Comment: Alternatives considered should be described; environmental losses due to a "no-development" alternative have not been identified; and an alternative with only environmental objectives has not been included.

Response: A more detailed explanation of the alternatives considered for the project has been included in the statement. With regard to the comment on the environmental losses that may result from a "no-development" alternative, non-implementation of the project would allow periodic flooding to continue that could cause damages to the surrounding areas, such as loss of trees, vegetation, top soil, etc., and possible loss to human life, with a resultant unfavorable effect on the environment. The estimate of a $250,000 annual loss noted in the statement represents the annual loss to local interests if flood control measures are not instituted and was based on the annual benefits that would accrue if the project is implemented. The estimated benefits were derived by computing the actual flood damages suffered by the area residents from the largest flood of record in conjunction with data developed from hydraulic and hydrologic studies. Actual flood damage losses were gathered from personal interviews with the local inhabitants during field investigations. An alternative with only environmental objectives in

mind was incorporated into the present statement.

Comment: There is also an irreversible commitment of about one-half mile of natural stream and an irretrievable commitment of the remainder of the undeveloped flood plain.

Response: The irreversible commitment attributed to the replacement of a portion of the natural stream and on irretrievable commitment of the remainder of the undeveloped flood plan are reflected in the present statement.

Comment: The statement does not objectively evaluate environmental impact.

Response: The present statement has been revised to contain additional environmental impacts that would result from project implementation.

(6) *County of Ulster, N.Y.*

Comment: Concurred with the draft statement and the project, and noted that implementation of the project would greatly enhance and beautify the village of Ellenville and the Shawangunk Valley, and will help bring more sportsmen and tourists into the area.

(7) *Village of Ellenville, N.Y.*

Comment: Concurred with the draft statement and the project.

(8) *Town of Wawarsing, N.Y.*

Comment: Concurred with the draft statement and the project.

c. *Citizen groups.* There is no known environmental conflicts or issues raised by citizen or conservation groups.

(NOTE: This section will treat the concerns of citizen, conservation, and environmental groups in the same manner as those in the preceeding section under *Government agencies.* Copies of all correspondence received will be attached to the statement. For further guidance see Appendix C.)

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc.71-8116 Filed 6-10-71;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

LICENSING DEPARTMENT INVENTIONS

Notice of Availability for Exclusive Licensing

Pursuant to authority delegated by the Secretary in 7 CFR 19.3 (35 F.R. 7493), the Acting Administrator, Agricultural Research Service, determined that certain Department inventions shall be made available for exclusive licensing under the provisions of Government Patent Policy (28 F.R. 10943) and 7 CFR 19.5 (35 F.R. 7493). Notice was given (36 F.R. 1919) that 15 Department inventions were available for exclusive licensing.

The notice specified that applicants for exclusive licenses would have a period of 60 days from the date of publication (Wednesday, February 3, 1971) in which to file information as required by 19.6 application for licenses, of Title 7 CFR (35 F.R. 7493). Applications have been received within the 60-day period for inventions numbered 12 (Patent application S.N. 865,199) and 13 (U.S. Patent 3,205,130) as listed in that notice. The remaining inventions listed in that notice will continue to be available for exclusive licensing for an indefinite period. At the end of each 60-day period, from the date of initial publication, the Agricultural Research Service will consider the applications received during that period.

Future notices will list other inventions available for exclusive licensing, at which time reference will be made to those inventions listed in previous notices which are still available.

Applications should be mailed to the Administrator, Agricultural Research Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., this 7th day of June 1971.

GEORGE W. IRVING, Jr.,
Administrator,
Agricultural Research Service.

[FR Doc.71-8202 Filed 6-10-71;8:51 am]

Consumer and Marketing Service

HUMANELY SLAUGHTERED LIVESTOCK

Identification of Carcasses; Changes in Lists of Establishments

Pursuant to section 4 of the Act of August 27, 1958 (7 U.S.C. 1904), and the statement of policy thereunder in 9 CFR 381.1, the lists (36 F.R. 3205, 4710, 7025, and 9146) of establishments which are operated under Federal inspection pursuant to the Federal Meat Inspection Act (21 U.S.C. 601 et seq.) and which use humane methods of slaughter and incidental handling of livestock are hereby amended as follows:

The reference to sheep with respect to The Evans Packing Co., Establishment 11, is deleted. The reference to Miller Abattoir Co., Establishment 179, and the reference to calves with respect to such establishment, are deleted. The reference to swine with respect to Kachina Packing Co., Establishment 7040, is deleted. The reference to Kentucky Sausage Co., Inc., Establishment 7300, and the reference to swine with respect to such establishment, are deleted.

The following table lists species at additional establishments and additional species at previously listed establishments that have been reported as being slaughtered and handled humanely.

ESTABLISHMENTS SLAUGHTERING HUMANELY

Name of Establishment	Establishment No.	Cattle	Calves	Sheep	Goats	Swine	Horses	Mules
Wilhelm Foods, Inc.	692	(*)						
Valley Meat Packing Co., Inc.	7676	(*)						
Rahr Meat Service	7678	(*)						
Hardin Meat Market	7684	(*)						
Timberland Packing Corp.	7687	(*)						
Havre Abattoir	7688	(*)						
Rocky Mountain Packing Co	7690	(*)				(*)		
Ricks Packing Co	7710	(*)				(*)		
Fan Mountain Meats	7712	(*)				(*)		
Vollmer & Sons, Inc.	7713	(*)		(*)		(*)		
Schramm Packing Co.	7719	(*)				(*)		
Tolman Meat Processing	7724	(*)				(*)		
Conti Packing Co., Inc.	7814	(*)						
Sam's Meat Packing Co.	7908	(*)				(*)		
Partin's Country Sausage	7923					(*)		
New establishments reported: 15.								
Riverside Abattoir, Inc.	210		(*)					
Beeville Packing Co.	377			(*)				
Del Curto Meat Co.	445				(*)			
Clayton Packing Co.	2373			(*)				
Rollin Packing Co.	6563					(*)		
Muskogee Meat & Food Lockers	7015			(*)	(*)			
Sixty Six Packing Co.	7023				(*)			
Bowman Locker Plant	7620			(*)				
Rocklake Locker Plant	7624			(*)				
Bud's Food Market	7637			(*)				
Ferrante & Urso	7887					(*)		
Species Added: 12.								

Done at Washington, D.C., on June 3, 1971.

L. V. SANDERS,
Acting Deputy Administrator, Meat and Poultry Inspection Program.

[FR Doc.71-8110 Filed 6-10-71;8:45 am]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

BERL L. HANKINS

Notice of Loan Application

JUNE 4, 1971.

Berl L. Hankins, Post Office Box 1226, Sitka, AK 99835, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a used wood vessel, about 39 feet in length, to engage in the fishery for salmon, halibut, crab, and tuna.

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic

hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
Chief,
Division of Financial Assistance.

[FR Doc.71-8164 Filed 6-10-71;8:47 am]

[Docket No. B-518]

BRENTON H. PEROW

Notice of Loan Application

JUNE 4, 1971.

Brenton H. Perow, Star Route No. 2, Bath, Maine 04530, has applied for a loan from the Fisheries Loan Fund to aid in financing the purchase of a new wood vessel, about 31 feet in length, to engage in the fishery for lobsters, shrimp, and groundfish (cod, cusk, haddock, hake, pollock, and ocean perch).

Notice is hereby given, pursuant to the provisions of 16 U.S.C. 742c, Fisheries Loan Fund Procedures (50 CFR Part 250, as revised), and Reorganization Plan No. 4 of 1970, that the above entitled application is being considered by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, Interior Building, Washington, D.C. 20235. Any person desiring to submit evidence that the contemplated operation of such vessel will cause economic hardship or injury to efficient vessel operators already operating in that fishery must submit such evidence in writing to the Director, National Marine Fisheries Service, within 30 days from the date of publication of this notice. If such evidence is received it will be evaluated along with such other evidence as may be available before making a determination that the contemplated operation of the vessel will or will not cause such economic hardship or injury.

JAMES F. MURDOCK,
Chief,
Division of Financial Assistance.

[FR Doc.71-8165 Filed 6-10-71;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. FDC-D-122; NDA 10-491]

LEMMON PHARMACAL CO.

Anergex; Order Withdrawing Approval of New Drug Application

On February 27, 1969, there was published in the FEDERAL REGISTER, 34 F.R. 2680, a Notice of Opportunity for Hearing in which the Commissioner of Food and Drugs proposed to issue an order under the provisions of section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of new-drug application number 10-491 for Anergex, and all amendments and supplements thereto, on the ground that new information before him with respect to this drug, evaluated together with the evidence available to him when the application was approved, shows that there is a lack of substantial evidence that this drug has the effect it purports or is represented to have under the conditions of use prescribed, recommended or suggested in its labeling.

Lemmon Pharmacal Co., Sellersville, Pa. 18960, holder of NDA No. 10-491 for Anergex on March 19, 1969, filed a letter requesting a hearing pursuant to the February 27, 1969 publication. Earlier, on November 12, 1968, and again on March 11, 1969, the Commissioner had notified Lemmon by letter that certain manufacturing and control data were inadequate. Lemmon submitted inadequate material to show that their deficiencies had been corrected on March 25, 1969, and on September 27, 1969, there was published in the FEDERAL REGISTER, 34 F.R. 14908, an Amended Notice of Opportunity for Hearing to include the additional grounds that the methods used in and the facilities and controls used for the manufacture, processing, and packing of the drug are inadequate to assure and preserve the drug's identity, strength, quality and purity.

Lemmon on October 24, 1969, filed a letter stating that it was requesting a hearing pursuant to both FEDERAL REGISTER notices. In a letter dated January 15, 1970, Lemmon's attorney enclosed a letter dated January 12, 1970, from the President of Lemmon which included supporting medical documentation and stated reasons why the firm contends that a hearing is in order.

On May 19, 1970, the Commissioner by letter notified Lemmon that the Hearing Regulations and Regulations Describing the Scientific Content of Adequate and Well Controlled Clinical Investigations, published in the FEDERAL REGISTER (35 F.R. 7250) of May 8, 1970, were applicable to any request for a hearing, and on June 15, 1970, Lemmon responded to the Commissioner's letter setting forth a factual analysis to support the label claims for Anergex.

The presentation by Lemmon has been considered, and the Commissioner of Food and Drugs concludes that there is no genuine and substantial issue of fact requiring a hearing and that the legal arguments offered are insubstantial, all as explained in more detail below.

REASONS FOR WITHDRAWAL OF APPROVAL

1. *The drug.* The label for Anergex (Poison Oak Extract) for Injection states that it contains in each milliliter 40 milligrams of extractive substances from *Toxicodendron quercifolium* dissolved and/or suspended in dilute alcohol (35 percent v/v), with 4 percent benzyl alcohol to reduce pain of injection. It is recommended for use in the treatment of certain conditions (allergic rhinitis, asthma, eczema, food sensitivity, urticaria, hives, angioneurotic edema) generally considered to be allergic in etiology.

The recommended daily dose is 1 milliliter intramuscularly for 6 to 8 days.

The rationale for the preparation is that by giving daily injections the patient is desensitized.

2. *Clinical evidence to support the claims of effectiveness.* Lemmon in its package insert states that Anergex is "A specially prepared botanical extract which seems to inhibit the allergic response," but later in the same insert states that "It is not recommended for use in vague conditions that might have an allergic element in the background. In the insert, Lemmon lists allergic rhinitis, asthma, food sensitivity, urticaria, hives, angioneurotic edema as specific allergic states for which Anergex is useful.

The National Academy of Sciences-National Research Council's (NAS-NRC) Drug Efficacy Study Panels for Allergy and Dermatology III both reviewed the Medical Evaluation of Reports from the New Drug Application (NDA-10-491) filed in 1956 and the scientific literature. The Allergy Panel stated that literature references submitted by Lemmon present data that was obtained in an uncontrolled fashion and that there is no evidence to substantiate the claims for Anergex. The panel cited three scientific articles in support of its position. The panel in Dermatology III also found Anergex ineffective despite nine cited references, since it found no support clinically or in the literature for the drug's use.

After the Commissioner notified Lemmon on May 19, 1970, that the May 8, 1970, regulations would apply to Anergex, Lemmon on June 15, 1970, replied stating that the May 8, 1970, regulation setting forth the procedural requirements are not applicable to Anergex, since its right to a hearing was fixed on March 19, 1960, and that erroneous conclusions were drawn by the NAS-NRC panels. Even though Lemmon alleges it is not governed by the May 8, 1970, regulations, it submitted a factual analysis of the clinical and other investigational data. A review of Lemmon's submission follows:

I. "Treatment of Allergy in Children: A Double Blind Study"; Troncelliti, E. A., M.D.; Review of Allergy and Applied Immunology 19:403-407, July-August 1965. Examination of the study clearly shows that it cannot be accepted as an adequate and well controlled study for the following reasons:

(a) The selection of patients (subjects) is inadequate because the diagnostic criteria for determining whether any patient had rhinitis, asthma, eczema, gastrointestinal disorders (food sensitivity), or urticaria is not stated, and there is no indication in the patient's clinical records that skin tests, temperatures, physical examinations for swollen glands, or confirmatory laboratory tests were

conducted. In the protocol abstract and the article, Dr. Troncelliti indicated that laboratory studies including skin tests were to be conducted to confirm that the patients were suffering from an allergic reaction. There is no record that this was ever done. The personal patient and family histories are incomplete and there is no indication that any physical examinations were ever done. There were too many conditions (5) being studied for 51 patients, and no real criteria were used to diagnose the patients for allergy conditions to make sure that a patient was suffering from an allergy and not something else. The clinical reports indicate that of the 30 patients allegedly suffering from rhinitis, about ten suffered from asthmatic bronchitis which is a disease condition, not an allergic condition, where the allergy often improves when the underlying infection clears up.

(b) In five of the rhinitis patients one or two other drugs were used (concomitant therapy), and in one case the drug was penicillin. It is difficult if not impossible to evaluate the effectiveness of any drug in a study where concomitant therapy is being employed. The fact concomitant therapy was present was not mentioned in the article.

(c) The final conclusions of the study are based on using all patients even though Dr. Troncelliti's diagnosis groups the patients separately. No evaluation was made as to Anergex's effectiveness in each allergic condition. It should be noted here that eczema is not a medical diagnosis, but a nonspecific term used to describe a number of disease conditions.

(d) There is no indication what the placebo was, how it was prepared, or whether it caused pain at the site of injection [Anergex does cause pain at the site of injection (label and package insert)]. The protocol and article indicate this placebo had only the "appearance" of Anergex. Lemmon in its submission states a placebo should be similar in appearance and pain producing properties.

(e) It is apparent that Dr. Troncelliti in evaluating Anergex and the placebo has ignored the evaluations of slight and moderate improvement that appear in the clinical reports. If these two categories are included, then the placebo might have been as effective in treating the conditions as Anergex. There is no explanation as to why the evaluations of slight and moderate improvement were not considered.

II. "Non-Specific Therapy in Allergy: A Double Blind Study;" Abruzzi, W. A., M.D., and Silson, J. E., M.D.; Clinical Medicine, 74:57–60, February 1967. Only the published article was submitted by Lemmon with no supporting clinical reports or raw data. This study cannot be considered for two reasons. The first is that William A. Abruzzi, M.D., was disqualified by the Food and Drug Administration to conduct acceptable clinical studies on August 31, 1966, and has not been reinstated. On March 16, 1967, the then Commissioner of the Food and Drug Administration notified the Mulford Co., then the holder of NDA 10–491, that Dr. Abruzzi had been disqualified as a clinical investigator and that it could only rely on his study if it supplied proof of the reliability of the study. The President of Mulford on April 4, 1967, assured the Agency that the company would not seek to rely on Abruzzi's study unless it could accumulate supporting data. To this date the Agency has received nothing to support the reliability of the Abruzzi study.

The second reason is that the article does not contain sufficient information to demonstrate that it is a well controlled double blind clinical study.

(a) There is no showing that skin tests or other laboratory procedures were used to establish the diagnosis of the patient's condition,

(b) There is no indication how the placebo was prepared, whether it contained alcohol, and whether it caused pain on injection, and

(c) What, if any, concomitant therapy occurred in the study is not noted. The Agency also finds it incredible that one physician could treat 143 outpatients for a series of 8 straight days including Saturday and Sundays and never have at least one patient miss an injection.

III. Lemmon states that the Agency cannot rely on two studies cited by one of the NAS–NRC panels to support its position. The agency is relying on its finding that there is a lack of any adequate and well controlled clinical studies. Lemmon is correct when it stated that studies that are not well controlled cannot be relied on. It is the lack of such studies that is the basis for the Agency withdrawing the approval of the NDA 10–491, Anergex.

IV. The Miscellaneous Clinical Reports, Physician Survey and Unpublished Clinical Studies, Physicians and Patients Reports are testimonials from physicians and others. These are unacceptable as clinical proof. The two animal studies are not acceptable to prove the effectiveness of human drugs. Lemmon cited six allegedly partially controlled clinical studies which could provide corroborative support for adequate and well controlled clinical studies regarding efficacy, but since Lemmon has not met the requirement of supplying such studies, the partially controlled corroborative studies cannot raise a genuine and substantial issue of fact.

V. Lemmon states that on March 19, 1969, it supplied the Agency with all the information it had in regard to manufacturing, identification, testing, and standardization. On September 19, 1969, the Agency published the amended notice finding the information insufficient. The particulars are these:

(a) The Agency found that the raw material controls were unsatisfactory because there is no reference infrared (IR) spectrum submitted for the purpose of establishing a standard against which the raw material would be tested. The IRs submitted only serve to prove that samples tested were similar.

(b) Lemmon's letter of January 12, 1970, indicated one active principal is pentadecylcatechol, but the letter fails to provide any assay specifications for pentadecylcatechol, nor does it indicate the amount present in each batch.

(c) The laboratory controls on the finished dosage form of Anergex were unsatisfactory because there are no specifications and/or methods for determining the specific activity or potency of the drug, which is necessary since the active ingredients have not been fully identified. There is no assay or specification for the ingredient benzyl alcohol.

(d) The stability data is also unsatisfactory in that it consists of a toxicity study on one lot of Anergex to establish its stability after 5 years and 10 IR spectra obtained from 10 different lots. The ages of the lots when the IRs were determined was not submitted. A toxicity study does not prove stability, nor do IRs when there is no established reference standard infrared spectrum. Anergex is a solution and/or suspension and Lemmon has offered no evidence that the drug is physically stable. The suspended material may precipitate or change size during storage. (Label: climatic conditions may increase the amount of suspended particles) Lemmon has done no studies on what effect precipitation or particle size changes have on effectiveness. These are only some of the controls lacking in the production of Anergex to assure and preserve the drug's identity, strength, quality, and purity.

Lemmon contends that the May 8, 1970, regulations do not apply to good manufacturing practices. Clearly, these procedural regulations require the applicant who elects to avail himself of a hearing to provide a full factual analysis setting forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing (21 CFR 130.14). Moreover, it would be a useless task for the Commissioner to grant a hearing on the manufacturing practices where the drug had been withdrawn because there is a lack of substantial evidence of effectiveness.

VI. Lemmon in its January 12, 1970, letter stated essentially the same things it had in its June 15, 1969, letter, except it requested that it should be heard on a proposal to limit the indications for Anergex to specific desensitization of Rhus Dermatitis (poison oak dermatitis). Lemmon has never offered Anergex for Rhus Dermatitis, nor has it submitted well controlled double blind clinical studies to demonstrate that Anergex would be effective for such use. Its effectiveness for Rhus dermatitis would hardly be a proper question for a hearing under this withdrawn notice.

VII. The legal objections urged by Lemmon, including whether a right to hearing was fixed, have been resolved in Upjohn v. Finch, 432 F. 2d 944 (C.A. 6, 1970); Pharmaceutical Manufacturers Assn. v. Richardson, 318 F. Supp. 301 (D. Del., 1970) and Pfizer v. Richardson, 434 F. 2d 536 (C.A. 2, 1970).

Therefore, the Commissioner, pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (section 505(e), 52 Stat. 1052, as amended; 21 U.S.C.

355(e)) and under authority delegated to him (21 CFR 2.120), finds on the basis of new information before him with respect to Anergex NDA 10-491, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling and that the methods used in and the facilities and controls used for the manufacture, processing, and packing of the drug are inadequate to assure and preserve the drug's identity, strength, quality, and purity.

For the foregoing reasons, approval of new drug application No. 10-491, and all amendments and supplements thereto, is withdrawn effective on the date of the signature of this document.

Dated: May 31, 1971.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[FR Doc.71-8163 Filed 6-10-71;8:47 am]

ATOMIC ENERGY COMMISSION

[Docket No. 50-358]

CINCINNATI GAS & ELECTRIC CO. ET AL.

Notice of Receipt of Application for Construction Permits and Facility Licenses; Time for Submission of Views on Antitrust Matter

The Cincinnati Gas & Electric Co. (Cincinnati), Fourth and Main Streets, Cincinnati, OH 45202; Columbus and Southern Ohio Electric Co. (Columbus), 215 North Front Street, Columbus, OH 43215; and The Dayton Power and Light Co. (Dayton), 25 North Main Street, Dayton, OH 45401, pursuant to the Atomic Energy Act of 1954, as amended, have filed an application dated April 6, 1970, for construction permits and facility licenses to authorize construction and operation of two single cycle, forced circulation, boiling water nuclear reactors on a site on the east shore of the Ohio River, just north of Moscow and about 24 miles southeast of Cincinnati, in Washington Township, Clermont County, Ohio. In a subsequent amendment to the application, dated December 15, 1970, the applicants amended the application to reflect a single unit.

The proposed reactor, designated by the applicants as the Wm. H. Zimmer Nuclear Power Station Unit 1 (Zimmer Station), is designed for initial operation at approximately 2,436 megawatts (thermal), with a net electrical output of approximately 807 megawatts.

Cincinnati, Columbus, and Dayton will share undivided ownership of the proposed Zimmer Station as tenants in common, and will share in the engineering and construction costs in proportion to their ownership interests as set forth in the application. Cincinnati, acting for itself and as agent for Columbus and Dayton, will have responsibility for the design, construction and operation of Zimmer Station.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the Commission within sixty (60) days after May 21, 1971.

A copy of the application, including amendments, is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the Clermont County Library, Third and Broadway, Batavia, OH.

Dated at Bethesda, Md., this 14th day of May 1971.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[FR Doc.71-7039 Filed 5-20-71;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 20993; Order 71-6-22]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Cargo Matters

Issued under delegated authority, June 3, 1971.

By Order 71-5-91, dated May 19, 1971, action was deferred, with a view toward eventual approval, on an agreement embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA), and adopted as a result of the third meeting of the Cargo Traffic Procedures Committee. The agreement, in addition to incorporating various technical and procedural changes to existing resolutions, incorporates two new resolutions which (a) provide for a documentation charge within TC-1 for the preparation of an air waybill, and (b) provides rules for the carriage of pets.

In deferring action on the agreement, 10 days were granted in which interested persons might file petitions in support of or in opposition to the proposed action. No petitions have been received within the filing period and the tentative conclusions in Order 71-5-91 will herein be made final.

Accordingly, it is ordered, That:

Agreement CAB 22429, R-1 through R-5, be and hereby is approved.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-8186 Filed 6-10-71;8:49 am]

[Docket No. 22628; Order 71-6-23]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Fare Matters

Issued under delegated authority, June 3, 1971.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations, between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Traffic Conference 2 and Joint Conferences 2-3 and 1-2-3 of the International Air Transport Association (IATA). The agreement, which was adopted by mail votes, has been assigned the above-designated CAB agreement numbers.

The agreement would provide for increases in certain normal and special fares applying to/from points in West/West Central Africa. Except to the very limited extent that the agreement involves fares between such African points and Guam/Okinawa/American Samoa, it is not directly applicable in air transportation as defined by the Act.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14:

1. It is not found, on a tentative basis, that the following resolutions, incorporated in the agreement as indicated, are adverse to the public interest or in violation of the Act:

Agreement CAB 22433:	*IATA resolutions*
R-3	JT23(Mail 275)055.
	JT23(Mail 275)065.
	JT123(Mail 666)058.
	JT123(Mail 666)068.

2. It is not found that the following resolutions, which are incorporated in the agreement as indicated and which do not directly affect air transportation, are adverse to the public interest or in violation of the Act:

Agreement CAB 22433:	*IATA resolutions*
R-1	200(Mail 098)052.
	200(Mail 098)062.

3. It is not found that Resolution 200 (Mail 098) 072b, which is incorporated in Agreement CAB 22433, R-2, affects air transportation within the meaning of the Act.

Accordingly, it is ordered, That:

1. Action on Agreement CAB 22433, R-3, be and hereby is deferred with a view toward eventual approval;

2. Agreement CAB 22433, R-1, be and hereby is approved; and

3. Jurisdiction is disclaimed with respect to Agreement CAB 22433, R-2.

Persons entitled to petition the Board for review of this order, pursuant to the Board's regulations, 14 CFR 385.50, may, within 10 days after the date of service of this order, file such petitions in support of or in opposition to our proposed action herein.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-8187 Filed 6-10-71;8:49 am]

[Docket No. 19923; Order 71-6-38]

LIABILITY AND CLAIM RULES AND PRACTICES

Order Expanding Issues

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 7th day of June 1971.

By order 70-7-121, dated July 24, 1970, the Board approved, pendente lite, certain agreements of the U.S. scheduled route carriers arrived at in Board authorized discussions, and relating to liability and claim rules and practices. In this order the Board attached conditions to its approval of some agreements and initiated an investigation as to whether such agreements were adverse to the public interest, or whether the tariff rules and practices related thereto were lawful. The Board further noted that:

> From the inception of this proceeding in August 1967 to date, the Board has received a substantial volume of correspondence on this subject from shippers and various shipper groups, the general public, and Members of the Congress. Much of such correspondence and other written presentations is thoughtful and compelling, and the Board can only conclude, as it earlier indicated in 1967, that a substantial degree of public dissatisfaction has existed and will still exist with respect to the air carriers' rules and practices concerning air freight liability and claims.
>
> With rare exception, however, protestants offer little opposition to the pending agreements of the carriers and their proposed rule changes, per se. Rather, the opposition has focused largely on what the carriers have not proposed to revise, and/or that their proposed revisions do not go far enough. Thus, it appears that the proposed revisions to these rules are considered typically to constitute an improvement, albeit a lesser one than most would have contemplated.

In addition, the Board stated that:

> The Board intends, at least initially, that the investigation be limited to the major issues just discussed. With regard to other rules and issues of lesser import, which the carriers have not resolved, the Board will instruct its staff to develop revised and improved rules to be circulated to the carriers and shippers,[15] which if adopted will obviate an investigation thereof by the Board. We will not hesitate, however, to broaden the investigation to include other rules and issues should it appear that these informal procedures are not successful.

[15] In addition to rules directly concerned with liability, the Board also takes note of concern expressed by shippers with rules involving carrier terms of acceptance, as well as the numerous individual carrier exceptions throughout the carriers' tariff. The staff effort will therefore embrace these aspects as well.

At this point, some 10 months after the investigation was first ordered, with limited exceptions, the carrier parties have not implemented the approved agreements, either conditionally or unconditionally. Moreover, there appears to be no basis to assume that there will be a meeting of the minds upon the rules and issues of lesser import outside of the forum of the investigation. We have decided, therefore, that the public interest will best be served by formally including these additional issues in the heretofore ordered investigation. While these rules were not included in the initial order of investigation, the Board, nonetheless, believes that they are of considerable concern to air shippers and receivers; that they appear to create confusion and antagonism in the minds of many air cargo users; that they may be unlawful; and that they raise questions of public interest with respect to the carriers' agreements on claims rules and practices. Notwithstanding this inclusion of these additional issues in the formal investigation heretofore ordered, our action herein will not preclude any stipulation by all parties as to a just and reasonable rule to replace one of those which we have brought or are here bringing into the investigation, and an exploration of such procedure within the framework of this investigation is encouraged.

Specifically, the additional matters with which we are concerned involve (1) the different treatment of similar international traffic in some instances by the same carrier moving over a domestic segment and which is dependent upon the identity of the international carrier (Rule 2[1]; Rule 10, ATP CAB No. 8; Rule 5, ATP CAB No. 158); (2) form and content of the air shipping document (Rules 2 and 26); (3) dissimilar or unpublished (in tariffs) carrier terms of acceptance, pickup, liability, handling, or delivery of goods (Rules 2, 12, 18, 22, 54 (c), and 66; Rule 20, ATP CAB No. 19); (4) certain rates on tropical fish, inter alia (ATP CAB No. 158[2]); (5) a significant issue as to the obligation of the carrier to monitor shippers' documents (Rule 28); (6) remittance of (a) proceeds from carrier sale of undelivered goods (Rule 38), or (b) c.o.d. fees (Rule 66); (7) assessment of higher charges via carrier-specified routing than are available via alternate routing (Rule 42 (A); Rule 20, ATP CAB No. 8); and (8) reserved air freight practices (Rules 44 and 46). The foregoing rules may variously limit the carriers' common carrier obligation to carry, or provide unsupported limitations upon the carriers' liability, or the availability of full liability coverage for shippers, and may result in unreasonable provisions and unjust discrimination as among shipments and shippers. As before, the investigation of the foregoing will be further extended to embrace similar rules and practices in other domestic and international tariffs.

[1] Unless otherwise noted, all rule references refer to Official Air Freight Rules Tariff No. 1-B, CAB No. 96, Airline Tariff Publishers, Inc., Agent (ATP).

[2] The rates in question are applicable only when the shipper does not make a declaration of value, and are optional vis-a-vis higher rates with the usual declared value option, thus raising a substantive question of lawfulness.

Upon consideration of all relevant matters, the Board finds that these provisions may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and that they should be investigated, and will expand the issues in Docket 19923 to embrace the foregoing provisions, as well as comparable provisions of the carrier parties in other domestic and international tariffs.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, 412, 414, and 1002 thereof:

It is ordered, That:

1. The investigation, heretofore ordered in Docket 19923 by Order 70-7-121, dated July 24, 1970, is hereby expanded to include a determination of whether the provisions of the rules contained in the enumerated tariffs listed in the attached Appendix A,[3] to the extent they apply on behalf of the carrier parties in Docket 19923, and the rules, regulations, and practices affecting such provisions, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful provisions, and rules, regulations, or practices affecting such provisions;

2. The scope of said investigation is further expanded to include the issue of whether Agreement CAB 19891-A4 embodying the provisions of Rule 38 of Airline Tariff Publishers, Inc., Agent's Tariff CAB No. 96 is adverse to the public interest or in violation of the Federal Aviation Act of 1958; and

3. Copies of this order will be served upon all parties to the proceeding in Docket 19923.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.71-8185 Filed 6-10-71;8:49 am]

[3] Appendix A filed as part of the original document.

CIVIL SERVICE COMMISSION

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Notice of Revocation 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 revokes the authority of the Department of Housing and Urban Development to fill by noncareer executive assignment in the excepted service the position of Director, Office of Housing Management, Renewal and Housing Management.

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

[FR Doc.71-8194 Filed 6-10-71;8:50 am]

DEPARTMENT OF JUSTICE

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 Justice to fill by noncareer executive assignment in the excepted service the position of Chief, Consumer Affairs Section, Antitrust Division.

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

[FR Doc.71-8192 Filed 6-10-71;8:50 am]

DEPARTMENT OF TRANSPORTATION

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 Transportation to fill by noncareer executive assignment in the excepted service the position of Special Assistant to the Secretary (Field Coordination), Office of the Secretary.

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

[FR Doc.71-8193 Filed 6-10-71;8:50 am]

SMALL BUSINESS ADMINISTRATION

Notice of Revocation of Authority To Make Noncareer Executive Assignment; Correction

In the FEDERAL REGISTER of May 13, 1971 (F.R. Doc. 71-6692), on page 8823 a notice of revocation of authority to make noncareer executive assignment for the position of Associate General Counsel, Finance, Small Business Administration, was published in error.

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

[FR Doc.71-8195 Filed 6-10-71;8:50 am]

ENVIRONMENTAL PROTECTION AGENCY

CELANESE CHEMICAL CO.

Notice of Filing of Petition Regarding Pesticide Chemicals

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 1F1143) has been filed by Celanese Chemical Co., 245 Park Avenue, New York, NY 10017, proposing establishment of tolerances (21 CFR Part 420) for residues of the fungicides acetic acid at 1.4 percent and propionic acid at 0.6 percent in or on the raw agricultural commodities grains of barley, corn, oats, sorghum, and wheat.

The analytical method proposed in the petition for determining residues of the preservatives is a procedure in which the grain samples are ground and the acids extracted with a dilute pyridine solution. The samples are filtered and the acid titrated with standard sodium hydroxide.

Dated: June 4, 1971.

LOWELL E. MILLER,
Acting Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.71-8204 Filed 6-10-71;8:51 am]

FEDERAL MARITIME COMMISSION

[Docket No. 71-20; Special Permission 5345]

CAL-HAWAIIAN FREIGHT, INC.

General Increases in Rates in U.S. Pacific and Hawaiian Trade; First Supplemental Order

By the original order in this proceeding served March 5, 1971, the Commission placed under investigation a general rate increase of the subject carrier, and suspended to and including July 7, 1971 various revised pages to Tariff FMC-F No. 1. The Commission's order prohibits changes in tariff matter held in effect by reason of suspension, during the period of suspension, unless otherwise ordered by the Commission.

By Special Permission Application No. 1 authority is sought to depart from the terms of Rule 20(c) of Tariff Circular No. 3 and the terms of the original order in this proceeding to permit the filing, upon not less than 1 day's notice, Second Revised Page 30 and First Revised Page 31 which will change tariff matter continued in effect by reason of suspension in this proceeding.

A full investigation of the matters involved in the application having been made, which application is hereby referred to and made a part hereof:

It is ordered, That:

1. Authority to depart from Rule 20(c) of Tariff Circular No. 3 and the terms of the order in Docket No. 71-20 to make the changes in rates and provisions as set forth in exhibits of Second Revised Page 30 and First Revised Page 31 in Special Permission Application No. 1, said changes to become effective on not less than 1 day's notice, is hereby granted. The authority requested by Special Permission Application No. 1 to file a new rate on household refrigerators or freezers and to file a services fee rule on the advancement of charges, is hereby denied.

2. The authority granted hereby does not prejudice the right of this Commission to suspend and/or investigate any publications submitted pursuant thereto, either upon receipt of protest or upon the Commission's own motion under section 3 of the Intercoastal Shipping Act, 1933.

3. Publications issued and filed under this authority shall bear the following notation: "Issued under authority of First Supplemental Order in Docket No. 71-20 and Federal Maritime Commission Special Permission No. 5345."

4. This special permission does not modify any outstanding formal orders of the Commission except insofar as it allows the aforementioned changes, nor waive, except as herein authorized, any of the requirements of its rules relative to the construction and filing of tariff publications.

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.71-8171 Filed 6-10-71;8:48 am]

[Docket No. 71-49; Special Permission 5353]

GULF PUERTO RICO LINES, INC.

General Increases in Rates in U.S. Gulf/Puerto Rico Trade; First Supplemental Order

By the original order in this proceeding served April 30, 1971, the Commission placed under investigation a general rate increase of the subject carrier, and suspended to and including September 1, 1971, Supplement No. 7 and various revised pages to Tariff FMC-F No. 1. The Commission's order prohibits changes in tariff matter held in effect by reason of suspension, during the period of suspension, unless otherwise ordered by the Commission.

By Special Permission Application No. 54 authority is sought to depart from the terms of Rule 20(c) of Tariff Circular No. 3 and the terms of the original order in this proceeding to permit the filing, upon not less than 1 day's notice, of certain revised pages which will

change tariff matter continued in effect by reason of suspension in this proceeding. Authority is further sought to obtain continuing special permission to make changes in rates and provisions held in effect by reason of suspension in said docket, upon lawful notice, but only to the extent that such changes will result in a reduction in rates and charges.

A full investigation of the matters involved in the application having been made, which application is hereby referred to and made a part hereof:

It is ordered, That:

1. Authority to depart from Rule 20(c) of Tariff Circular No. 3 and the terms of the order in Docket No. 71–49 to make the changes in rates and provisions as set forth in the Appendix to Special Permission Application No. 54, said changes to become effective on full statutory notice, is hereby granted. The short notice authority requested by Special Permission Application No. 54 is hereby denied.

2. Authority is further granted to Gulf Puerto Rico Lines, Inc., to depart from the terms of Rule 20(c) of the Commission's Domestic Tariff Circular No. 3 and the terms of the original order in Docket No. 71–49 to make changes in rates and provisions in its Tariff FMC–F No. 1 held in effect by reason of suspension in said docket, upon lawful notice, but only to the extent that such changes will result in a reduction in rates or charges, unless otherwise authorized by the Commission. This authority extends to and including September 1, 1971.

3. The authority granted hereby does not prejudice the right of this Commission to suspend any publications submitted pursuant thereto, either upon receipt of protest or upon the Commission's own motion under section 3 of the Intercoastal Shipping Act, 1933.

4. Publications issued and filed under this authority shall bear the following notation: "Issued under authority of First Supplemental Order in Docket No. 71–49 and Federal Maritime Commission Special Permission No. 5353."

5. This special permission does not modify any outstanding formal orders of the Commission except insofar as it allows the aforementioned changes and permits the statutory filing of reduced rates, nor waive, except as herein authorized, any of the requirements of its rules relative to the construction and filing of tariff publications.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71–8172 Filed 6–10–71;8:48 am]

NOVO CORP. AND J. R. WILLEVER, INC.

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 the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed for approval by:

Edward Schmeltzer, Esq., Morgan, Lewis & Bockius, 1140 Connecticut Avenue NW., Washington, DC 20036.

Agreement No. FF 71–3 between Novo Corp. (Novo) and J. R. Willever, Inc. (Willever), FMC License No. 540, is intended to secure Federal Martime Commission approval for an agreement whereby Novo will buy all of the outstanding stock of Willever. Novo will pay the stockholders of Willever a cash amount based on the net assets of Willever as of May 31, 1971, determined from an actual audited balance sheet, plus $25,000 less accrual of employee bonuses and Federal income taxes.

J. R. Willever, Inc., holds Independent Ocean Freight Forwarder License No. 540. Subsidiaries of Novo Corp. include:

Barnett/Freeslate International Corp.—Independent Ocean Freight Forwarder License No. 865.

Novo International Corp.—Independent Ocean Freight Forwarder License No. 773.

Barnett International Forwarders, Inc. of California—Independent Ocean Freight Forwarder License No. 689.

The stock purchase will not become effective until after the Federal Maritime Commission approves the transaction.

Dated: June 7, 1971.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY, *Secretary.*

[FR Doc.71–8173 Filed 6–10–71;8:48 am]

FEDERAL POWER COMMISSION

[Docket No. CP71–289]

COLUMBIA LNG CORP. AND CONSOLIDATED SYSTEM LNG CO.

Notice of Application

JUNE 9, 1971.

Take notice that on June 4, 1971, Columbia LNG Corp. (Columbia LNG), 20 Montchanin Road, Wilmington, DE 19807, and Consolidated System LNG Co. (Consolidated), 445 West Main Street, Clarksburg, WV 26301, jointly filed in Docket No. CP71–289, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for the receipt, storage, and regasification of liquefied natural gas (LNG) and transportation of regasified LNG, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, applicants propose to construct and operate an LNG receiving terminal at Cove Point, Calvert County, Md., and approximately 82.6 miles of 36-inch pipeline from said terminal to a point of interconnection with the facilities of United Fuel Gas Co. (United) at United's Loudoun Compressor Station in Loudoun County, Va. The proposed terminal facilities will consist of docking and receiving facilities, for the receipt of LNG from cryogenic tankers, insulated cryogenic tanks for the storage of approximately 1,500,000 barrels of LNG, facilities for regasification of the LNG and other ancillary and auxiliary facilities. The estimated total cost of these pipeline and terminal facilities is $131,145,000. Columbia LNG states that its portion of this cost will be approximately $67,148,000, which cost is to be financed by the issuance of common stock and installment promissory notes to its parent company, The Columbia Gas System Inc. Consolidated states that its portion of this total cost of construction will be approximately $63,997,000 which cost is to be financed by the sale of securities to its parent company, Consolidated Natural Gas Co.

Applicants state that the capacity of these facilities when completed, in 1975, will be equivalent to approximately 1,000,000 Mcf of vaporous gas per day. Columbia LNG proposes to sell to United annual volumes of regasified LNG equivalent to an average of approximately 300,000 Mcf per day. Consolidated proposes to sell to Consolidated Gas Supply Corp. annual volumes of regasified LNG equivalent to an average of approximately 200,000 Mcf per day.

Applicants filed information on the environmental impact of the proposed project similar to that previously filed in the related import proceeding in Docket No. CP71–68 et al.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter that 15 days

for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before June 18, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-8296 Filed 6-10-71;8:52 am]

[Docket No. CP71-290]

CONSOLIDATED SYSTEM LNG CO.

Notice of Application

JUNE 9, 1971.

Take notice that on June 4, 1971, Consolidated System LNG Co. (applicant), 445 West Main Street, Clarksburg, WV 26301, filed in Docket No. CP71-290 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas pipeline facilities and the employment of said facilities for the sale of natural gas to Consolidated Gas Supply Corp. (Consolidated Supply), for resale in interstate commerce, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, applicant proposes to construct, in 1974, and operate approximately 190.2 miles of 30-inch pipeline extending from a connection with facilities proposed to be constructed by applicant and Columbia LNG Co. (Columbia) in Loudoun County, Va., to a point of connection with the facilities of Consolidated Supply located in Clinton County, Pa. Applicant states that the purpose of the facilities proposed herein is to transport and sell up to 200,000 Mcf of regasified liquefied natural gas (LNG) per day to Consolidated Supply. The instant proposal is related to the proposed importation of LNG for which an application is pending in Docket No. CP71-68 et al., and to the construction of an LNG receiving terminal proposed by applicant and Columbia in Docket No. CP71-289. The estimated costs of the facilities proposed herein is $46,122,800, which cost applicant states will be financed by the issuance of long-term promissory notes and common stock to its parent company, Consolidated Natural Gas. Co.

Applicant filed information on the environmental impact of the proposed project similar to that previously filed in the related import proceeding in Docket No. CP71-68 et al.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests or petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before June 18, 1971, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Acting Secretary.

[FR Doc.71-8295 Filed 6-10-71;8:52 am]

FEDERAL RESERVE SYSTEM

MISSOURI BANCSHARES, INC.

Order Approving Acquisition of Bank Stock by Bank Holding Company

In the matter of the application of Missouri Bancshares, Inc., Kansas City, Mo., for approval of acquisition of 90.65 percent or more of the voting shares of Bank of Ferguson, Ferguson, Mo.

There has come before the Board of Governors, pursuant to section 3(a)(3) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(3)) and § 222.3 (a) of Federal Reserve Regulation Y (12 CFR 222.3(a)), an application by Missouri Bancshares, Inc., Kansas City, Mo. (Applicant), a registered bank holding company, for the Board's prior approval of the acquisition of 90.65 percent or more of the voting shares of Bank of Ferguson, Ferguson, Mo. (Bank).

As required by section 3(b) of the Act, the Board gave written notice of receipt of the application to the Missouri Commissioner of Finance and requested his views and recommendation. The Commissioner indicated that he had no objection to approval of the application.

Notice of receipt of the application was published in the FEDERAL REGISTER on April 17, 1971 (36 F.R. 7328), providing an opportunity for interested persons to submit comments and views with respect to the proposal. A copy of the application was forwarded to the U.S. Department of Justice for its consideration. Time for filing comments and views has expired and all those received have been considered.

The Board has considered the application in the light of the factors set forth in section 3(c) of the Act, including the effect of the proposed acquisition on competition, the financial and managerial resources and future prospects of the Applicant and the banks concerned, and the convenience and needs of the communities to be served, and finds that:

Applicant, the fifth largest registered bank holding company and banking organization in Missouri, has 7 subsidiary banks with $395 million in deposits, representing approximately 3.8 percent of the total commercial bank deposits in the State. (All banking data are as of June 30, 1970, and reflect holding company formations and acquisitions approved by the Board to date.) Consummation of the proposal herein would increase Applicant's share of total deposits in the State to 4 percent, and Applicant would become the State's fourth largest registered bank holding company and banking organization.

Bank ($20.9 million deposits) the only bank in Ferguson, is the seventh largest of the 12 banks in its service area, which is approximated by the northeast portion of St. Louis County, and holds 6.7 percent of that area's deposits. Bank faces strong competition from the other area banks, three of which are affiliated with St. Louis-based holding companies. Applicant has two subsidiaries

located 18 and 30 miles from Bank, but the amount of competition between these subsidiaries and Bank appears to be minimal. None of Applicant's other subsidiary banks competes with Bank to any significant extent. Additionally, the development of such competition in the future is considered unlikely because of distances separating Applicant's subsidiaries and Bank, the presence of numerous banking alternatives, and Missouri's restrictive branching law. Consummation of the proposal may enhance competition by making Bank a more effective competitor in its service area. It does not appear that existing competition would be eliminated, or significant potential competition foreclosed, by consummation of Applicant's proposal, or that there would be undue adverse effects on any bank in the area involved.

On the basis of the record before it, the Board concludes that consummation of the proposed acquisition would not adversely affect competition in any relevant area. Considerations relating to the financial and managerial resources as they relate to Applicant, its subsidiaries, and Bank are regarded as consistent with approval of the application. Unlike the other area banks, Bank has been operated conservatively, and does not appear to have made a broad effort to meet the banking needs of area residents. Applicant proposes to change this conservative policy and to establish new services, including trust services, payroll accounting, and an expanding consumer loan program, which should enable Bank to better serve the expanding needs of the area. These considerations relating to convenience and needs lend weight in support of approval of the application. It is the Board's judgment that the proposed transaction would be in the public interest, and that the application should be approved.

It is hereby ordered, For the reasons set forth above, that said application be and hereby is approved: *Provided*, That the acquisition so approved shall not be consummated (a) before the thirtieth calendar day following the date of this order or (b) later than 3 months after the date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Kansas City pursuant to delegated authority.

By order of the Board of Governors,[1] June 7, 1971.

[SEAL] KENNETH A. KENYON,
Deputy Secretary.

[FR Doc.71-8144 Filed 6-10-71;8:45 am]

[1] Voting for this action: Chairman Burns and Governors Robertson, Mitchell, Daane, Maisel, Brimmer, and Sherrill.

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

ISLAND CREEK COAL CO.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Electric Face Equipment Standard specified in the Federal Coal Mine Health and Safety Act of 1969 have been received as follows:

(1) ICP Docket No. 3048 000, Island Creek Coal Co., North Branch Mine, USBM ID No. 46 01309 0, Bayard, Grant County, W. Va.:
ICP Permit No. 3048 014 (Galis Roof Bolter, Ser. No. 1110-67).
ICP Permit No. 3048 015 (Jeffrey Ram Car, Ser. No. 34028).
ICP Permit No. 3048 016 (Jeffrey Ram Car, Ser. No. 34029).

In accordance with the provisions of section 305(a)(7) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

Copies of renewal applications are available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Eighth Floor, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

JUNE 8, 1971.

[FR Doc.71-8166 Filed 6-10-71;8:47 am]

OFFICE OF ECONOMIC OPPORTUNITY

SECRETARY OF HEALTH, EDUCATION, AND WELFARE

Delegation of Authority Regarding National Summer Youth Sports Program

1. Pursuant to section 602(d) of the Economic Opportunity Act of 1964, as amended (hereinafter the "Act"), I hereby delegate to the Secretary of Health, Education, and Welfare (hereinafter the "Secretary") such authority pursuant to section 222(a) of the Act as may be necessary for the purpose of carrying out a program to provide sports instruction and competition and supplemental health and nutrition services during the summer of 1971 to youth living in metropolitan areas of concentrated poverty. The program shall be known as the "National Summer Youth Sports Program." The Director of the Office of Economic Opportunity (hereinafter the "Director") shall transfer to the Secretary such funds as the Director and the Secretary agree are necessary to finance this program.

2. In connection with the foregoing delegation, I further delegate to the Secretary authority under section 225(b) to provide a separate allotment, assuring an equitable distribution of funds reflecting the relative incidence in each State of the needs to which this program is directed, of the funds transferred to him for this program.

3. I further delegate to the Secretary such authority under sections 242, 244(2), 602, and 610-1(c) of the Act as may be necessary and appropriate in order to carry out his functions under this delegation.

4. The powers hereby delegated shall be exercised in accordance with the provisions of the Economic Opportunity Act and with such memoranda of understanding as may be entered into between the Secretary and the Director.

5. All operating information, evaluation reports and other data concerning the program administered under this delegation shall be freely exchanged between the Department of Health, Education, and Welfare and the Office of Economic Opportunity pursuant to sections 602(d) and 633 of the Act.

6. The powers hereby delegated may be redelegated by the Secretary, with or without authority for further redelegation. The Director shall be advised of all such redelegations.

Dated: April 5, 1971.

FRANK CARLUCCI,
Director,
Office of Economic Opportunity.

Approved: June 7, 1971.

RICHARD NIXON,
President of the United States.

[FR Doc.71-8206 Filed 6-10-71;8:51 am]

OFFICE OF MANAGEMENT AND BUDGET

COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget by Executive Order No. 11541 of July 1, 1970 (35 F.R. 10737), the following rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (Part 43 of Chapter I of Title 28 of the Code of Federal Regulations), and have been determined to represent the reasonable value of hospital, nursing home, medical, surgical or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals and nursing homes, with the exception of Canal Zone Government hospitals—

	Effective July 1, 1971, and thereafter
Hospital care per inpatient day:	
Federal general and turberculosis hospitals	$61.00
Federal mental hospitals	27.00
Veterans' Administration nursing home units	20.00
Outpatient medical and dental treatment:	
Per facility visit	13.00

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be the amounts expended by the United States for such care and treatment;

(c) For such care and treatment at Canal Zone Government hospitals, the rates shall be those established, and in effect at the time the care and treatment is furnished, by the Canal Zone Government for such care and treatment furnished to beneficiaries of other United States Government agencies.

For the period beginning July 1, 1971, the rates prescribed herein supersede those established by the Director of the Bureau of the Budget on June 23, 1970 (35 F.R. 10531).

GEORGE P. SHULTZ,
Director, Office of Management and Budget.

MAY 27, 1971.

[FR Doc.71-8170 Filed 6-10-71;8:48 am]

SECURITIES AND EXCHANGE COMMISSION

[Files Nos. 7-3788—7-3794]

ALLEGHENY POWER SYSTEM, INC., ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

JUNE 7, 1971.

In the matter of applications of the Cincinnati Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Allegheny Power System, Inc	7-3788
Arizona Public Service Co	7-3789
Arkansas Louisiana Gas Co	7-3790
Baltimore Gas & Electric Co	7-3791
Boise Cascade Corp	7-3792
Caterpillar Tractor Co	7-3793
Central & Sout West Corp	7-3794

Upon receipt of a request, on or before June 22, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-8176 Filed 6-10-71;8:48 am]

[Files Nos. 7-3795—7-3801]

CONSUMERS POWER CO. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

JUNE 7, 1971.

In the matter of applications of the Cincinnati Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Consumers Power Co	7-3795
Florida Power Corp	7-3796
Florida Power & Light Co	7-3797
General Tire & Rubber Co	7-3798
Houston Lighting & Power Co	7-3799
Idaho Power Co	7-3800
Kaiser Aluminum & Chemical Corp	7-3801

Upon receipt of a request, on or before June 22, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-8177 Filed 6-10-71;8:48 am]

[70-5028]

EASTERN UTILITIES ASSOCIATES ET AL.

Notice of Proposed Issue and Sale of Notes by Holding Company and Subsidiary Companies to Banks and Open Account Advances by Holding Company to Subsidiary Company

JUNE 7, 1971.

In the matter of Eastern Utilities Associates, Post Office Box 2333, Boston, MA 02107; Blackstone Valley Electric Co., Post Office Box 1111, Lincoln, RI 02865; Brockton Edison Co., 36 Main Street, Brockton, MA 02403; Fall River Electric Light Co., 85 North Main Street, Fall River, MA 02772; and Montaup Electric Co., Post Office Box 391, Fall River, MA 02772.

Notice is hereby given that Eastern Utilities Associates (EUA), a registered holding company, and its four electric utility subsidiary companies, Blackstone Valley Electric Co. (Blackstone), Brockton Edison Co. (Brockton), Fall River

Electric Light Co. (Fall River), and Montaup Electric Co. (Montaup), have filed an application-declaration with this Commission pursuant to the Public Utility Holding Company Act of 1935 (Act), designating sections 6(a)(1), 7, 12(b), and 12(f) of the Act and Rules 45(a) and 50(a)(2) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transactions.

EUA, Blackstone, Brockton, Fall River, and Montaup propose to issue and sell short-term, unsecured, promissory notes to banks, and, in the cases of Blackstone, Brockton, and Fall River, to also receive open-account advances from EUA, from time to time during the period beginning July 1, 1971, and ending January 3, 1972, in the maximum aggregate amounts to be outstanding at any one time, as shown below:

[Thousands of dollars]

	EUA	Blackstone	Brockton	Fall River	Montaup
The Chase Manhattan Bank (N.A.), New York, N.Y.		$2,300	$800	$2,300	$4,200
Industrial National Bank of Rhode Island, Providence, R.I.		1,200			
Rhode Island Hospital Trust National Bank, Providence, R.I.		1,200			
The First National Bank of Boston, Boston, Mass.	$5,400		900	2,400	4,300
State Street Bank and Trust Co., Boston, Mass.			900		
Plymouth Home National Bank, Brockton, Mass.			400		
First County National Bank, Brockton, Mass.			300		
B.M.C. Durfee Trust Co., Fall River, Mass.				650	
Fall River Trust Co., Fall River, Mass.				700	
Fall River National Bank, Fall River, Mass.				250	
Total from banks	5,400	4,700	3,300	6,300	8,500
EUA		9,800	10,800	1,800	
Maximum amount of aggregate short-term borrowings from banks and advances from EUA to be outstanding at any one time	5,400	14,500	14,100	8,100	8,500

The notes to banks will be dated as of the date of issuance, will bear interest at a rate not to exceed the prime rate on the date of issuance (presently 5½ percent per annum) and will be prepayable in whole or in part without penalty. Notes issued after July 1, 1971, and prior to October 1, 1971, will mature on October 1, 1971, and all notes issued on and after October 1, 1971, and prior to January 3, 1972, will mature on January 3, 1972. The advances by EUA to Blackstone and Brockton will be subordinated to the rights of the preferred stockholders of Blackstone and Brockton, respectively, to receive dividends and in liquidation if, and so long as, (a) preferred stock dividends are in arrears (or in the event of liquidation, the liquidation rights of preferred stockholders have not been satisfied) and (b) the sum of the advances from EUA, the notes payable to banks and all other securities representing unsecured debt, maturing in less than 10 years, exceeds 10 percent of the company's secured debt, capital stocks, premium and surplus. The advances will bear interest payable on October 1, 1971, and January 3, 1972, at the prime rate in effect at the First National Bank of Boston on those respective dates or the rate at which EUA is then borrowing from said Bank, whichever is lower, except that to the extent advances are made hereunder from the proceeds of issuance by EUA of its $17 million 5-year unsecured promissory notes (Holding Company Act Release No. 17085), such advances shall bear interest payable at the rate incurred by EUA.

Blackstone expects to have outstanding, at July 1, 1971, an estimated $9,100,000 principal amount of short-term loans, including at $4,400,000 loan from EUA; Brockton, Fall River and Montaup except to have outstanding principal amounts of short-term notes of $13 million, including $10,800,000 loan from EUA, $7,100,000, including $1,800,000 loan from EUA, and $7,200,000, respectively. The proceeds from the proposed notes and advances will be used in part by the respective companies to meet cash requirements for construction and to pay short-term loans at or prior to maturity.

Blackstone, Brockton, or Fall River may prepay its notes to banks, in whole or in part, by the use of an advance from EUA, or may repay an advance from EUA with the proceeds of notes issued to banks. Any advance from EUA for such purpose will bear interest, for the unexpired term of the prepaid note, at the lower of the prime rate or the rate borne by the prepaid note. If the interest rate on a note issued to a bank for the purpose of obtaining funds to repay an advance from EUA shall exceed the rate on the advance being repaid, EUA shall reimburse or credit Blackstone, Brockton, or Fall River, as the case may be, for the added interest required for the term of the note so issued.

In the event of any permanent financing by any of the borrowing companies (with the exception of permanent financing by EUA the proceeds of which are applied to the payment or prepayment of its 5-year note), the net cash proceeds therefrom will be applied to the payment of its short-term note indebtedness or advances from EUA then outstanding, and the maximum amount of short-term note indebtedness and advances to be outstanding at any one time, as proposed herein, will be reduced by the amount of the proceeds of such permanent financing.

The application-declaration states that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions. The fees and expenses to be incurred in connection with the proposed transactions are to be supplied by amendment.

Notice is further given that any interested person may, not later than June 28, 1971, request in writing that a hearing be held in respect of such matters, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the application-declaration which he desires to controvert; or he may request that he be notified should the Commission order a hearing in respect thereof. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the applicants-declarants at the above-stated addresses, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective, as provided in Rule 23 of the general rules and regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof, or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

[SEAL] THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-8181 Filed 6-10-71;8:49 am]

[File No. 1-4692]

FAS INTERNATIONAL, INC.

Order Suspending Trading

JUNE 4, 1971.

The common stock, 2 cents par value and the 5 percent convertible subordinated debentures due 1989 of FAS International, Inc., being traded on the New York Stock Exchange, Inc., pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of FAS International, Inc., being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities is required in the public interest and for the protection of investors:

It is ordered, Pursuant to sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange be summarily

suspended, this order to be effective for the period June 6, 1971, through June 15, 1971.

By the Commission.

[SEAL] THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-8182 Filed 6-10-71;8:49 am]

[File Nos. 7-3802—7-3807]

KIMBERLY-CLARK CORP. ET AL.

Notice of Applications for Unlisted Trading Privileges and of Opportunity for Hearing

JUNE 7, 1971.

In the matter of applications of the Cincinnati Stock Exchange for unlisted trading privileges in certain securities.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stocks of the following companies, which securities are listed and registered on one or more other national securities exchanges:

	File No.
Kimberly-Clark Corp	7-3802
S. S. Kresge Co	7-3803
Long Island Lighting Co	7-3804
Middle South Utilities, Inc	7-3805
Montana Power Co	7-3806
Occidental Petroleum Corp	7-3807

Upon receipt of a request, on or before June 22, 1971, from any interested person, the Commission will determine whether the application with respect to any of the companies named shall be set down for hearing. Any such request should state briefly the title of the security in which he is interested, the nature of the interest of the person making the request, and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on any of the said applications by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing with respect to any particular application, such application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-8178 Filed 6-10-71;8:48 am]

[File No. 7-3808]

LOEWS CORP. (DELAWARE)

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

JUNE 7, 1971.

In the matter of application of the Philadelphia-Baltimore-Washington Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Loews Corp. (Delaware, File No. 7-3808).

Upon receipt of a request, on or before June 22, 1971, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commsision (pursuant to delegated authority).

[SEAL] THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-8180 Filed 6-10-71;8:49 am]

[File No. 7-3809]

SCHERING-PLOUGH CORP.

Notice of Application for Unlisted Trading Privileges and of Opportunity for Hearing

JUNE 7, 1971.

In the matter of application of the Pacific Coast Stock Exchange for unlisted trading privileges in a certain security.

The above-named national securities exchange has filed an application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the common stock of the following company, which security is listed and registered on one or more other national securities exchange:

Schering-Plough Corp., File No. 7-3809.

Upon receipt of a request, on or before June 22, 1971, from any interested person, the Commission will determine whether the application shall be set down for hearing. Any such request should state briefly the nature of the interest of the person making the request and the position he proposes to take at the hearing, if ordered. In addition, any interested person may submit his views or any additional facts bearing on the said application by means of a letter addressed to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549 not later than the date specified. If no one requests a hearing, this application will be determined by order of the Commission on the basis of the facts stated therein and other information contained in the official files of the Commission pertaining thereto.

For the Commission (pursuant to delegated authority).

[SEAL] THEODORE L. HUMES,
Associate Secretary.

[FR Doc.71-8179 Filed 6-10-71;8:49 am]

INTERSTATE COMMERCE COMMISSION

EAGLE MOTOR LINES, INC., ET AL.

Assignment of Hearings

JUNE 8, 1971.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 73165 Sub 292, Eagle Motor Lines, Inc., assigned June 28, 1971, in the Moot Courtroom, The College of Law, the Ohio State University, 1659 North High Street, Columbus, Ohio.

MC 83835 Sub 79, Wales Transportation, Inc., assigned June 28, 1971, in the Moot Courtroom, The College of Law, The Ohio State University, 1659 North High Street, Columbus, Ohio.

FD 26268, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., now assigned July 22, 1971, at Green Bay, Wis., at the Courthouse Annex, Second Floor, 125 South Adams Street.

FD 26496, Norfolk Southern Railway Co.—Abandonment—Portion of its Bayboro Branch Line in Craven and Pamlico Counties, N.C., assigned July 19, 1971, at New Bern, N.C., in U.S. District Courtroom (Judge Larkin's Courtroom) 401 Middle Street.

MC-115841 Sub 386, Colonial Refrigerated Transportation Inc., assigned July 19, 1971, at Sioux City, Iowa, in Second Floor Jury Room, Federal Building, Sixth and Douglas Streets.

MC-115841 Sub 387, Colonial Refrigerated Transportation Inc., assigned July 26, 1971, at Sioux City, Iowa, in Second Floor Jury Room, Federal Building, Sixth and Douglas Streets.

MC 113678 Sub 407, Curtis, Inc., assigned July 23, 1971, in Room 1430, Federal Building-Courthouse, Denver, Colo.

MC 114211 Sub 149, Warren Transport, Inc., assigned July 19, 1971, in Room 1430, Federal Building-Courthouse, Denver, Colo.

MC 115524 Sub 14, William P. Bursch, doing business as Bursch Trucking Co., assigned July 26, 1971, in Room 1430, Federal Building-Courthouse, Denver, Colo.

MC 134968 Sub 1, Bert F. Jones, doing business as Mitey Bee Xpress, assigned July 22, 1971, in Room 1430, Federal Building-Courthouse, Denver, Colo.

MC 135082, Bursch Trucking, Inc., assigned July 26, 1971, in Room 1430, Federal Building-Courthouse, Denver, Colo.

MC 2860 Sub 87, National Freight Inc., assigned July 15, 1971, in Room 1430, Federal Building-Courthouse, Denver, Colo.

FD 26446, Atchison, Topeka & Santa Fe Railway Co. Abandonment in Prowers, Bent, & Otero Counties, Colo., assigned July 22, 1971, in the City Council Chambers, Second Floor, City Hall, Pueblo, Colo.

MC 31389 Sub 134, McLean Trucking Co., assigned July 19, 1971, for continued hearing in Room 914, Federal Building, 167 Main Street, Memphis, Tenn.

MC 31364 Sub 4, Francis Hill, doing business as Hill Furniture Carriers, assigned July 26, 1971, at the Offices of Interstate Commerce Commission, Washington, D.C.

MC 114457 Sub 93, Dart Transit Co., assigned July 26, 1971, at Chicago, Ill., in Room 1630, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 134784 Sub 1, Transportes Hispanos, Inc., assigned July 19, 1971, at Chicago, Ill., in Room 1630, Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 135254, Fernando Mireles, doing business as Transporters "Azteca", Ltd., assigned July 19, 1971, at Chicagi, Ill., in Room 1630, Everett McKinley Dirksen Building, 219 South Dearborn Street.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-8196 Filed 6-10-71;8:50 am]

FOURTH SECTION APPLICATION FOR RELIEF

JUNE 8, 1971.

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. 42223—*Salt from Stafford, Tex.* Filed by Southwestern Freight Bureau, agent, (No. B-244), for interested rail carriers. Rates on salt, common (sodium chloride), evaporated or rock, plain or iodized, in carloads, as described in the application, from Stafford, Tex., to Illinois Freight Association, northern, southern, and western trunkline territories, as described in the application.

Grounds for relief—Market competition, rate relationship, short-line distance formula and grouping.

Tariffs—Supplements 75 and 202 to Southwestern Freight Bureau, Agent, tariffs ICC 4883 and 4691, respectively. Rates are published to become effective on July 5, 1971.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.71-8197 Filed 6-10-71;8:50 am]

[Notice 309]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

JUNE 7, 1971.

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 3255 (Sub-No. 10 TA), filed May 28, 1971. Applicant: PEP TRUCKING CO., INC., 386 Henderson Street, Jersey City, NJ 07302. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick and paving block*, from Jersey City, N.J., and Flushing, N.Y., to New Haven, Conn., for 150 days. Supporting shipper: Hastings Pavement Co., Inc., 49 Water Mill Lane, Great Neck, Long Island, NY 11021. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 61403 (Sub-No. 213 TA), filed May 26, 1971. Applicant: THE MASON AND DIXON TANK LINES, INC., Eastman Road, Post Office Box 969, Kingsport, Tenn. 37662. Applicant's representative: Charles E. Cox (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Liquid chemicals*, in bulk, from the plantsite and/or storage facilities of Georgia-Pacific Corp., at or near Plaquemine, La., to points in Alabama, Arkansas, Florida, Georgia, Mississippi, North Carolina, Ohio, South Carolina, Tennessee, and Texas, for 180 days. Supporting shipper: Georgia-Pacific Corp., Post Office Box 629, Plaquemine, LA. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 803 1808 West End Building, Nashville, Tenn. 37203.

No. MC 113855 (Sub-No. 241 TA), filed May 26, 1971. Applicant: INTERNATIONAL TRANSPORT, INC., U.S. Highway 52 South, Rochester, MN 55901. Applicant's representative: Thomas J. Van Osdel (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Snowmobiles*, (2) *snowmobile trailers;* (3) *parts, attachments and accessories*, for the commodities described in (1) and (2) above; and (4) *snowmobile clothing and accessories*, from Crosby, Minn., to points in Washington, Oregon, California, Idaho, Nevada, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Michigan, Wisconsin, Illinois, Indiana, Ohio, New York, Pennsylvania, Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island, and New Jersey, for 180 days. Supporting shipper: Scorpion, Inc., Crosby, Minn. 56441. Send protests to: A. N. Spath, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 448 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 115162 (Sub-No. 229 TA), filed May 28, 1971. Applicant: POOLE TRUCK LINE, INC., Post Office Box 500, Evergreen, AL 36401. Applicant's representative: Robert E. Tate (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Composition building board and parts, materials and accessories incidental to the installation thereof*, from Mobile, Ala., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the District of Columbia, for 180 days. Supporting shipper: National Gypsum Co., Building Products Division, 325 Delaware Avenue, Buffalo, NY 14202. Attention: Harold C. Halm, Transportation Manager—Service. Send protests to: Clifford W. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 116073 (Sub-No. 173 TA), filed May 28, 1971. Applicant: BARRETT MOBILE HOME TRANSPORT, INC., Post Office Box 919, 1825 Main Avenue, Moorhead, MN 56560. Applicant's representative: Robert G. Tessar (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Buildings*, in sections, from Hometown, Pa., to points in Maine, Vermont, New Hampshire, Connecticut, Delaware, Massachusetts, Rhode Island, New York, Maryland, and New Jersey, for 180 days. Supporting shipper: Speedspace Building Systems, Post Office Box 109, Tamaqua, PA 18252. Send protests to: J. H.

Ambs, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Post Office Box 2340, Fargo, ND 58102.

No. MC 119767 (Sub-No. 270 TA), filed May 28, 1971. Applicant: BEAVER TRANSPORT CO., Post Office Box 188, Pleasant Prairie, WI 53158. Applicant's representative: Fred H. Figge (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dairy products and other commodities distributed by dairies* (except commodities in bulk), from plantsites, warehouses, storage and production facilities utilized by Land O'Lakes, Inc., in Chicago, Ill., and its commercial zone as defined by the Commission, to points in Ohio on and west of a line beginning at Sandusky, Ohio, and extending south along Ohio 4 to Marion, Ohio, and then south along U.S. Highway 23 to Portsmouth, Ohio, and points in Kentucky, for 180 days. Supporting shipper: Land O'Lakes, Inc., Post Office Box 116, Minneapolis, MN 55440 (Gary Huntbach, Supervisor, Traffic Division). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 123048 (Sub-No. 191 TA), filed May 28, 1971. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 1919 Hamilton Avenue, Racine, WI 53401. Applicant's representative: Paul Martinson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Tractors* (except truck tractors designed to be used in the transportation of property on highways) *and tractor attachments in mixed loads with tractors*, from the plant and warehouse facilities of J. I. Case Co. at Bettendorf, Iowa; to points in Wisconsin, Michigan, Illinois, Indiana, Ohio, Kentucky, Tennessee, Mississippi, Florida, Georgia, South Carolina, North Carolina, West Virginia, and Alabama, for 180 days. Supporting shipper: J. I. Case Co., 700 State Street, Racine, WI 53404 (James Pavel, Traffic Manager). Send protests to: District Supervisor Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 126328 (Sub-No. 4 TA), filed May 28, 1971. Applicant: ACTION VAL MOTOR EXPRESS LIMITED, 1193 Ricard Street, Acton Vale, PQ Canada. Applicant's representative: Edwin W. Free, Jr., 25 Keith Avenue, Barre, VT 05641. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Snowmobile, snowmobile trailers, all terrain vehicles* (not including new or used automobiles), *seamobiles, parts and accessories therefor*, and *snow mobile clothing*, including *suits, boots, helmets, and gloves*, from ports of entry on the international boundary line between Canada and the United States, to Albany, and Horsehead, N.Y.; South Portland, Maine; Somerset, Pa.; Lansing, Mich.; Green Bay, Madison, Brillion, and De Pere, Wis.; New Hope, Minn.; Fargo, N. Dak.; Wichita, Kans.; Hamilton, Great Falls, and Belgrade, Mont.; Boise, Idaho; Salt Lake City, Utah; Denver, Colo.; and San Jose, Calif.; and Sparks, Nev., and within a 15-mile radius of said cities, and *return with above damaged and rejected commodities, and tarpaulins, strapping, plywood, and pallets incidental to the outbound traffic*, for 180 days. Supporting shipper: Skiroule, Ltee, Wickham, Quebec, Canada. Send protests to: Martin P. Monaghan, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 52 State Street, Montpelier, VT 05602.

No. MC 134073 (Sub-No. 10 TA), filed May 28, 1971. Applicant: GENOVA TRANSPORT, INC., 484 Clayton Road, Williamstown, NJ 08094. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Plastic articles*, for the account of Crown Zellerbach corporation at Glassboro, N.J., from Glassboro, N.J., to Atlanta, Ga.; Baltimore, Md.; Hershey, Pa.; New York, N.Y.; for 150 days. Supporting shipper: Crown Zellerbach, Post Office Box 5810, Berkeley, Mo. 63134. Send protests to: Raymond T. Jones, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 134264 (Sub-No. 9 TA), filed May 27, 1971. Applicant: OCKENFEL'S TRANSFER, INC., Post Office Box 3, 732 Rundell St., Iowa City, IA 52240. Applicant's representative: Kenneth F. Dudley, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Corrugated plastic drainage tubing and related articles, supplies and accessories*, from Cresco, Iowa, to points in Illinois, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; and (2) *materials, equipment, and supplies* used in the manufacture, processing, sale, distribution, and installation of corrugated plastic drainage tubing, from points in Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin to Cresco and Iowa City, Iowa, for 180 days. Supporting shipper: Advanced Drainage Systems, Inc., Iowa City, Iowa 52240. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 332 Federal Building, Fourth and Perry Streets, Davenport, IA 52801.

No. MC 135379 (Sub-No. TA), filed May 28, 1971. Applicant: EASTERN TRANSPORT, INC., 320 Stiles Street, Linden, NJ 07036. Applicant's representative: George A. Olsen, Traffic Consultant, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by wholesale, retail chain grocery, and food business houses (except commodities in bulk), and in connection therewith *equipment, materials, and supplies* used in the conduct of such business (except commodities in bulk) for the account of Food Fair Stores, Inc.; (1) between Linden and Paterson, N.J., on the one hand, and, on the other, points in Nassau and Suffolk Counties, N.Y., New York, N.Y., Connecticut, and New Jersey; (2) from New York, N.Y., to points in Westchester and Rockland Counties, N.Y., Connecticut, and New Jersey. Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract or contracts with Food Fair Stores, Inc., of Linden, N.J., for 150 days. Supporting shipper: Food Fair Stores, Inc., Food Fair Building, 3175 John F. Kennedy Boulevard, Philadelphia, PA 19101. Send protests to: District Supervisor Robert E. Johnston, Bureau of Operations, Interstate Commerce Commission, 970 Broad Street, Newark, NJ 07102.

No. MC 135635 TA, filed May 27, 1971. Applicant: MERRILL E. FLEIG, Rural Route 4, Box 237, Fairfield, IA 52556. Applicant's representative: Kenneth F. Dudley, 611 Church, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Automatic livestock watering and feeding equipment, animal pens, and equipment, concrete flooring slat forms and equipment, and livestock equipment*, from Fairfield, Iowa, to points in Delaware, Maryland, North Carolina, and Virginia, for 180 days. Supporting shipper: Fairfield Engineering & Manufacturing Co., 601 West Kirkwood Avenue, Fairfield, IA 52556. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 322 Federal Building, Fourth and Perr Streets, Davenport, IA 52801.

No. MC 135643 (Sub-No. 1 TA), filed May 28, 1971. Applicant: SAFE TRANSPORT, INC., 610 Cooper Street, Hamilton, IL 62341. Applicant's representatives: Routman & Lawly, 300 Reisch Building, Springfield, Ill. 62701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, from Hamilton, Ill., to Dubuque, Keokuk, and Fort Madison, Iowa, for 180 days. Supporting shipper: Hiram Walker & Sons, Inc., Post Office Box 1196, 2400 Southwest Washington Street, Peoria, IL 61601. Send protests to: Raymond E. Mauk, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1086, Chicago, IL 60604.

MOTOR CARRIERS OF PASSENGERS

No. MC 124935 (Sub-No. 4 TA), filed May 28, 1971. Applicant: ALMEIDA BUS

LINES, INC., 23 Swift Street, New Bedford, MA 02740. Applicant's representative: Mary E. Kelley, 11 Riverside Avenue, Medford, MA 02155. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *Passengers and their baggage*, between Hyannis, Mass., and Provincetown, Mass., serving all intermediate points, restricted to the discharge of passengers on eastbound trips and receiving of passengers on westbound trips, from Hyannis, over Yarmouth Road to its junction with U.S. Highway 6, thence over U.S. Highway 6 to Provincetown; also from Hyannis over Massachusetts Highway 28 to junction U.S. Highway 6, thence over U.S. Highway 6 to Provincetown, Mass.; also from Hyannis over Yarmouth Road and Willow Street to junction U.S. Highway 6A in Yarmouth, thence over U.S. Highway 6A to junction U.S. Highway 6, thence over U.S. Highway 6 to Provincetown; and return over the same routes, for 180 days. NOTE: Applicant does intend to tack the authority in MC–124935 at Hyannis, Mass. Supporting shippers: There are approximately 36 statements of support attached to the application which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Gerald H. Curry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 187 Westminster Street, Providence, RI 02903.

No. MC 134170 (Sub-No. 2 TA), filed May 27, 1971. Applicant: WAUKEGAN NORTH CHICAGO TRANSIT COMPANY, 1400 10th Street, Waukegan, IL 60085. Applicant's representative: Donald S. Mullins, 4704 West Irving Park Road, Chicago, IL 60641. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicles with passengers, between Great Lakes Naval Training Center, Great Lakes, Ill., and Milwaukee, Wis., for 180 days. Supporting shipper: Curtis L. Wagner, Jr., Chief, Regulatory Law Office, Office of the Judge Advocate General, Department of the Army, Washington, D.C. 20310. Send protests to: William J. Gray, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, 219 South Dearborn Street, Room 1086, Chicago, Ill. 60604.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.71-8198 Filed 6-10-71;8:50 am]

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PART II

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

■

MILK IN CHICAGO REGIONAL AND CERTAIN OTHER MARKETING AREAS

Notice of Recommended Decision and Opportunity to File Written Exceptions

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Parts 1030, 1032, 1046, 1049, 1050, 1062, 1099]

[Dockets No. AO-361-A3, etc.]

MILK IN CHICAGO REGIONAL AND CERTAIN OTHER MARKETING AREAS

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	Docket No.
1030	Chicago Regional	AO-361-A3.
1032	Southern Illinois	AO-313-A20.
1046	Louisville-Lexington-Evansville.	AO-123-A37.
1049	Indiana	AO-319-A16.
1050	Central Illinois	AO-355-A9.
1062	St. Louis-Ozarks	AO-10-A42.
1099	Paducah, Ky	AO-183-A24.

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the aforesaid marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by the 20th day after publication of this decision in the FEDERAL REGISTER. Seven copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

PRELIMINARY STATEMENT

The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreements and to the orders as amended, were formulated, was conducted at Clayton, Mo., on July 14–22, 1970, pursuant to notice thereof which was issued June 26, 1970 (35 F.R. 10692).

The material issues on the record of the hearing relate to:

1. Application of a uniform milk classification plant in the seven markets;
2. Revision of the present Class I classification;
3. Classification and pricing of milk not needed for Class I use;
4. Miscellaneous classification and accounting changes:
   (a) Other source milk definition;
   (b) Accounting for nonfat milk solids added to milk and milk products;
   (c) Classification of milk transferred or diverted to other plants;
   (d) Classification and end-of-month inventories;
   (e) Shrinkage allowances;
   (f) Allocation of receipts to utilization;
   (g) Obligations relative to other source milk; and
   (h) Reports;
5. Changing the butterfat differentials; and
6. Advance announcement of prices for surplus milk.

General setting of the hearing. Prior to the hearing, the National Milk Producers Federation, an organization of cooperative associations of dairy farmers and federations of such cooperative associations, undertook the development of a uniform milk classification plan for use under Federal milk orders. Guidelines were formulated for use by member organizations in the drafting of specific classification proposals for consideration at public hearings.

Using these guidelines as a basis for their proposals, Associated Milk Producers, Inc., Dairymen, Inc., Mid-America Dairymen, Inc., and Pure Milk Products Cooperative petitioned the Department for a hearing on various proposals relating to the classification and pricing of milk in the seven subject markets. These four cooperative associations, which will be referred to in this decision as the "principal" cooperatives, collectively represent a substantial number of the producers associated with each of these markets.

The main thrust of the cooperatives' proposals was the proposed use of an identical classification plan under each of the seven orders. As proposed, the new plan would have three classes of utilization rather than the two classes now provided in each order. The present Class II classification would be redesignated as Class III and a new Class II classification, which would include various milk products now in Class I and Class II, would be established.

Corollary proposals by the principal cooperatives would provide that the Class III price under each order be the Minnesota-Wisconsin manufacturing milk price for the month. They proposed that the new Class II price under each order be the Minnesota-Wisconsin price plus 10 cents. They proposed also that a single handler butterfat differential apply to all three classes. This differential, which would be identical among the seven orders, would be based on the Chicago butter price times a factor of 0.115.

These proposals in general were endorsed at the hearing by the Association of Operating Cooperatives on behalf of six Wisconsin-based producer groups. These cooperatives proposed, however, that the price to be applicable to milk used in butter and nonfat dry milk be the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price. Another cooperative association, Land O'Lakes, Inc., proposed that the lower of the Minnesota-Wisconsin price or the product formula price apply to all Class III uses of milk. Its butter-nonfat dry milk formula price would be lower relative to the formula price proposed by the Association of Operating Cooperatives.

A uniform classification plan for the seven orders was advocated also by the Milk Industry Foundation and the International Association of Ice Cream Manufacturers, national trade associations of fluid milk and ice cream processors whose members operate in each of the seven subject markets. Instead of taking a position on whether there should be two or three use classes, these groups offered alternative proposals on the classification of various milk products under either type of classification plan. Individual handlers also made proposals concerning specific aspects of the classification scheme.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Application of a uniform milk classification plan in the seven markets.* Each of the seven orders under consideration should provide for the same basic classification plan. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. Likewise, the same basic procedure would be used under each order for classifying milk transferred or diverted from cool plants to other plants, and for allocating a handler's receipts to his utilization to determine the classification of his producer milk. Also, each order would use the same butterfat differential, which would be identical for all classes, and the same Class II and Class III price formulas.

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. When each of the seven subject orders was promulgated, the classification plan adopted reflected the marketing conditions and practices prevailing at the time in the local area concerned. Because conditions were seldom alike from market to market, the classification plans often varied from one order to another. As long as the markets remained relatively isolated from each other, marketing problems resulting from the differences in the various classification plans were minimal.

In recent years the "local" character of these markets has been disappearing. Intermarket movements of milk have become commonplace as handlers and producers alike seek to find additional outlets for milk. Such milk movements have been encouraged or facilitated by such developments as inspection reciprocity between health jurisdictions, improved highway networks and transportation equipment, conversion from can handling to farm bulk tanks, new processing and packaging techniques, and concentration of processing and

packaging operations in large, specialized facilities.

Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these products is relatively limited, it is probably the distribution of these products more than any others that has precipitated such general interest within the industry for uniform classification provisions among Federal orders.

Several cases cited on the record serve to illustrate the widespread movements of packaged specialty products. At the time of the hearing a handler regulated under the Paducah order was distributing half and half or whipping cream in 20 federally regulated marketing areas, including six of the markets involved in this hearing. Similarly, a handler under the Louisville-Lexington-Evansville order was selling half and half, yogurt or sour cream in 12 Federal order markets. A processor with plants in New York and Ohio was selling yogurt in nearly every State east of the Mississippi River, which includes most of the markets involved in this proceeding.

Although the seven orders have been revised from time to time to reflect the closer intermarket relationships, the classification plans of these orders continue to differ. The differences relate not only to the products included in each respective class, but also to the attendant class prices and butterfat differentials, the rules for classifying milk moved from one plant to another, the procedure for allocating a handler's receipts to his utilization, the method of classifying end-of-month inventories, and the manner of classifying shrinkage.

Such differences in the classification and pricing of milk are often disruptive to the competitive relationships of handlers and to the marketing of producer milk. Many of these differences, though, have little, if any, foundation under today's marketing conditions. It is thus concluded that a generally uniform classification and pricing plan should be incorporated in each of the seven orders under consideration.

It should be noted that the amendments to each of the seven orders that are attached to this decision do not reflect the proposed amendments to such orders that were set forth in the Assistant Secretary's decision on "General Provisions" which was issued on April 15, 1971 (36 F.R. 7514), of which official notice is taken. Correlation of the General Provisions amendments with those adopted herein would be necessary at a later stage in this proceeding.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the seven subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, eggnog, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted, likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk or skim milk in plain or sweetened form, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in the seven orders as a "fluid milk product."[1]

Class I milk should include also packaged fluid milk products that are in a plant's inventory at the end of the month. In addition, any skim milk and butterfat not specifically accounted for in Class II or Class III, except that shrinkage permitted a Class III classification, should be classified as Class I milk.

Except for sterilized products, most of the products herein included in Class I are presently included in the Class I classification under each of the seven orders. Only the Chicago Regional order, however, now includes any milk shake mixes in Class I. None of the orders includes eggnog in Class I. The Paducah order is the only one of the seven orders that includes sterilized fluid milk products (other than cream items) in Class I.

The adopted Class I classification would not include cream products or mixtures of cream and milk or skim milk (such as half and half) containing 9 percent or more butterfat. Sweet cream (except that in frozen, concentrated, aerated or sterilized form) and half and half are presently Class I products under the seven orders. Grade A sour cream is a Class I product under all but the Indiana order, while Grade A sour cream mixtures are Class I items under all but the Indiana and Paducah orders. Also, non-Grade A sour cream is presently a Class I product under the Paducah and Louisville-Lexington-Evansville orders.

Under the adopted changes, yogurt would not be a Class I product. A Class I classification for yogurt, which is now in the surplus class under these orders, was proposed by the principal cooperatives.

The proposals concerning the Class I classification of milk related primarily to the use under all orders of a uniform fluid milk product definition based on product composition, and to the appropriate classification of milk shake and ice milk mixes, eggnog, sterilized fluid milk products, cream, yogurt, fluid milk products to which nonfat milk solids have been added and ending inventory. The classification of cream and yogurt is discussed under Issue 3 which deals with the classification and pricing of milk not needed for Class I use. The method of accounting for nonfat milk solids added to fluid milk products is discussed under Issue 4(b). The classification of ending inventory is dealt with under Issue 4(d). The remaining Class I issues are dealt with at this point.

Milk shake and ice milk mixes containing less than 20 percent total solids should be included in Class I. Such mixes containing a greater percentage of solids should be Class III products.

The principal cooperatives proposed that milk shake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milk shake mixes be in Class II. The national organizations of fluid milk and ice cream processors, on the other hand, asked that all milk shake mixes be included in the lowest classification.

Milk shake and ice milk mixes are being marketed generally through two channels. Limited quantities of such mixes are processed for home consumption, with such mixes being distributed to consumers through food stores and on home delivery routes. The major outlet for milk shake and ice milk mixes, though, is the so-called "soft-serve" trade. Mixes processed by regulated handlers for this use are sold to commercial establishments where the product is run through a special freezer and dispensed to the public in a semisoft form.

Milk shake and ice milk mixes are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. Although such shake mixes are intended to be consumed in a semisoft form, or even in a very thick fluid form, they are being marketed for essentially the same use as the traditional frozen desserts. This is the case whether such mixes are sold through the "soft-serve" trade or for home use. With minor exception, as noted below, milk used in milk shake and ice milk mixes thus should be classified in the same class as milk used in the traditional frozen desserts. As discussed later in this decision, the classifi-

[1] The reader should keep in mind that the orders do not classify products per se but rather the skim milk and butterfat disposed of in the form of a particular product or used to produce a particular product. To simplify the presentation of the findings and conclusions, however, reference is made in this decision to Class I products, Class II products and Class III products, or to certain products included in a particular class.

cation plan adopted herein includes frozen desserts in Class III.

It is possible that a product very similar in composition and form to chocolate milk could be marketed under the label of a milk shake mix for the purpose of having a lower classification apply to the product. Since such a product actually would have the same general form and purpose as other fluid milk products now classified as Class I under these orders, it should be included in the Class I classification. It is necessary, though, to provide some means of distinguishing between such a product and the general category of milk shake mixes that are being sold in competition with frozen desserts. For this purpose, the total solids content of the product should be used. A standard of 20 percent or more total solids should encompass those milk shake and ice milk mixes intended for use as a type of frozen dessert. Mixes with less solids are similar in composition to chocolate milk and other flavored fluid milk products and should be a Class I product.

The principal cooperatives proposed that eggnog, which is presently a Class II product under each order, be included in the new intermediate price class. Although recognizing that eggnog is a beverage that competes with presently defined fluid milk products, the cooperatives contended that eggnog should not be a Class I product because of its relatively high butterfat content and its highly seasonal demand. In addition to generally supporting the cooperatives' position, handlers urged that eggnog flavored fluid milk products be included in the same class as eggnog since eggnog and eggnog flavored products are competing products.

Including eggnog in Class I recognizes that this product has essentially the same marketing characteristics that other Class I products being marketed for beverage use have. Eggnog is prepared for use as a beverage. Regulated handlers processing eggnog distribute this product in the same type of consumer packages and in the same trade channels as in the case of other Class I beverages, including eggnog flavored fluid milk products. Thus, the classification of milk used in eggnog should be the same as the Class I classification applicable to other beverage products.

No exception to the Class I classification of milk should be made for fluid milk products in sterilized form. This was proposed by the principal cooperatives and the national organizations of fluid milk and ice cream processors. A group of handlers in the Indiana and Louisville-Lexington-Evansville markets proposed, however, that all sterilized products in rigid metal or glass containers be excluded from Class I.

The sterilization of fluid milk products does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products which they resemble, such sterilized products are disposed of in fluid form for consumption as a beverage. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same consumers.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are being marketed for the same beverage use. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products, which are being sold in sterilized form, are now excluded from the Class I classification and, as proposed by cooperatives and handlers, such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Fluid milk products should not be defined only on the basis of product composition, as was proposed by the principal cooperatives. Contending that the present fluid milk product definition in each order does not clearly identify those products that are intended to be classified as Class I products, the cooperatives proposed that a fluid milk product be defined solely in terms of moisture and milk solids content of the product. As proposed by producers, a "fluid milk product" would be any product containing at least 6.5 percent but less than 27 percent nonfat milk solids, less than 9 percent moisture, all computed on the basis of weight.

In support of their proposal, proponents indicated that such a definition would result in a more uniform application among the seven orders of the classification provisions. They contended that the listing of products under the current definitions does not accommodate the proper classification of new products or variations of the listed products when they are introduced on the market. Proponents pointed out that as market administrators have had to make order interpretations in response to this situation variations in interpretation and classification have resulted among the markets. Adoption of the proposed definition, it was contended, would eliminate such problems. Any product meeting the specified composition limits for a fluid milk product would be a fluid milk product regardless of the name under which the product might be marketed.

Proponents recognized, however, that their proposed fluid milk product definition would include some products not intended by them to be in Class I, and, at the same time, would exclude certain products that they wanted in this classification. To overcome this problem, proponents stated that certain products should be listed by name, either as inclusions or exclusions, to assure that the fluid milk product definition would include those products, and only those products, warranting a Class I classification.

Handlers generally took the position that the fluid milk product definition should continue to list by name those products intended to be included in Class I. They believed that this procedure would result in less confusion within the industry concerning the application of this definition.

The primary concern with any fluid milk product definition is that it clearly define the products or types of products that are intended to be included in the definition. The fluid milk product definition adopted herein, which incorporates both the listing of specified products and the use of composition percentages, should meet this requirement. Incorporation of this definition in each of the seven orders will provide a uniform basis for identifying those products that are to be fluid milk products.

For simplicity, the fluid milk product definition should continue to list the generic names of those products commonly sold for consumption as beverages. The products listed in the adopted definition encompass most of the forms in which milk for fluid uses is sold. Anyone referring to this fluid milk product definition may easily ascertain in the case of most milk products whether or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any product not specified as a Class II or Class III

product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids. These standards are chosen so as to conform as closely as possible to the water, solids and butterfat content of those products specifically listed in the fluid milk product definition that are commonly sold for use as beverages.

The 9 percent butterfat standard coincides with the butterfat percentage adopted herein to delineate the mixtures of cream and milk or skim milk to be included in Class II. The total solids and water percentages represent a reasonable measure of the fluidity of those products that normally are consumed as beverages. The 6.5 percent nonfat milk solids standard is used to exclude from the fluid milk product definition those products which contain some milk solids but which are not closely identified with the dairy industry, such as chocolate flavored drinks in "pop" bottles. In the case of the nonfat milk solids standard, it is intended that nonfat milk solids include such milk solids as lactose and the nonfat solids in dried whey.

3. *Classification and pricing of milk not needed for Class I use.* The present Class II classification of milk under each of the seven orders should be redesignated as Class III, and a new Class II classification that would include certain products now in Class I and Class II should be established. The new Class II price should be the basic formula price (Minnesota-Wisconsin manufacturing milk price) for the month plus 20 cents. The price under each of the orders for the redesignated Class III classification should be the basic formula price for the month.

The new Class II classification should include skim milk and butterfat used to produce cottage cheese, creamed or partially creamed cottage cheese, yogurt, sour cream and any sour mixture of cream and milk or skim milk containing 9 percent or more butterfat. Included also in this classification should be skim milk and butterfat disposed of in the form of a "fluid cream product", i.e., cream or any mixture of cream and milk or skim milk containing 9 percent or more butterfat. Packaged fluid cream products that are in inventory at the end of the month likewise should be in Class II. In addition, any product containing 6 percent or more nonmilk fat (or oil) that resembles any product already named in this paragraph should be in this class.

The redesignated Class III classification should include skim milk and butterfat used to produce cheese (other than cottage cheese and creamed or partially creamed cottage cheese), butter, plastic cream, frozen cream, anhydrous milk fat, any milk product in dry form, milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen dessert, frozen dessert mixes, custards, puddings, pancake mixes, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, any concentrated milk product in bulk, fluid form, and any product containing 6 percent or more nonmilk fat (other than a Class II product). Any other product not otherwise designated as a Class I or Class II product also should be included in Class III.

Other Class III uses should include bulk fluid milk products and bulk fluid cream products in inventory at the end of the month, and that portion of modified (by the addition of nonfat milk solids) fluid milk products not included in the Class I classification. Also, a Class III classification should apply to bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and at which there is no disposition of fluid milk products other than those received in consumer-type packages. In addition, Class III should include any fluid milk product or product listed in the Class II classification that is dumped or disposed of for animal feed. Also, shrinkage within certain limits should be classified as Class III milk.

The Class II classifications under the present orders are essentially alike. Class II uses include skim milk and butterfat used to produce any product other than a fluid milk product, and skim milk and butterfat in fluid milk products that are disposed of to commercial food processing establishments, dumped, disposed of for animal feed, or in inventory at the end of the month. Under the Southern Illinois and Central Illinois orders, such classification of inventory is limited to fluid milk products in bulk form. The orders also include shrinkage (within certain limits) in this classification and that portion of the skim milk equivalent of nonfat milk solids added to fluid milk products that is not classified as Class I milk.

Under five of the seven orders, the present Class II price is the Minnesota-Wisconsin manufacturing milk price. The Indiana order establishes the Class II price at the lower of the Minnesota-Wisconsin price of a butter-nonfat dry milk formula price. Under the Louisville-Lexington-Evansville order, the Class II price for the months of September through March is the Minnesota-Wisconsin price. For the remaining months, it is the Minnesota-Wisconsin price less 10 cents.

The principal cooperatives proposed that the present Class II classification under each order be redesignated as Class III and that many of the uses now included in the surplus class be included in a new, higher-priced Class II classification. These uses would include all soft and hard cheeses except cheddar cheese, frozen desserts, milk shake mixes sold to commercial establishments for further processing, eggnog, cream in plastic, frozen, aerated or sterilized form, anhydrous milkfat, sour cream, sour mixtures (dips), evaporated or condensed milk or skim milk, dietary and infant formulas, custards, puddings, pancake mixes, any product with 6 percent or more nonmilk fat (or oil), and fluid milk products disposed of to commercial food processors. In addition, the cooperatives proposed that the new Class II also include all cream products now in Class I, i.e., cream, mixtures of cream and milk or skim milk containing 9 percent or more butterfat, sour cream and sour mixtures. Under their proposal, producer milk allocated to these uses would be priced under each order at the Minnesota-Wisconsin price plus 10 cents.

Of the present Class II uses, only cheddar cheese, butter, dried products, dumpage, animal feed, shrinkage, ending inventory, and the non-Class I portion of modified fluid milk products would remain in the lowest class under the cooperatives' proposal. These groups asked that milk in such uses be priced under each order at the Minnesota-Wisconsin price.

In support of their proposed classification plan, proponents contended that the present differences in the demand for certain groups of milk products support three different price levels, or classes of utilization, for milk. They stated that the demands for cheddar cheese, butter and nonfat dry milk are quite sensitive to changes in product prices, thus warranting the classification of milk used in such products in the lowest priced class. Proponents contended, on the other hand, that other products presently in Class II should be included in an intermediate-priced class since the demands for such products are less sensitive to price changes.

The principal cooperatives testified also that handlers generally demand a regular supply of producer milk for many of their proposed Class II uses and that alternative supplies of milk or milk products for such uses cannot be obtained for less than the Class II price they propose. Moreover, they claimed that a higher price for some of the surplus milk uses would result in products other than fluid milk products bearing some of the burden of attracting a total supply of milk for the market.

The principal cooperatives contended further that a lower price should apply to milk used in cream and cream mixtures now in Class I. They pointed out that the present classification has placed these products in a poor competitive position in the market relative to nondairy substitutes. Indicating that the industry already may have waited too long to shift cream products to a lower price category, proponents urged a lower price for milk used in such products with the hope that the declining demand for cream could be halted.

The classification plan proposed by the principal cooperatives was generally endorsed by other cooperative associations operating in or near the seven markets. One group of cooperatives urged, however, that all "American" cheeses, rather than just cheddar cheese, be included in Class III. "American" cheeses are com-

monly considered to include cheddar cheese, colby cheese, granular or stirred curd cheese, and washed curd cheese. Another cooperative proposed that cheddar cheese and colby cheese be in separate classes, but with little difference in the prices established for such classes. Three producer groups also proposed that yogurt be included in the proposed new Class II, rather than in Class I as proposed by the principal cooperatives.

As noted earlier, the national trade associations of fluid milk and ice cream processors did not take a position at the hearing on whether there should be two or three classes of utilization. The two handler groups stated that if a three-class system is adopted certain products proposed by the principal cooperatives to be in the new Class II should be included, instead, in Class III. They urged that the lowest classification apply to frozen desserts (including those with yogurt flavoring), puddings, sour cream, sour mixtures, and dispositions to commercial food processors.

Other handler groups and individual handlers likewise opposed a higher price on milk used in certain manufactured products. Particular attention was focused on milk and condensed products sold to food processors and on evaporated milk. Representatives of the "soft-serve" frozen dessert industry urged that milk shake mixes for commercial use be in the lowest class. Some handlers advocated that the only classification change be that of classifying cream products in a lower class. They proposed that any action to maintain producer returns at present levels because of a change in the classification of cream be limited to increasing the Class I price.

Producer milk not needed for Class I use must be priced at a level that insures the orderly disposition of the milk. Normally, excess milk supplies must be channeled into manufacturing uses. This requires that such milk be priced competitively with manufacturing grade milk if the market is to be cleared of its reserve supplies.

Within this framework, however, the price for reserve milk should be set at the highest possible level. The prices for all classes of milk must result in a level of returns to producers, as reflected through the blend price, that attracts an adequate supply of quality milk for the Class I market. To the extent that the price for reserve milk in a market contributes less value than possible to the total producer returns required to attract the necessary milk supplies, the Class I price must be higher than otherwise necessary to make up this difference. Thus, it is in the public interest that the price for reserve milk supplies be maintained at the highest practicable level.

Several Wisconsin and Minnesota cooperative associations engaged in the manufacture of butter and nonfat dry milk proposed that all seven of the orders under consideration provide for the use of a butter-nonfat dry milk formula for pricing surplus milk. Under the proposal of the Wisconsin cooperatives, the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price would apply to producer milk processed into butter and nonfat dry milk. Other proposed Class III uses would be priced at the Minnesota-Wisconsin price. A cooperative based in Minnesota proposed that the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price apply to all Class III uses.

Different formula prices were proposed, however, by these producer groups. The Wisconsin cooperatives urged the adoption of essentially the same butter-nonfat dry milk formula contained in the Indiana order. The formula proposed by the Minnesota cooperative, on the other hand, would yield a price 12 cents per hundredweight lower than the Indiana formula because of the greater processing costs for butter and nonfat dry milk, or "make allowance," built into the formula. In 1969, the proposed pricing would have returned 17 to 29 cents (depending on the formula used) per hundredweight less than the use of the Minnesota-Wisconsin price alone.

The basic contention of these cooperatives was that plants processing butter and nonfat dry milk from a Class I market's surplus milk cannot afford to pay the Minnesota-Wisconsin price for milk so used. They indicated that the difference between the market value for these products and the Minnesota-Wisconsin price is considerably less than the amount required to cover the operating costs of such plants. Such plants associated with a fluid market, proponents claimed, have particularly high costs of operation because of the underutilized plant capacity that results when there is a heavy demand for milk at bottling plants. The cooperatives maintained that the class price for milk used in butter and nonfat dry milk must assure processors of such products a minimum processing allowance.

As pointed out, producer milk not needed for Class I use should not be priced lower than is necessary for the orderly disposition of the milk. Presently, handlers and cooperative associations in the seven markets are generally disposing of milk not needed for Class I use at prices that are not less than the Minnesota-Wisconsin price adopted herein as the minimum price for surplus milk. The Minnesota-Wisconsin price is now the lowest price for surplus milk under the St. Louis-Ozarks, Paducah, Southern Illinois, Central Illinois, and Chicago Regional orders. There is no indication that handlers or cooperatives in these five markets are experiencing difficulty in disposing of excess milk supplies at this price level. This includes the Chicago Regional market where nearly one-half of the 7.115 billion pounds of producer milk in 1969 was disposed of in Class II uses.

In the Louisville-Lexington-Evansville market where the Minnesota-Wisconsin price also applies to surplus milk except in certain months, reserve supplies likewise are being disposed of at not less than the Minnesota-Wisconsin price. During the period of January 1969 through June 1970, 176 million pounds of the market's 424 million pounds of Class II producer milk were disposed of by a cooperative to nonpool plants for manufacturing at not less than this price level. This included sales in those months (April–August) when the Class II price under the Louisville-Lexington-Evansville order is the Minnesota-Wisconsin price less 10 cents.

Although the Indiana order now provides for the use of a butter-nonfat dry milk formula price in combination with the Minnesota-Wisconsin price, there is no indication that handlers or cooperatives in this market are disposing of their surplus milk under conditions uniquely different from those faced by handlers in the other nearby markets under consideration. Much of the producer milk associated with the Indiana market is, in fact, produced in the State of Wisconsin.[2] Such milk not needed for Class I use by Indiana handlers is either transferred from Indiana pool plants back to manufacturing plants in the Wisconsin production area or diverted directly to such plants from nearby farms. Processors in Wisconsin buying milk for manufacturing use are generally paying not less than the Minnesota-Wisconsin price for such milk. Moreover, handlers in the Indiana market are not limited to butter and nonfat dry milk uses in disposing of milk not needed for Class I purposes. Of the total quantity of milk processed in this market into manufactured products in 1969, only one-fifth was used in butter and nonfat dry milk.

Under these circumstances, it must be concluded that conditions in each of the seven markets support the use of the Minnesota-Wisconsin price as the minimum price for surplus milk.

Certain uses of producer milk not needed for Class I purposes should be priced at a level 20 cents per hundredweight higher than the Minnesota-Wisconsin price. These uses, which are included in a new Class II classification, were set forth at the beginning of this discussion on pricing surplus milk.

Of the products adopted herein for inclusion in the new Class II, the one of principal importance is cottage cheese. In six of the seven markets under consideration, cottage cheese production in 1969 would have represented between 74 and 92 percent of the milk used that year in the proposed Class II products. As noted later, cottage cheese data for one market are not available. For this discussion, the term "cottage cheese" encompasses cottage cheese (i.e., the dry curd), creamed cottage cheese, and partially creamed cottage cheese.

In 1969, handlers in the Chicago Regional market used 343 million pounds of skim milk and butterfat in the production of cottage cheese. This was equal

[2] Official notice is taken of the publication issued February 1971 by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture (C&MS–50 (1969)), titled "Sources of Milk for Federal Order Markets." This publication indicates that in December 1969 over 26 percent of the producer milk on the Indiana market was produced in Wisconsin.

to 10 percent of the total producer milk in the market that was used in Class II that year. Corresponding figures for the other markets are: Louisville-Lexington-Evansville—72 million pounds, 27 percent; Indiana—127 million pounds, 29 percent; Southern Illinois—70 million pounds, 23 percent; Central Illinois—35 million pounds, 33 percent; and St. Louis-Ozarks—60 million pounds, 14 percent. Cottage cheese production data for the Paducah market, where about 21 million pounds of producer milk were used in Class II in 1969, were not placed in the record since they would have revealed confidential information.

In these markets cottage cheese has been considered for pricing purposes merely as one of various uses for producer milk not needed for the Class I market. There are, however, several distinguishing characteristics of cottage cheese production that support a higher price for milk in this use than for milk channeled into the residual surplus uses. There is little, if any, relationship between the quantity of cottage cheese made and the amount of reserve milk in the market, as is the case with respect to butter and nonfat dry milk, for instance. Regulated handlers, in conjunction with their fluid milk sales, generally move cottage cheese through the same retail and wholesale outlets. In addition to supplying the Class I requirements of handlers, producers are expected to make available sufficient supplies of fresh, high quality milk for the production of cottage cheese.[3] This is not the case with respect to butter, nonfat dry milk, hard cheese or ice cream.

Although some cottage cheese is made in specialized country plants, as the economics of location would suggest, cottage cheese production is commonly an integral part of the processing operations at fluid milk distributing plants. Such plants are usually located in or near the populated centers of the market. This entails a greater hauling expense for producers than when the reserve milk is processed in the production area, as is generally the case with respect to butter, nonfat dry milk and hard cheese manufacture. Also, cottage cheese, unlike most other manufactured products, has a more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers require that adequate supplies of producer milk be made available at their distributing plants at all times for cottage cheese use.

The adopted Class II price (the Minnesota-Wisconsin price plus 20 cents) is a reflection of at least the minimum additional value which producer milk used in cottage cheese has to regulated handlers. The local producer supplies are the only dependable supplies of quality fluid milk within the normal milksheds of the seven subject markets for cottage cheese production. In these markets, any nearby milk of the necessary quality is attached to other regulated fluid milk markets and would be available to handlers only sporadically. With the handling and transportation charges, the cost of this milk to handlers would be at least as high as the adopted Class II price.

Handlers choosing not to use producer milk in making cottage cheese can use reconstituted nonfat dry milk for this purpose. The price per pound of spray process nonfat dry milk in the Chicago area in 1969 averaged 22.99 cents. Assuming that it takes 8.5 pounds of nonfat dry milk to make 100 pounds of fluid skim milk, the cost of nonfat dry milk would have been about $1.95 per hundredweight of skim milk equivalent.

Under the pricing adopted herein, the Class II price in 1969 would have averaged $4.62 and the handler butterfat differential would have averaged 7.8 cents. This would have resulted in an average skim milk cost under the order of $1.96 per hundredweight for producer milk used in cottage cheese. Thus, the ingredient cost for handlers using nonfat dry milk in the production of cottage cheese would have been nearly the same as when using producer milk.

Rather than produce his own cottage cheese, a handler might choose to purchase the finished product from some other Federal order market where a lower price applies to cottage cheese milk. There is no indication, however, that under the adopted pricing such a handler could materially enhance his competitive position relative to handlers using producer milk. The cost of transporting cottage cheese, a relatively bulky and perishable item, from distant areas to outlets in the seven markets would generally negate any apparent price advantage attributable to differences in order prices applicable to cottage cheese milk.

Milk used in yogurt should be priced at the Class II price level rather than at the Class I level as the principal cooperatives proposed. Yogurt is a soft, nonfluid, "spoonable" product. It is not a beverage as are other products defined herein as fluid milk products.

Yogurt has some of the marketing characteristics of cottage cheese, although, unlike cottage cheese, very limited quantities of yogurt are made in the seven markets under consideration. To the extent of this limited production, however, processors generally use regular supplies of inspected milk. Although yogurt can be made from cream and nonfat dry milk, processors indicated that milk is preferred. Since yogurt has a relatively limited shelf life, it is made on a continuing basis, thus requiring a regular supply of milk at all times. As in the case of cottage cheese production, these conditions warrant that producer milk used in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

The new Class II should not include yogurt flavored frozen desserts. Frozen desserts containing milk cultured with the lactic acid producing bacteria used in yogurt are being marketed in such forms as sherbet, mix for the "soft-serve" trade, and chocolate covered frozen yogurt on a stick. These products compete with other frozen desserts and thus should be classified in the same Class III classification adopted herein for such other frozen desserts.

Classifying the several types of cream items, some of which are now in Class I while others are in Class II, in the new Class II will accommodate proponents' desire for a lower price for milk used in cream products and at the same time price at the same level a variety of products that often compete with each other. Half and half, whether sterilized or unsterilized, and light cream are used principally by consumers in coffee. Aerated cream and sterilized and unsterilized whipping cream are used as dessert toppings. Both graded and ungraded sour cream and sour mixtures are used by consumers for the same purpose. The same classification for these cream products will result in uniform pricing to handlers for milk used in products competing in the same trade channels for the same users.

Although the present Class I cream products sold in these markets must be made from inspected milk, which is delivered regularly by producers to distributing plants, there was general agreement by producers that milk sold in the form of such products should no longer be subject to the Class I price. Relative to the total Class I sales of producer milk in these markets, cream products represent approximately 2 percent of the present Class I market. Thus, this classification change will have relatively little effect on the total returns to producers.

In connection with the reclassification of cream products, it is desirable to define a new term—"fluid cream product". "Fluid cream product" would mean cream or a mixture of cream and milk or skim milk containing 9 percent or more butterfat. For purposes of the order, this definition is not intended to include frozen cream, plastic cream, or anhydrous milk fat.

With the reclassification of cream, movements of cream to or from a plant no longer should be considered in determining if a plant meets the pooling requirements of the order. To accommodate this, certain changes are necessary in those pool plant definitions that make specific reference to the movement of cream.

The orders now provide that any "filled" product containing 6 percent or more nonmilk fat (or oil) shall be a Class II product. With the establishment of a new intermediate price class, it is appropriate that any such filled products that resemble the proposed Class II products made with milk fat likewise be in-

[3] The reliance on producers for milk for cottage cheese production is not unique to the seven markets under consideration. As noted in the November 1970 issue of Federal Milk Order Market Statistics, 80 percent of the creamed cottage cheese made in the United States in 1969 was processed from milk regulated under Federal milk orders. Official notice is taken of this publication which was issued by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C.

cluded in this new class. The substitution of nonmilk fat for milk fat in a product merely changes the composition of the product and not its use. For competitive reasons, a comparable classification of products made with milk fat and their filled counterparts is necessary.

Certain other milk uses now in the lowest price class should not be included in the new Class II as cooperatives proposed. As previously noted, several cooperatives held that various hard cheeses should be placed in a class apart from cheddar cheese. All hard cheeses, however, and not just cheddar cheese, or cheddar cheese and colby cheese, or all "American" cheeses, as proposed by various cooperatives, should be included in the redesignated Class III classification.

The record does not provide any breakdown on the quantity of milk being used in the seven markets in the individual types of hard cheese. Data for the States of Wisconsin, Indiana, Illinois, Missouri, and Kentucky, as well as national data, would suggest, though, a ratio of 3 pounds of milk used in American cheese (cheddar, colby, granular, or stirred curd, and washed curd) to every 1 pound of milk used in all other hard cheeses. In 1969, an estimated 1.5 billion pounds of milk were used in all hard cheeses in the seven markets combined.

Proponents provided no data that would establish that producer milk used in hard cheeses other than cheddar cheese is of significantly greater value to regulated handlers than milk used in cheddar cheese. Although data for the seven local markets are not available, prices paid to dairy farmers by plants processing American cheese and plants processing other "miscellaneous" types of cheese are compiled on a national basis by the Department's Statistical Reporting Service. In 1969, pay prices at plants processing "miscellaneous" cheese averaged about 8 cents per hundredweight higher than the prices paid at plants processing American cheese.[4] Thus, it must be concluded that under the pricing herein adopted for Class II and Class III milk there is no basis for differentiating for pricing purposes between milk going into various types of hard cheese.

With respect to several other present Class II products which cooperatives proposed be reclassified upward, the form in which milk is generally used by manufacturers is a major consideration in the classification of milk used in such products. Frozen desserts (including commercial milkshake and ice milk mixes), dietary and infant formulas, custards, puddings, pancake mixes, candy, soups, and other food products are made in varying degrees from concentrated forms of milk. Condensed milk or skim milk, nonfat dry milk, dry buttermilk, dry whey, butter, cream, plastic cream, or frozen cream, for example, may be used, often interchangeably or in combination, in the processing of such products. Because of processing techniques and product formulations, milk in its whole, fluid form does not lend itself to the processing of these various manufactured products. Thus, a milk plant operator or other food processor using producer milk in such products first would have to concentrate the milk before making the finished product.

When the cost of converting producer milk into a concentrated "intermediate" product is considered, such milk priced at 20 cents per hundredweight over the Minnesota-Wisconsin price would not be competitive with concentrated dairy products from other sources. Such concentrated products, which need not be made from inspected milk for many uses, are obtainable from unregulated plants where no more than the Minnesota-Wisconsin price has been paid for milk. In addition, handlers could use dried products made from producer milk priced under one of the seven subject orders. As under the cooperatives' proposal, milk used in dried products would be priced at the Minnesota-Wisconsin price.

Condensed milk or skim milk, plastic cream, frozen cream, and anhydrous milk fat are "intermediate" products that also should be included in the lowest classification. These products are normally used in making other products, primarily frozen desserts and food products such as candy. Under the classification adopted herein, frozen desserts and food products are Class III uses for milk. Accordingly, producer milk used in the several intermediate products likewise should be priced at the Class III level.

A Class III classification for producer milk used in evaporated milk will permit this use to remain as a competitive outlet for milk surplus to the needs of the Class I market. Evaporated milk made from milk regulated under these seven orders must compete in a national market with evaporated milk processed from other graded or ungraded milk that is often priced at no more than the Minnesota-Wisconsin price. Comparable pricing should prevail under these seven orders.

In proposing a uniform classification and pricing plan for the seven markets, the principal cooperatives emphasized that any new plan adopted should not result in less total returns to producers in the combined seven-market area. Handlers, on the other hand, stressed that their total cost for milk should not be increased.

The effect on producer returns cannot be controlling in deciding on the matter of classification here under consideration. Although the total value of producer milk under the seven orders combined would have remained virtually unchanged in 1969 under the adopted classification and pricing plan, this would not necessarily have been the case if a different group of markets had been involved. Providing for classification and pricing provisions that are generally uniform among various markets cannot necessarily encompass at the same time the maintenance of the same value of producer milk in each market.

With the differences that now exist in the seven orders in classification and pricing, resolution of these differences would be expected to have some effect on the value of producer milk. Had the revised classification and pricing plan adopted herein been in effect in 1969, the average blend price in the Indiana market would have been increased 7 cents per hundredweight, while in the Paducah market there would have been a decrease of 7 cents. With respect to the other areas, the average blend price would have been 1 cent lower for the Chicago Regional market, 1 cent higher for the Louisville-Lexington-Evansville and Southern Illinois markets, and 2 cents higher for the Central Illinois market. Only in the St. Louis-Ozarks market would there have been no change in producer returns as a result of the proposed classification and price changes.

4. *Miscellaneous classification and accounting changes.* The following findings and conclusions relate to certain miscellaneous classification proposals by handlers and producers and to some of the order changes that are necessary to implement the revised classification plan adopted herein for each of the seven subject orders.

(a) *Other source mik definition.* A common other source milk definition should be adopted for each order.

Because of the revised classification plan, certain changes in the present other source milk definition of each order are necessary. This definition would continue to serve, however, the present function of implementing the identification of various categories of receipts at a regulated plant.

Presently, fluid milk products (which include cream) from any source other than producers, cooperatives acting as a handler for farm bulk tank milk, pool plants, and plant inventory at the beginning of the month are considered as other source milk. Under the revised classification plan, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, however, it is desirable that fluid cream products, when in bulk form, continue to be treated in the same manner as fluid milk products for purposes of applying the other source milk definition.

Fluid cream products that are received at a pool plant from any source in consumer-type packages and disposed of, or held in inventory, in the same container in which received should not be considered as other source milk. Such packaged fluid cream products should be treated as "pass-through" products in the same manner as now provided for manufactured milk products, such as butter or creamed cottage cheese, that may be received at a pool plant and then disposed of from the plant without further processing. Receipts of packaged fluid cream products would be considered as other

[4] Official notice is taken of the release titled "Milk Prices Paid by Creameries and Cheese Plants" which was issued for July 1970 by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture, Chicago, Ill. For comparative purposes, the 1969 prices reported in this release were adjusted to a 3.5 percent butterfat basis by using the 1969 average Class II butterfat differential under the Chicago Regional order.

source milk, however, under circumstances where the receiving handler is unable to account for all disposition of such products or reprocesses such products.

The orders now provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant shall be considered as other source milk. It should be provided, however, that cottage cheese (i.e., the dry curd) which is received at a pool plant and to which cream is then added be treated instead as a pass-through item. Cottage cheese cannot be converted into any product other than creamed or partially creamed cottage cheese, which are Class II products under the adopted classification plan. Thus, receipts of cottage cheese should not be treated as other source milk that is subject to allocation to a handler's lowest utilization.

Other source milk should include any disappearance of any product (other than a fluid milk product or a bulk fluid cream product) that is in a form in which it may be converted into a Class I product and which is not otherwise accounted for under the order. Four of the seven orders now have such a provision concerning the unaccounted for disappearance of milk products. The other source milk definitions in the Chicago Regional, Paducah and Louisville-Lexington-Evansville orders do not specify such disappearance as other source milk.

It is necessary that a handler be required to account for all manufactured milk products, such as nonfat dry milk, that can be converted into Class I products. Otherwise, a handler with inadequate records could gain a competitive advantage over his competitors who properly account for all milk products received. Treating any unexplained disappearance of milk products as other source milk will assist in the uniform application of the regulatory plan to all handlers.

(b) *Accounting for nonfat milk solids added to milk and milk products.* No change should be made in the present method of classifying the skim milk equivalent of nonfat milk solids added to a fluid milk product.

Currently, each of the seven orders provides that a modified fluid milk product shall be classified as Class I in the amount of the weight of an equal volume of an unmodified product of the same nature and butterfat content. The remaining skim milk equivalent of the nonfat milk solids in such product is classified in Class II.

The principal cooperatives proposed that the amount of a modified fluid milk product that is classified as Class I be the actual weight of the modified product rather than the weight of a like unmodified product.

Proponents stated that when verification of the nonfat milk solids used to modify natural milk and skim milk involves laboratory tests of the modified product, the amount of modification is expressed as a percentage of the weight of the modified product. Where laboratory analysis is used to determine the total milk solids disposed of in modified products, proponents contended that administrative procedures could be simplified by using the actual product weight factor.

There was no showing of the extent to which laboratory analysis of modified products is used in verification by market administrators in these seven markets. Also, there was no claim that any saving in administrative cost would be possible under the procedure proposed by the cooperatives in those instances where the market administrator determines the amount of solids added to modified products by using production records rather than by laboratory tests of packaged products. Accordingly, it is not clear from this record that the proposed procedure would result in any net saving in administrative cost.

Proponents did not attempt to demonstrate any economic basis for making the slightly greater charge for nonfat milk solids used to modify fluid milk products which would result from their proposal. Their proposed procedure would increase slightly the quantity of a modified product priced in Class I. A gallon of modified skim milk containing 11 percent nonfat milk solids would be classified in Class I on an 8.7 pounds weight factor as compared to the present basis of an 8.63 pounds weight factor. The larger weight factor would add about one-tenth cent (ranging from 0.09 cent under the Chicago Regional order to 0.11 cent under the St. Louis-Ozarks order) to a handler's obligation under the order per gallon of such product sold.

The present method of classifying modified fluid milk products increases total Class I sales only to the extent of the volume of the unmodified product that the added nonfat milk solids replaces. In the absence of evidence that the present procedure is inappropriate, it should be continued. The present procedure is used under Federal orders generally and, therefore, carries out the objective of uniformity in this respect.

Handlers may add nonfat milk solids to several of the proposed Class II products, such as half and half and light cream. To simplify the accounting procedures, each order should provide that in these cases the entire weight of the skim milk equivalent of the solids added be classified in Class II. This procedure differs from that applicable to modified fluid milk products in that no part of the skim milk equivalent of the added solids would be classified in the lowest class. As described in more detail later, a handler will have the opportunity to have nonfat dry milk or condensed milk that is added to, or used to produce, a Class II product allocated directly to his Class II use. Thus, classification of the entire skim milk equivalent in Class II would not adversely affect the handler's pool obligation under this allocation procedure.

(c) *Classification of milk transferred or diverted to other plants.* Certain changes should be made in the provisions of each order that prescribe the classification of fluid milk products that are transferred or diverted from a pool plant to another plant. Several of the changes become necessary with the adoption of three classes of utilization in place of the present two classes. Other changes are appropriate for purposes of uniformity among orders and clarity in the classification of milk.

Under the adopted classification plan, fluid cream products (cream and mixtures of cream and milk or skim milk containing 9 percent or more butterfat) would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its final use. Thus, it is necessary that fluid cream products that are transferred in bulk form from a pool plant to another plant be classified in a manner similar to that now used in classifying transfers of bulk fluid milk products.

Each order now prescribes a procedure for classifying transfers of bulk fluid milk products from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant. To determine such classification, the nonpool plant's utilization must be assigned to its receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the proposed assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk.

Thus, any Class I route disposition of the nonpool plant in the marketing area of a Federal order, and any transfers of packaged fluid milk products from the nonpool plant to plants fully regulated under such order, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under such order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders. Next, any other Class I disposition of packaged fluid milk products from the nonpool plant would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first,

to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, second, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of bottling grade milk from dairy farmers and other unregulated nonpool plants.

Under the final assignment step, any Class III utilization, then Class II utilization, and then any remaining Class I utilization, at the nonpool plant would be assigned to any remaining unassigned receipts of fluid milk products and bulk fluid cream products at the nonpool plant from all Federal order plants.

In determining the classification of milk transferred or diverted from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

Each of the seven orders now provides that transfers of fluid milk products from a pool plant to a producer-handler shall be classified as Class I milk. The St. Louis-Ozarks order requires also that such transfers to a producer-handler under any other order likewise shall be Class I. This additional requirement should apply under each of the orders.

Under the Federal order program, producer-handlers, in their capacity as handlers, are exempt from the pricing and pooling provisions of the various orders. In consideration of this exemption, each order requires a Class I classification of all fluid milk products that are transferred from a pool plant to a producer-handler as defined under that particular order. Inasmuch as the producer-handler exemption under each order is predicated on essentially the same basis, a Class I classification of milk transferred from a pool plant regulated under one order to a producer-handler as defined under another order would be in keeping with the general basis for producer-handler exemption.

Bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

As in the case of all other fluid milk products, such transfers of cream are now classified as Class I milk. Such classification tends to assure that producers do not carry for producer-handlers the burden of all reserve supplies for their Class I market. With the removal of cream from the Class I classification, as adopted herein, a mandatory Class I classification of cream transfers to producer-handlers would not be necessary for this purpose.

In addition to the Class I classification of all fluid milk products transferred to a producer-handler, the Chicago Regional order provides for a similar classification of all fluid milk products transferred to an "exempt distributing plant." Also, a similar classification applies under the St. Louis-Ozarks order to all fluid milk products transferred to a plant operated by a "governmental agency." Under each of these two orders, the adopted method for classifying bulk fluid cream products transferred to a producer-handler should apply likewise to transfers of bulk fluid cream products to these two other types of plants.

The classification of milk transferred or diverted from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant should not be contingent upon any distance limitation. Presently, such mileage (or area) limitations apply under the Chicago Regional, Louisville-Lexington-Evansville and St. Louis-Ozarks orders. Until recently, similar limitations applied also under the Southern Illinois and Central Illinois orders. These limitations under the latter two orders were removed by amendatory actions (35 F.R. 12267, 18107) subsequent to the classification hearing on which this decision is based.

The Chicago Regional order provides that fluid milk products transferred in bulk form from a pool plant to a nonpool plant located outside the States of Wisconsin, Minnesota, Iowa, Illinois, Indiana, Michigan, or Ohio shall be classified as Class I milk to the extent of the nonpool plant's Class I disposition, regardless of where such disposition is made. Transfers to nonpool plants located in these States, on the other hand, are classified on a basis that assigns the nonpool plant's Class I utilization to its various sources of receipts in accordance with where the plant disposes of its Class I milk.

Under the Louisville-Lexington-Evansville order, milk transferred or diverted to a nonpool plant located 250 miles or more from the nearer of Louisville, Kentucky, or Evansville, Indiana, is classified as Class I milk regardless of its use at the nonpool plant. Recognition is given under the classification provisions of such order to the nonpool plant's actual utilization in the case of milk transferred to less distant plants.

Classification provisions similar to those for the Louisville-Lexington-Evansville order are contained in the St. Louis-Ozarks order. In this case, the automatic Class I classification applies on transfers and diversions of milk to plants located more than 350 miles from St. Louis.

The conditions prompting the initial adoption of these mileage limitations no longer prevail, thereby making their continued use inappropriate. The use of mileage limitations evolved in large part from the relatively high transportation cost of milk relative to its value for manufacturing and from the administrative cost of verifying the utilization of milk transferred to plants distant from the local market. Under today's conditions of distribution, milk regularly moves greater distances as a routine matter. Moreover, Federal orders now operate throughout much of the United States. Arrangements for verifying the utilization at distant plants can be made easily through the facilities of the various market administrators' offices.

Also, the mileage limitations often are no longer consistent with the existing supply patterns. Milk is often moved considerable distances from producers' farms to distributing plants. When such milk is not needed for fluid use, it is usually diverted to manufacturing plants located close to the production area. Classifying such milk in Class I because of applicable mileage limitations is not consistent with the obvious manufacturing use of the milk. Removal of such provisions will promote uniformity in classification among the seven markets.

(d) *Classification of end-of-month inventories.* Each of the seven orders should provide that packaged fluid milk products in a handler's inventory at the end of the month be classified as Class I milk. Such inventory should be priced at the current month's Class I price, with no subsequent adjustment because of a change in the Class I price level in the following month. A Class III classification should apply to ending inventory of fluid milk products in bulk form.

This would continue under the Southern Illinois and Central Illinois orders the present practice of classifying ending inventory of packaged fluid milk products in Class I and classifying ending inventory of bulk fluid milk products in the lowest closs. These two orders provide, though, that a handler's obligation for Class I inventory shall be adjusted in the following month to the extent that the Class I price level initially applicable to such inventory changes.

The classification of inventory under the other five orders being considered would be changed. Presently, all end-of-month inventories of fluid milk products, whether in bulk or packaged form, are classified in the lowest class.

The principal cooperatives proposed that all seven orders classify all ending inventories of fluid milk products in Class III. They claimed that this procedure would be less complicated for handlers since handlers only occasionally would have any adjustment in their pool obligation as a result of having Class III inventories reclassified the following month in Class I. Proponents stated that with packaged inventories in Class I, as under the Central Illinois and Southern Illinois orders, each handler usually has some adjustment each month in his obligation for Class I inventories. The cooperatives' proposed classification of ending inventories was supported by handlers.

In the interest of establishing uniform classification provisions among the orders, the same procedure for classifying end-of-month inventory should be adopted for each of the seven orders. Either type of inventory classification procedure now being used in the seven markets results over the long run in

the same pool obligation for handlers and the same returns to producers. There are factors to be considered, however, that support extending to the other five markets the procedure now used in the Southern Illinois and Central Illinois markets—but without the provision for monthly price adjustments.

At the close of the monthly accounting period, fluid milk products that have been packaged but not yet delivered to the place of sale may be at any one of several places in a handler's distribution system. Depending on the handler's method of operation, such places could include the cold storage room within his processing plant, trucks parked on or near the plant's premises, distribution points, or trucks in transit to distribution points or places of sale. It would not be unusual for one handler to decide differently from another as to which point in his distribution system packaged fluid milk products are no longer a part of his inventory.

When ending inventory is classified in the lowest class, the classification of packaged fluid milk products can be contingent entirely on what point in his distribution system a handler decides such products are not in inventory. This situation does not arise when ending inventory of packaged fluid milk products is classified as Class I milk, the ultimate utilization of such products.

As noted, the Southern Illinois and Central Illinois orders provide for readjusting a handler's pool obligation on his Class I inventory if the Class I price level changes the following month. Thus, if the Class I price increases over the previous month's price (at which the inventory was first accounted for), the handler is charged the difference between the Class I price for the current month and the Class I price for the preceding month on the quantity of ending inventory classified as Class I milk in the preceding month. If the current Class I price is less than that for the preceding month, the handler receives a corresponding credit.

Discontinuance of this provision will eliminate minor adjustments of handlers' obligations which the industry considers undesirable and will simplify administration of the order. This change will have minimal effect on the overall milk costs for handlers and returns to producers. For the 18-month period of February 1969 through July 1970, the monthly rate of adjustment averaged plus 1.6 cents per hundredweight.

Under the revised classification plan, skim milk and butterfat disposed of in the form of a fluid cream product would be classified as Class II milk. Packaged fluid cream products that are in a handler's inventory at the end of the month should be classified as Class II milk, the ultimate utilization of these products in such form. In the following month, such inventory, as Class II inventory on hand at the beginning of the month, should be allocated directly to the handler's Class II utilization.

Fluid cream products in bulk form that are on hand at the end of the month should be classified in Class III. As in the case of bulk milk, the final use of cream being held in bulk form is not necessarily apparent from that form. The cream must be followed to its ultimate use, which may be in any class. Accordingly, it is reasonable to classify any bulk cream inventory in Class III and then apply a reclassification charge should the cream eventually be used in a higher class.

For the first month that the revised classification plan is effective under each of the seven orders, certain transitional provisions relating to inventory should apply. Under the Chicago Regional, Indiana, Louisville-Lexington-Evansville, St. Louis-Ozarks, and Paducah orders, beginning inventories of packaged fluid milk products and packaged cream items will have been priced in the prior month at the lowest class price. As adopted herein, beginning inventories of packaged fluid milk products normally would be allocated directly to a handler's Class I utilization. Beginning inventories of packaged fluid cream products normally would be allocated directly to Class II uses. Such allocation assumes that the products were priced at the corresponding price level in the preceding month. Since this would not be the case for the first month under the revised classification plan, such inventories should be allocated in the first month to Class III in the same manner as inventories of bulk fluid milk products and bulk fluid cream products.

This same allocation procedure for beginning inventories may have equal applicability in other months and should be applied when appropriate. A plant that becomes pooled under the order may not have been subject in the preceding month to any Federal order or to an order providing for the Class I classification of packaged inventories of fluid milk products. In this case, the plant's current receipts of producer milk, rather than its beginning inventories, should be given first priority to the plant's Class I utilization.

The Southern Illinois and Central Illinois orders presently classify ending inventories of packaged fluid cream products in Class I. Thus, in the last month that the present classification plan is effective, handlers under these two orders will have paid the Class I price for these packaged products in ending inventory. The next month, however, such packaged products, as beginning inventory, would be allocated under the revised classification plan to Class II. In this case, handlers under the two orders should receive a credit on such products in the first month that the revised orders are effective. Such credit would be at the difference between the Class I price for the preceding month applicable to these products and the Class II price for the current month. This price adjustment is necessary to assure that handlers will be subject to the same pricing for such products whether the products enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

(e) *Shrinkage allowances.* The classification of shrinkage under each order should be changed only to the extent necessary to achieve uniformity among the seven orders in the application of certain shrinkage provisions.

A cooperative association proposed that any plant losses experienced by a handler be classified as Class I milk. Currently, a handler is permitted to have a certain amount of shrinkage classified in Class II. In conjunction with the shrinkage proposal, this producer group also proposed that no exception to the Class I classification of fluid milk products disposed of on routes be made for route returns. Presently, the orders permit route returns that are disposed of for animal feed or dumped to be classified in Class II.

The cooperative proposed that in lieu of the Class II shrinkage and route return allowances a handler be given a credit on his pool obligation of 2 cents per hundredweight for all milk, skim milk, and cream handled in bulk form in his plant. To maintain the present relationship in the proration of shrinkage between the receiving and processing operations, the cooperative proposed that a handler be allowed 0.5-cent per hundredweight for receiving and 1.5 cents per hundredweight for processing, or a total of 2 cents if the handler performed both operations.

While urging that the classification provisions of the seven orders be made as uniform as possible, the principal cooperatives proposed that no change be made at this time in the shrinkage provisions of the orders.

Other than to make them uniform in several respects, no basic change should be made at this time in the shrinkage provisions of the seven orders, or in the arrangement for classifying route returns. Although there may be some merit in revising these provisions to a greater extent than is set forth herein, such changes should be based on a thorough exploration of the issue at a hearing after adequate public notice. These conditions were not met at this hearing.

Each of the orders now provides that with respect to a handler's shrinkage of milk that is received at his pool plant directly from producers, up to 2 percent of such receipts may be classified as Class II milk, the lowest utilization. Should the handler transfer some of the producer milk to another pool plant for processing, the Class II shrinkage which the handler may claim on such milk is limited to 0.5 percent of the milk.

This division of shrinkage between the receiving handler and the processing handler also applies under those orders which provide for a cooperative association to be the handler on bulk tank milk which it receives at the farm and delivers to a pool plant. If, in this case, the plant operator purchases such milk on the basis of scale weights, the maximum Class II shrinkage allowance for the plant operator is 1.5 percent of such milk. The cooperative, as the receiving handler, is the responsible handler for any difference between the farm weights and the weight at which the plant operator

purchases the milk. Of this difference, up to 0.5 percent of the milk at farm weights is allowed the cooperative as Class II shrinkage. If the plant operator purchases the milk on the basis of farm weights, however, he is permitted the full 2 percent Class II shrinkage allowance.

With respect to producer milk diverted from a pool plant to a nonpool plant or, under certain of the orders, to another pool plant, either by a plant operator or by a cooperative association, the shrinkage allowances under the present orders are not consistent in all cases with the shrinkage classification outlined above. There is little, if any, reason for applying shrinkage allowances differently under the several orders under comparable handling arrangements. The shrinkage provisions of these orders should be modified to the extent necessary to make them generally uniform with respect to the same handling arrangements.

In this regard, each order should provide that in the case of milk diverted to a nonpool plant or, if permitted, to another pool plant, the diverting handler shall be allowed up to 0.5 percent Class III shrinkage on the milk if it is not purchased on the basis of farm weights by the operator of the plant where the milk is physically received. Where such diversions are to a pool plant, the operator of the plant to which the milk is diverted should be permitted in this case up to 1.5 percent Class III shrinkage. If the operator of the nonpool plant or pool plant purchases such milk on the basis of farm weights, no shrinkage allowance on the milk should be permitted the diverting handler. In the case of the operator of the pool plant where the milk is physically received, such operator should receive the full 2 percent allowance.

(f) *Allocation of receipts to utilization.* In adopting a revised classification plan under each of the seven orders, conforming changes must be made in the provisions that prescribe how a handler's receipts from different sources shall be allocated to his utilization for the purpose of classifying producer milk. Such changes are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes as at present.

In this connection, the adoption of three use classes requires a new consideration of how other source milk shall be allocated to a handler's utilization of milk. Under the present orders, other source milk is allocated in most cases to a handler's surplus uses to the extent possible, regardless of how it actually may have been used. The producers who are relied upon for a regular supply of milk for the local fluid market thus receive the highest possible classification of their milk. Depending on the supply conditions, milk from unregulated supply plants and other Federal order plants is permitted to share in varying degrees with local producer milk in the higher value of the handler's Class I sales.

In conjunction with the revised classification plan, however, handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products should be permitted to have such other source milk allocated directly to their Class II uses. Under the plan herein, such other source milk to which direct allocation could apply would be limited to milk products that are not fluid milk products or fluid cream products (such as nonfat dry milk and condensed milk or skim milk).

The national associations of fluid milk and ice cream processors proposed that if a three-class system is adopted handlers should have the option of having other source milk allocated to their Class II utilization rather than allocated to the extent possible to the lowest class. It was their position that the Class II price for producer milk should not be set at a level that is any higher than the cost to handlers of obtaining alternative supplies of milk or milk products for Class II use. These groups contended that with such pricing there is no justification for "down-allocating" to Class III any receipts of other source milk which actually may have been used in Class II.

Handlers indicated further that with optional allocation a handler could choose to use other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk for Class II use. Also, these groups stated that down-allocation of other source milk would imply an intent to provide undue protection of the Class II market for producers. They maintained that such protection is not justified, or apparently intended by producers in view of no producer proposal for a compensatory payment on other source milk used in Class II.

The principal cooperative associations, on the other hand urged in connection with their proposal for three classes that producers have first claim on a handler's Class II use as well as on his Class I use. It was their contention that producer milk not used in Class I should receive the next highest possible classification since the milk was produced for the Class I market and represents the reserve supply for this segment of the dairy industry.

As pointed out earlier in this decision, the establishment of a new intermediate price class is supported by the fact that handlers rely largely on producers for a regular supply of milk for the products herein included in Class II. The major use of other source milk in making these Class II products is the addition of nonfat dry milk to cream products, mainly half and half, and to skim milk being used for the manufacture of cottage cheese. On occasion, when producer supplies are short, handlers also may reconstitute nonfat dry milk for cottage cheese production. Condensed milk or skim milk may be similarly used. Handlers choosing to use such other source milk in this way should be permitted to have such milk allocated directly to their Class II utilization rather than allocated first to any Class III utilization they may have.

In establishing a new intermediate price class, it is not intended that this outlet for producer milk necessarily be reserved for local producers. This new use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed under the revised classification plan on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As was shown previously, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in the proposed Class II products. Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation to a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle in his plant any receipts of fluid other source milk with his receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating that he actually used fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk in essentially the same manner as now provided by the orders.

In keeping with the goal of classifying milk uniformly under the seven orders, certain changes should be made in the

orders to effect a uniform application of the allocation provisions to multiple-plant handlers. Presently, the seven orders differ as to how the allocation procedure shall be carried out for handlers who operate two or more pool plants regulated under the same order.

Each order should provide that for purposes of allocating a multiple-plant handler's receipts to his utilization the operations of all of his pool plants be combined. Thus, in determining the classification of producer milk, the market administrator would combine the utilization in each of the respective classes at all of the handler's pool plants, and, likewise, the respective types of receipts at such plants.

The multiple-plant handler should have the option, however, of requesting that the allocation of receipts to utilization be done on an individual plant basis rather than on a system basis. Such allocation should be permitted, however, only if the handler does not have at any of his pool plants receipts of other source milk from unregulated supply plants and other Federal order plants that would be allocated on a pro rata basis with producer milk to the plant's Class I utilization.

This application of the allocation provisions to a multiple-plant handler is now used under the Chicago order. The Paducah order requires that allocation be on a system basis in all cases. The other five orders provide that allocation be on an individual plant basis unless there are receipts of other source milk at any one of the plants that are to be prorated with producer milk to the plant's Class I utilization. The Indiana and Louisville-Lexington-Evansville orders provide that in this case system allocation shall apply at those steps of the allocation procedure where such other source milk is to be allocated. The St. Louis-Ozarks, Southern Illinois, and Central Illinois orders, on the other hand, require in this case that all allocations of the handler's receipts to utilization be done on the basis of his total system.

Conditions in the individual markets do not require continuance of the several allocation methods now provided in the orders under consideration. At this time when handlers or plants are often subject at different times to the regulatory provisions of different orders, the use of uniform accounting provisions should promote equity and reduce misunderstanding in the milk industry of the regulatory program. There would be little, if any, change in a handler's total obligation under the order or in producer returns from extending the use of the Chicago order's allocation procedure to the other markets involved here.

It should be noted that under the proposed allocation provisions for multiple-plant handlers the present requirement that a handler submit reports of receipts and utilization for each of his pool plants would be continued. Likewise, the amount of shrinkage and overage of skim milk and butterfat experienced by a handler would continue to be determined separately for each of his pool plants. An exception to this procedure is now permitted under the Chicago order. On the basis of this record, this is not changed. Under that order, reporting and shrinkage or overage determinations, if approved by the market administrator, may be done on a system basis if a handler so requests.

In those cases where allocation of receipts to utilization is done on a system basis, it is necessary that the handler's obligation, as determined by the market administrator, likewise be computed for the handler's total system. When allocation is on an individual plant basis, the orders should provide that a handler's obligation may be determined for each of his plants individually if he so requests

The revised application of the allocation provisions to multiple-plant handlers requires that the rules for determining the quantity of milk eligible for Class I location adjustment for such handlers be explicit in each order. Certain modifications of the present location adjustment provisions are thus necessary to assure that these rules are clearly set forth. In this connection, the objective of uniformity in classification and pricing among these markets can be furthered by making such rules in each order uniform to the extent possible at this time.

The rules defining the quantities of skim milk and butterfat eligible for location adjustment deal with situations in which Class I milk at a given plant must be assigned to a variety of milk sources, including inventory, other source milk, producer milk received directly at such plant, and milk received by transfer from other pool plants. The assignment of such Class I use to receipts from various sources is necessary in order to determine the amount of producer milk at each plant to which the location adjustment applies.

Six of the seven orders now contain the same general rules for determining the quantity of milk from each source eligible for location adjustment. The seventh order, Chicago Regional, provides a different system of location pricing. Class I transfers by pool plants under the Chicago order are priced at the Zone I Class I price, regardless of the location of the plant from which the transfer is made. The transferee distributing plant is allowed a location adjustment credit based on the location of the transferor plant to the extent that the receipt from such plant does not exceed 110 percent of the Class I use assigned to such receipt. Class I use at the distributing plant, after deducting packaged receipts and receipts of other source milk, is prorated to receipts directly from producers and receipts from other pool plants. Because this system of location credits is unique to the Chicago Regional order and is adapted to marketing practices in that area, no change should be made in these provisions of the Chicago order on the basis of this record. Continuing such provisions will not have serious effect on uniformity of classification and accounting of milk.

The remaining six orders provide that location adjustment credit be assigned to receipts from transferor plants in sequence according to the location of the transferor plant, starting with the plant where the highest Class I price is applicable. Such assignment is after direct receipts from producers and other source milk are assigned to Class I use. (For the purpose of computing location adjustments, receipts of farm bulk tank milk from producers for whom a cooperative association acts as the handler are treated the same as direct producer receipts. In this discussion the term "direct producer receipts" includes such cooperatively handled milk.)

Two of the orders provide that the initial assignment of Class I milk to direct producer receipts apply to 100 percent of such receipts. Four of the orders provide for assignment of location adjustment credit to transferor plants after taking into account a 5-percent reserve in Class II at the transferee plant. The reserve is taken into account in two different ways. It is expressed in two orders (Paducah and St. Louis-Ozarks) as 5 percent of direct producer receipts and in the two other orders (Central Illinois and Southern Illinois) as 5 percent of Class I disposition. Since substantially the same reserve is provided in these four orders, it should be expressed uniformly in each of the orders. As adopted herein, the reserve would be based on the amount of producer milk received. In the two orders (Indiana and Louisville-Lexington-Evansville) where no reserve is provided now, no change should be made in this respect on the basis of this record.

The St. Louis-Ozarks order provides a detailed procedure for assigning other source milk in a handler's system to Class I utilization at each plant before calculating the quantity of skim milk and butterfat eligible for location adjustment. The other orders do not. Since it is necessary to make such assignments, rules for making the assignments should be provided in each of the orders, and they should be uniform.

The rules for determining the quantity of milk that is eligible at each plant for location adjustment are more extensive for a multiple-plant system than for an individual plant. For that reason, the provisions applicable when skim milk and butterfat are allocated on an individual plant basis are set forth separately from those applicable to a plant system.

After subtracting Class I utilization at each plant which may be assigned to beginning inventory and receipts of other source milk, it is then necessary to determine the quantities of milk received directly from producers and from each other pool plant which are eligible for location adjustment. Since the eligibility for location adjustment of Class I transfers to another plant is determined at the transferee plant, the first step in determining the quantity eligible for location adjustment at any plant is to separate any Class I utilization based on transfers to another plant.

The first step in determining the quantity to which the location adjustment

applies in the case of the transferee plant which reports as a single plant is to exclude from total Class I utilization any Class I transfers to other pool plants which are not assigned location adjustment credit at the transferee plant. This is to avoid assigning location adjustments to receipts at the plant on the basis of transfers from the plant which are not eligible for such adjustment. Then, subtract any beginning inventory and other source milk allocated to Class I. Next, subtract 95 percent (100 percent in Indiana and Louisville-Lexington-Evansville orders) of the receipts at such plant from producers and from cooperative associations acting as handlers on farm bulk tank deliveries. The remaining Class I utilization is the quantity eligible for assignment to receipts of fluid milk products from other pool plants. Such eligible quantity shall be assigned to fluid milk products received by transfer during the month from each pool plant in sequence starting with receipts from the plant having the highest Class I price. The quantity so assigned eligibility for location adjustment, however, shall apply only to the extent that the transfer was classified in Class I at the transferor plant.

The quantity of Class I disposition from the plant (other than transfers to pool plants) which is allocated to producer milk plus the quantity eligible for location adjustment based on transfers which are classified as Class I milk is the quantity of producer milk on which a handler location adjustment applies.

In the multiple-plant system, other source milk is allocated according to the total utilization in all plants of the handler's system. Thus, to determine the quantity of producer milk eligible for location adjustment at each plant in a system, it is necessary to first identify the Class I utilization and utilization in other classes which is to be assigned to other source milk received at each plant. This is done to determine the net amount of milk received from producers at each location which remains eligible for location adjustments.

The first assignment step for the multiple-plant system is to assign Class II and Class III utilization at each plant (exclusive of transfers to other pool plants of the handler) to other source milk receipts at such plant to the extent of combined classification in such classes. This will identify the other source milk at each plant which is not to be assigned Class I utilization at the particular plant.

If other source milk of the same category is received at two or more plants, such other source milk shall be assigned first to the combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices. This sequence of assignment complements the "nearby rule" for assigning location adjustments to producer milk.

It is possible that some other source milk allocated to the handler's Class II and Class III utilization will remain after the above assignment. This will happen when other source milk is received at a plant having little or no Class II and Class III utilization which transfers milk to a plant where the proportion of Class II and Class III use is relatively large. Such remaining other source milk (and inventory) allocated to Class II and Class III should be assigned first to remaining Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices.

After the above assignment of beginning inventory and other source milk to combined Class II and Class III utilization at each plant, remaining quantities of such receipts at each plant shall be assigned to Class I milk at that plant. After subtracting the assigned inventory and other source milk in Class I at each plant, the remaining Class I milk is eligible for assignment of location adjustments.

From such remaining pounds of Class I skim milk and butterfat, respectively, at each plant (excluding all transfers to the handler's other pool plants and Class I transfers to pool plants of other handlers which are not assigned location adjustment at the transferee plant) subtract 95 percent (100 percent in Indiana and Louisville-Lexington-Evansville orders) of the skim milk and butterfat in direct producer receipts. The remaining Class I milk is eligible for assignment of location adjustments to fluid milk products received by transfer from other pool plants. Such eligible quantity shall be assigned to receipts from other pool plants in sequence beginning with receipts from the plant having the highest Class I price.

The quantity of skim milk and butterfat eligible for location adjustment at each plant in the system shall be the Class I disposition from the plant (other than transfers to pool plants) which is allocated to producer milk plus Class I transfers to other pool plants which are determined at the transferee plant to be eligible for location adjustment.

Since five of these six orders provide for diversion of producer milk between pool plants, it is necessary to consider such diverted milk in computing the quantity of milk eligible for location adjustment at each plant under such orders. The five orders have different rules for pricing such diverted milk. Two (Central Illinois and Southern Illinois) price diverted milk at the pool plant to which diverted, while the Louisville-Lexington-Evansville order prices all diverted milk at the plant from which diverted. The St. Louis-Ozarks and Indiana orders price diverted milk at the plant to which diverted if the divertee plant is located in specified areas and at the plant from which diverted in other cases.

The rules adopted herein would treat diverted milk the same as a receipt from producers at the location where it is priced at the divertee plant, it is treated in the computation as producer milk at such plant. When it is priced at the plant from which diverted, it is treated as a receipt of producer milk at the plant from which diverted and as a transfer from such plant to the divertee plant.

(g) *Obligations relative to other source milk.* As indicated earlier in this decision, it is proposed herein that each of the orders be clarified with respect to the classification of milk that is transferred or diverted from a pool plant to a nonpool plant not regulated under any order, particularly when the nonpool plant also has receipts of milk from plants regulated under other Federal orders. In conjunction with these changes, other revisions should be made to assure that handlers are not assessed a "double charge" on Class I other source milk from such nonpool plants for which a Class I charge already has been assessed under some Federal order. Under the present orders, such a charge could result in the following manner.

Producer milk could be transferred in bulk from a pool plant under the Indiana order to an unregulated nonpool plant and be assigned to the nonpool plant's Class I utilization. In determining his pool obligation, the pool plant operator would be charged for this Class I utilization of milk at the Class I price.

During the same month, bulk milk could be transferred from the nonpool plant to a pool plant under the Southern Illinois order and be allocated to such pool plant's Class I utilization. In this case, the operator of the pool plant would be charged under the Southern Illinois order the difference between the order's Class I price and weighted average price for this receipt of "other source" Class I milk.

Thus, to the extent of the Class I milk that was moved to the nonpool plant from the Indiana market as Class I milk, the Class I other source milk received at the Southern Illinois pool plant from the nonpool plant is, in effect, priced twice as Class I milk under the Federal order system.

More and more, plants are tending to specialize in the processing of certain products, or in the packaging of products in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to an unregulated nonpool plant for special processing and the finished products to be moved back into the regulated market. When the milk is initially priced at the Class I price, the market price structure is in no way undermined if this milk, or its equivalent, is disposed of by the nonpool plant in the regulated market.

The orders therefore should provide that the operator of the Southern Illinois plant, in this example, will have no obligation to the pool on such other source Class I milk. This is achieved through a revision of the allocation provisions and the procedure for computing the pool obligation of a pool plant operator. Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully

regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other allocation of receipts to the plant's Class I utilization, and no order obligation would apply to the milk so allocated to Class I. In the case of fluid milk products received from an unregulated supply plant in bulk form, the provisions setting forth a handler's pool obligation would specify that no payment would apply to any of such milk allocated to Class I if, as just described for packaged milk, an equivalent amount of milk received at the unregulated plant had been priced as Class I milk under some order.

In this same connection, the provisions in each order prescribing the obligation of a partially regulated distributing plant should be changed. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers from the plant to a regulated plant that are considered to already have been priced as Class I milk under some Federal order. Also, in computing such plant's pool obligation on route sales in a Federal order marketing area, recognition should be given to any receipt of milk at such plant from another unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under an order.

Each order now imposes a handler assessment for administering the order on all other source Class I milk except that received in fluid form from an other order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of a "double" Class I charge on such milk, each order should be changed to likewise remove any assessment on such milk for administrative expenses. It is presumed that such milk was subject to a similar charge under the order that initially priced the milk.

The orders should be changed also with respect to the application of location adjustments to other source Class I milk. As just described, each of the orders provides that a pool plant operator's obligation to the producer-settlement fund shall include a payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I. The handler's payment is determined by charging him at the Class I price for the Class I other source milk and giving him a credit on the milk at the weighted average price (uniform price in the case of the Chicago Regional order). Both the Class I and weighted average prices are adjusted for the location of the unregulated supply plant. The adjustment of the weighted average price, though, is so limited as to be not less than the lowest class price. No such limitation is applied currently to the Class I price adjustment.

In his testimony on how to implement certain classification proposals, a witness for a cooperative association indicated that such a limitation on the Class I price adjustment should be provided. Although the producers' proposals are not being implemented in the manner envisioned by this witness, the problem raised concerning the applicable location adjustment nevertheless should be dealt with.

Providing that any adjusted Class I price applicable to other source milk be not less than the Class III price is appropriate under each order. Otherwise, under certain conditions a handler could receive payment from the producer-settlement fund on Class I milk obtained from an unregulated supply plant. Such payment could result when the location differential for the distant plant is greater than the difference between the Class I and Class III prices. In this circumstance, producers under the order, in effect, would be providing the handler with a credit that reduces his cost for the distant milk below its value for manufacturing use at the point of purchase. From the standpoint of marketing efficiency, the handler should not be provided an incentive, which would be at the expense of local producers, to import such distant milk into the local market. It is unreasonable to expect that such a handler credit should apply on the other source milk.

A similar situation now exists with respect to the obligation of the operator of a partially regulated distributing plant or an other order plant. In certain cases, the handler's obligation includes a payment to the producer-settlement fund at the difference between the Class I price applicable at his plant and either the weighted average price or the Class III price. For the same reasons, each order should provide, in computing the obligation of such a handler also, that the Class I price, as adjusted for location, shall not be less than the Class III price.

(h) *Reports.* The proposed changes in the classification of milk are not expected to require any major change in the amount of information to be submitted by handlers in their monthly reports of receipts and utilization. The reporting provisions of each order must be changed, however, to reflect the new categories of information that each market administrator will need in administering an order. These changes stem largely from the proposed reclassification of cream and the revised accounting methods necessary for implementing a three-class classification scheme.

5. *Changing the butterfat differentials.* A single butterfat differential should apply under each of the seven orders to adjust all class prices and the uniform price to actual butterfat test. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest one-tenth cent.

Presently, the Class I butterfat differential under these orders is the Chicago butter price for the preceding month multiplied by 0.120. The Class II butterfat differential is the Chicago butter price for the current month times the factor listed for the respective market: Chicago Regional and Louisville-Lexington-Evansville, 0.120; Central Illinois, Southern Illinois, and St. Louis-Ozarks, 0.115; Indiana, 0.113; and Paducah, 0.115 during the months of August–March and 0.110 during the months of April–July.

The "butter price" used to compute the butterfat differentials for Class I and Class II milk is the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported during the month by the U.S. Department of Agriculture. This butter price would continue to be used under the revised orders.

The butterfat differential applicable to the uniform price to producers under each of the seven orders except Paducah is derived from the weighted average of the values of Class I and Class II butterfat. It is computed each month by multiplying the total pounds of butterfat in the producer milk allocated to each class by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of butterfat in producer milk, and rounding the result to the nearest one-tenth cent. The butterfat differential to producers under the Paducah order is determined from a fixed schedule of rates in the order which are related to the Chicago butter price, i.e., for each 5-cent change in the butter price, the butterfat differential changes one-half cent per point of butterfat.

The principal cooperative associations proposed that all class and uniform prices be subject to adjustment by a single butterfat differential based upon the Chicago butter price times a factor of 0.115. Handler opposition to the proposal was limited largely to the proposed decrease in the Class I butterfat differential that would result.

Lowering the Class I butterfat differential factor from 0.120 to 0.115 will accommodate producers' request for a readjustment of the values of skim milk and butterfat in Class I milk at a time of declining use of butterfat in fluid milk products. In 1960, the average butterfat test of fluid milk products (including cream items) in 63 Federal order markets was 3.76 percent. In 1969, the average butterfat test for such products in 60 markets was 3.32 percent. Comparable data for the seven subject markets as they are presently constituted are not available. On the basis of information compiled for such of the area now regulated by the seven orders, however, there is every indication that the use of butterfat in Class I in each of the seven markets is following the national trend.[5]

It is estimated that under the adopted classification plan the average butterfat test of Class I products in the seven markets would have ranged from 2.7 percent to 3.2 percent in 1969. On this basis,

[5] Official notice is taken of the annual summaries for 1960 and 1969 of Federal Milk Order Market Statistics which were issued by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C.

the effect of changing the Class I butterfat differential factor from 0.120 to 0.115 would be to increase the average Class I price at test by less than 3 cents per hundredweight. The effect upon the average handler's cost for skim milk would be an increase of 10.5 cents per hundredweight.

Using a single factor of 0.115 for computing the Class II and Class III butterfat differentials will result in a uniform adjustment of class prices of butterfat content among the markets under consideration. Continuation of the several butterfat differential factors now in use would offset to some extent the benefits to be gained through the adoption of a uniform classification plan and identical Class II and Class III prices for the seven orders. For example, if skim milk used to produce cottage cheese is to be priced uniformly among these markets, the same butterfat differential must apply under each order to such skim milk.

The Class I, Class II, and Class III butterfat differentials for the current month should be based upon butter prices for the current month. This requires that the butterfat differentials be announced after the end of the month. This represents a change only for the Class I differential which presently is based on butter prices prevailing during the preceding month and announced by the fifth or sixth day of the current month.

With the use of the same butterfat differential factor for each class, as adopted herein, there appears to be no need for announcing more than one butterfat differential, or for doing so before the end of the month in which it applies. The average butter price changes very little from month to month, and changes that do occur result in relatively limited changes in the butterfat differential. In 1969, the monthly butterfat differential would have changed from that applicable in the preceding month five times—twice downward and three times upward. Such changes would have averaged 0.2 cent, with a maximum change of 0.3 cent. Each change in the price of butter is readily seen by following the daily quotations for butter. In the absence of regulation, such information would be the best available for determining trends in butter prices and should be adequate for this purpose under regulation.

As previously indicated, the butterfat differential to producers in six of the seven markets reflects the weighted value of butterfat in the class uses. Since the same butterfat differential will now be used for all classes, the butterfat differential for adjusting the uniform price should be the same differential used for adjusting class prices.

It is recognized that the basic formula price of these seven orders is determined by adjusting the average Minnesota-Wisconsin price at test to a 3.5 percent butterfat basis by using a factor of 0.120 times the average Chicago butter price. The appropriateness of such factor for this purpose was not considered at the hearing and no consideration is given in this decision to changing this factor for such purpose. Moreover, since this method of determining the basic formula price is now used under all Federal milk orders throughout the country, it would appear that any change in this butterfat differential factor should be considered simultaneously in all orders.

6. *Advance announcement of prices for surplus milk.* The proposals by handlers to announce order prices for surplus milk at the beginning of the month rather than at the end of the month in which the prices apply, or to use bracketed pricing, should not be adopted.

Under the present two-class orders, the Class II price is announced by either the fifth or the sixth day of each month. This price applies to producer milk delivered to handlers during the preceding month. The present Class II prices are based on prices paid to farmers in Minnesota and Wisconsin for manufacturing grade milk. The average Minnesota-Wisconsin price for a particular month is announced by the Department shortly after the end of such month. The current procedure for announcing the Class II price after the end of the month thus permits such price to reflect the corresponding manufacturing milk pay prices for the same month.

The national associations of fluid milk and ice cream processors proposed that the class prices to be applicable in a particular month to surplus milk be announced at least by the fifth day of such month, and preferably before the beginning of the month. Such prices necessarily would reflect the prices paid for manufacturing grade milk in the preceding month.

Another group of handlers proposed that the Class II price for the current month be based on the Class III price for the preceding month. The group indicated, though, that if the Class II price is based instead on the current basic formula price the Class II price should increase or decrease only in 12-cent increments.

Handlers maintained that under the present announcement procedure they are often disadvantaged by not knowing the cost of producer milk for manufacturing use until after the end of the month in which the milk is processed. They claimed that when there is a significant increase in the order price the delayed notice of the increase prevents them from making corresponding adjustments in their resale prices on a timely basis.

The proposal as it concerned the announcement of the price for the proposed Class III classification was opposed by the principal cooperatives. They claimed that for handlers manufacturing the principal surplus products the Class III price should correspond as closely as possible with the prices being paid for manufacturing grade milk in the same month.

For the regulated handler processing producer milk into butter, nonfat dry milk and cheddar cheese, advance announcement of the applicable class price could place him at a competitive disadvantage on his sales of these manufactured products. The pay prices for manufacturing grade milk in Minnesota and Wisconsin are closely related to the market values of cheddar cheese, nonfat dry milk and butter, the principal uses for such milk. These product prices are established on a regular basis in a market that is national in scope. The manufacturers of ungraded milk are fully aware of the movements of these products prices and adjust their pay prices for milk in response to changes in the prices for the finished products. Regulated handlers who are processing these particular products must compete in the same national market in which the processors of manufacturing grade milk are competing.

Substantial quantities of milk are disposed of by regulated handlers in the seven markets in the form of butter, nonfat dry milk and cheese. In 1969, over 2 billion pounds of milk, or 57 percent of the total Class II use, were so disposed of by handlers in the Chicago Regional market. Southern Illinois handlers used 56 percent, or nearly 236 million pounds, of that market's total Class II milk that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other five markets, such uses still represented 25 percent or more of the total Class II use for each market. Thus, handlers in the seven markets have a very definite interest in the relationship of the applicable class price with prices being paid currently for manufacturing grade milk.

Accordingly, the prices paid by regulated handlers for Class III milk should correspond very closely with the pay prices for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products. Basing the Class III price for a particular month on the prices paid for manufacturing grade milk in the preceding month would not result in the price coordination necessary for those regulated handlers heavily engaged in the production of cheddar cheese, nonfat dry milk or butter.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products, or in the case of bracketed pricing for such milk. The influence of the manufacturing milk price level on the competitive relationship of producer milk for Class II uses is similar to that for producer milk used in the proposed Class III products. Therefore, the prices for Class II milk should be announced on the same basis as the prices for Class III milk.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth

herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

A handler presented a motion at the hearing that proposals for establishing a new intermediate price class (Class II) be rejected and denied. The motion was presented for inclusion in the hearing record; a ruling by the presiding officer was not requested.

The motion, as restated in the handler's brief is as follows: "That the proposals for such intermediate classification should be rejected and denied, for the reasons that said proposals and the related Order provisions proposed would result in discriminatory regulation, capricious regulation, arbitrary regulation, special legislation and class legislation; would constitute the practice of classification among parties and the selection of regulated parties on an unnatural and unreasonable basis; and would, therefore, be unlawful if adopted."

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by regulated handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. Such authority does not limit the number of use classes that may be established. The evidence of this record supports the adoption of three classes of utilization for producer milk under the seven subject orders.

As previously found, producers would represent in most circumstances the most economical source of milk for use in the intermediate-priced (Class II) milk uses. Nevertheless, handlers would not be precluded under the terms of each order from obtaining from alternative sources nonfluid other source milk for Class II use. As adopted herein, such alternative supplies could be allocated directly to such uses and no pool obligation would apply to such other source milk.

Under these circumstances, there is no basis for rejecting and denying the proposal by producers for three classes of utilization. The motion to do so is denied.

General Findings

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

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

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

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

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the aforesaid marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.7 is revised as follows:

§ 1030.7 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means:

(1) Any of the following products in fluid or frozen form, including such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package) or reconstituted: Milk, skim milk, lowfat milk, milk drinks, eggnog, buttermilk, filled milk, and milkshake and icemilk mixes containing less than 20 percent total solids; and

(2) Any milk product in fluid or frozen form that is not specified in subparagraph (1) of this paragraph or in § 1030.42 or § 1030.43(a) (1) through (8), if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

(1) Evaporated or condensed milk or skim milk in plain or sweetened form, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

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

2. Section 1030.8 is revised as follows:

§ 1030.8 Route disposition.

"Route disposition or disposed of on routes" means a delivery (including disposition from a retail plant store) of any fluid milk product classified as Class I pursuant to § 1030.41(a) to a retail or wholesale outlet other than a milk plant. Disposition of a plant through a vendor or through a distribution point shall be considered a route delivery at the location of the wholesale or retail outlet to which delivery is made.

3. In § 1030.11, paragraphs (a) (1) and (b) (1) (iii) are revised as follows:

§ 1030.11 Pool plant.

* * * * *

(a) * * *

(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, and milk received from a handler pursuant to § 1030.13(h), but excluding receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II or Class III uses from other pool distributing plants, and receipts from unregulated supply plants and other order plants which are assigned pursuant to § 1030.47(a) (7) (i) (a) and (ii) and the corresponding step of § 1030.47(b).

* * * * *

(b) * * *

(1) * * *

(iii) Partially regulated distributing plants and assigned to Class I milk disposed of in the marketing area from such plants pursuant to § 1030.45(d);

* * * * *

4. In § 1030.13(h), subparagraph (2) is revised as follows:

§ 1030.13 Handler.

* * * * *

(h) * * *

(2) All of the producer milk on which he is the handler pursuant to this paragraph shall be considered a transfer from such handler's pool distributing plant to another pool distributing plant for the purposes of classification pursuant to §§ 1030.40 through 1030.48;

* * * * *

5. In § 1030.16(a), subparagraph (2) is revised as follows:

§ 1030.16 Producer milk.

* * * * *

(a) * * *

(2) That milk received by diversion from other order plants which is assigned pursuant to § 1030.47(a) (7) (ii) and the corresponding step of § 1030.47 (b).

* * * * *

6. Section 1030.17 is revised as follows:

§ 1030.17 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source other than producers, cooperative associations acting as a handler pursuant to § 1030.13 (e), pool plants, and inventory at the beginning of the month;

(b) Products (other than fluid milk products, bulk fluid cream products, and cottage cheese) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product (other than a fluid milk product or a bulk fluid cream product) that is in a form in which it may be converted into a Class I product and which is not otherwise accounted for under the order.

7. A new § 1030.19a is added as follows:

§ 1030.19a Fluid cream product.

"Fluid cream product" means cream or a mixture of cream and milk or skim milk containing 9 percent or more butterfat.

8. In § 1030.22, paragraphs (j), (k), (l), and (m) are revised as follows:

§ 1030.22 Duties.

* * * * *

(j) Publicly announce on or before:

(1) The fifth day of each month, the Class I price for the current month pursuant to § 1030.51(a);

(2) The fifth day of each month, the Class II and Class III prices pursuant to § 1030.51 (b) and (c) and the butterfat differential pursuant to § 1030.52, all for the preceding month; and

(3) The 14th day after the end of each month, the uniform price pursuant to § 1030.71;

(k) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1030.47(a) (11) and the corresponding step of § 1030.47(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(l) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1030.47 pursuant to such report, and, thereafter, any change in such allocation required to correct errors disclosed in verification of such report;

(m) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any change in such allocation arising from the verification of such report; and

* * * * *

9. In § 1030.30(a), subparagraphs (3) and (5) are revised as follows:

§ 1030.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(3) Fluid milk products and bulk fluid cream products received from other pool plants (or pool plants of other handlers, if applicable);

* * * * *

(5) Inventories at the beginning and the end of the month of the following products, showing separately such inventories in bulk form and in packaged form:

(i) Fluid milk products; and

(ii) Fluid cream products except those received in packaged form from another plant;

* * * * *

10. Sections 1030.40 through 1030.46 are revoked and new §§ 1030.40 through 1030.48 are substituted therefor as follows:

§ 1030.40 Classification of all skim milk and butterfat.

All skim milk and butterfat to be reported by a handler pursuant to § 1030.30 and 1030.31 shall be classified each month in accordance with §§ 1030.41 through 1030.48. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1030.41 Class I milk.

Except as provided in §§ 1030.43, 1030.45, and 1030.48, Class I milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid milk product;

(b) In inventory at the end of the month of packaged fluid milk products; and

(c) Not specifically accounted for as Class II or Class III milk.

§ 1030.42 Class II milk.

Except as provided in §§ 1030.43, 1030.45, and 1030.48, Class II milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid cream product;

(b) Used to produce:

(1) Yogurt, cottage cheese, creamed or partially creamed cottage cheese, sour cream, and any sour mixture of cream and milk or skim milk containing 9 percent or more butterfat; and

(2) Any product containing 6 percent or more nonmilk fat (or oil) that resembles any product specified in paragraphs (a) and (b)(1) of this section; and

(c) In inventory at the end of the month of packaged fluid cream products.

§ 1030.43 Class III milk.

Except as provided in §§ 1030.45 and 1030.48, Class III milk shall be all skim milk and butterfat:

(a) Used to produce:

(1) Cheese (other than cottage cheese and creamed or partially creamed cottage cheese);

(2) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(3) Any milk product in dry form;

(4) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(5) Custards, puddings, and pancake mixes;

(6) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(7) Evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(8) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in § 1030.42(b)(2); and

(9) Any product that is not a fluid milk product and that is not specified in subparagraphs (1) through (8) of this paragraph or in § 1030.42;

(b) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and at which there is no disposition of fluid milk products other than those received in consumer-type packages;

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

(d) In fluid milk products and products specified in § 1030.42 that are disposed of by a handler for animal feed;

(e) In fluid milk products and products specified in § 1030.42 that are dumped by a handler if the marketing administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(f) If skim milk represented by the nonfat milk solids added to a fluid milk product that is in excess of the quantity of such skim milk included within the fluid milk product definition pursuant to § 1030.7; and

(g) In shrinkage that is:

(1) Assigned pursuant to § 1030.44(a) to the receipts specified in § 1030.44(a)(2); and

(2) Specified in §1030.44 (b) and (c).

§ 1030.44 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §§ 1030.30 and 1030.31, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant (or at all of the handler's pool plants combined if a single report is

filed pursuant to § 1030.30), which shall be assigned pro rata to:

(1) The net quantity of skim milk and butterfat, respectively, in the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) The quantity of skim milk and butterfat, respectively, in receipts of other source milk, excluding any such receipts used in the computations pursuant to paragraph (b) (5) and (6) of this section or in the form of packaged fluid milk products;

(b) The quantity of skim milk and butterfat, respectively, that was assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph which is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk described in § 1030.16 (a) and (a–1);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in producer milk described in § 1030.16(b), except that if the plant operator receiving such milk purchases the milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to a nonpool plant, except that if the operator of the nonpool plant purchases such milk on the basis of farm weights, no shrinkage shall be allowed;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants (or pool plants of other handlers, if applicable);

(5) Plus 1.5 percent of the skim milk and butterfat respectively, in bulk fluid milk products received from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other pool plants (or pool plants of other handlers, if applicable) and to nonpool plants; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1030.13 (d) or (e), but not to exceed 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of farm weights, no shrinkage shall be allowed.

§ 1030.45 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler (or to any pool plant if allocations pursuant to § 1030.47 are on an individual plant basis) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee plant after the computations pursuant to § 1030.47(a)(11) and the corresponding step of § 1030.47(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilizations available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of §§ 1030.41 through 1030.43.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's or divertee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant shall be classified as Class I milk, subject to the following conditions:

(1) If the transferor or divertor handler so requests and the conditions described in subdivisions (i) and (ii) of this subparagraph are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subparagraphs (2) through (7) of this paragraph:

(i) The transferor or divertor handler claims such classification in his report of receipts and utilization filed pursuant to § 1030.30 for the month within which such transaction occurred; and

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

(2) Class I route disposition of the nonpool plant in the marketing area of each Federal milk order and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated under such order shall be assigned to the extent possible:

(i) First to receipts of packaged fluid milk products at such nonpool plant from pool plants; and

(ii) Any remaining such route disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(3) Class I disposition from the nonpool plant of packaged fluid milk products other than that described in subparagraph (2) of this paragraph shall be assigned pro rata to any receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants that remain unassigned after the assignment pursuant to subparagraph (2) of this paragraph;

(4) Class I disposition of packaged fluid milk products described in sub-

paragraph (2) of this paragraph that was not assigned pursuant to such subparagraph and transfers of bulk fluid milk products from the nonpool plant to pool plants and other order plants, to the extent that such transfers and any remaining transfers of packaged fluid milk products to each such pool plant and other order plant exceed receipts of fluid milk products from such plant and that such excess is allocated to Class I at the transferee plant, shall be assigned to the extent possible:

(i) First to receipts of fluid milk products at such nonpool plant from pool plants that remain unassigned after the assignments pursuant to subparagraphs (2) and (3) of this paragraph; and

(ii) Any remaining such Class I disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(5) Any remaining unassigned Class I utilization at the nonpool plant shall be assigned to the extent possible:

(i) First to such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of bottling grade milk for such nonpool plant; and

(ii) Any remaining unassigned Class I utilization shall be assigned to the nonpool plant's receipts of bottling grade milk from plants not fully regulated under any Federal milk order;

(6) Any remaining unassigned receipts of fluid milk products and bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned pro rata to such remaining unassigned receipts from each source in sequence to any Class III utilization, then any Class II utilization and then any remaining Class I utilization at the nonpool plant; and

(7) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1030.46 Classification of producer milk.

Each month the market administrator shall determine the classification of producer milk in the following manner:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to §§ 1030.30 and 1030.31 and compute separately for each pool plant (or for all of a handler's pool plants combined if a single report is filed pursuant to § 1030.30) and for each cooperative association with respect to milk for which it is the handler pursuant to § 1030.13 (d) or (e) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1030.40 through 1030.45 and 1030.48. For purposes of this paragraph and § 1030.47, fluid cream products that are received from another plant in packaged form and disposed of, or held in inventory, in the same container in which received shall not be included in a handler's receipts, inventory, or disposition unless such products become other source milk pursuant to § 1030.17 (b) or (c);

(b) For each handler described in § 1030.13(a), allocate in accordance with § 1030.47 such handler's receipts of skim milk and butterfat to his utilization of skim milk and butterfat in each class, subject to the following conditions:

(1) If the handler is a cooperative association, such receipts and utilization shall not include any milk for which it is the handler pursuant to § 1030.13 (d) or (e); and

(2) If the handler operates two or more pool plants, such receipts and utilization shall be for all of his pool plants combined unless the handler requests in his reports filed pursuant to § 1030.30 that the classification of producer milk be determined separately for each of his pool plants and he has no skim milk or butterfat that would be allocated under § 1030.47(a) (10) or (11) or the corresponding steps of § 1030.47 (b); and

(c) The quantity of producer milk in each class shall be the following:

(1) For each cooperative association with respect to milk for which it is the handler pursuant to § 1030.13 (d) or (e), the combined pounds of skim milk and butterfat in each class that were determined pursuant to paragraph (a) of this section; and

(2) For each handler described in § 1030.13(a), the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1030.47(a)(13) and the corresponding step of § 1030.47(b).

§ 1030.47 Allocation of receipts to utilization.

For the purpose of § 1030.46, a handler's receipts shall be allocated to his utilization 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 milk pursuant to § 1030.43(g)(2);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) Receipts of exempt milk;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to subparagraph (6)(vi) of this paragraph, as follows:

(i) Form 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;

(4) With respect to a plant that was fully regulated in the immediately preceding month under any Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(i) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products that are in inventory at the beginning of the month; and

(ii) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1030.42;

(6) 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 (except that received in the form of a fluid milk product) that was not subtracted pursuant to subparagraph (5) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which bottling grade certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2)(i) of this paragraph;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant; and

(vii) Receipts of fluid milk products (other than exempt milk) from a government which has elected nonproducer status for the month pursuant to § 1030.9;

(7) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III, but not in excess of such quantities, 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 subparagraphs (2)(i) and (6)(v) of this paragraph:

(*a*) For which the handler requests Class II or Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying

the pounds of skim milk remaining in Class I by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis), and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph; and

(ii) Receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory at the beginning of the month of fluid milk products and fluid cream products (and, for the first month that this subparagraph is effective, Grade A sour cream and Grade A sour mixtures) that were not subtracted pursuant to subparagraph (4) of this paragraph;

(9) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2)(i), (6)(v), and (7)(i) of this paragraph and that were not offset by transfers of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(11) Subtract in the order specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (6)(vi) and (7)(ii) of this paragraph:

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net 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 § 1030.22(k) or the percentage that the 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 remainder of such receipts;

(12) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) according to the classification of such products pursuant to § 1030.45(a); and

(13) If the total 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"; and

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

§ 1030.48 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise. In the case of milk received from producers by a handler described in § 1030.13(e) for delivery to a pool plant, such handler shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1030.16(c), and the operator of such pool plant shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1030.16(b).

(b) Milk received by a pool plant operator from a handler described in § 1030.13(e) shall be classified according to the use or disposition of the milk at such pool plant and the value of the milk at class prices shall be included in the operator's pool obligation pursuant to § 1030.70.

(c) If verification by the market administrator discloses that the original classification of skim milk or butterfat was incorrect, such skim milk or butterfat shall be reclassified.

11. Section 1030.51 is revised as follows:

§ 1030.51 Class prices.

Subject to the provisions of § 1030.52, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $1.26.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

12. Section 1030.52 is revised as follows:

§ 1030.52 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the class prices specified in § 1030.51 and the uniform price specified in § 1030.71 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by an amount, rounded to the nearest one-tenth cent, that is equal to the butter price for the month multiplied by 0.115.

13. In § 1030.53, the introductory text and paragraph (c)(5) are revised and a new paragraph (e) is added as follows:

§ 1030.53 Location adjustments to handlers.

A location adjustment for each handler shall be computed by the market administrator as follows:

* * * * *

(c) * * *

(5) Substract the quantity of bulk fluid milk products received at the handler's pool plant(s) from other order plants and unregulated supply plants that are assigned to Class I pursuant to § 1030.47;

* * * * *

(e) The Class I price applicable to other source milk shall be reduced at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

14. 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 on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to § 1030.31(c) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

(1) Determine the pounds of skim milk and butterfat, respectively, in the partially regulated distributing plant's route disposition in the marketing area;

(2) Subtract the pounds of skim milk and butterfat, respectively, received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in the partially regulated distributing plant's route disposition in the marketing area;

(4) Combine the remaining pounds of skim milk and butterfat and multiply the total by the difference between the Class I price and the uniform price, both prices to be applicable at the location

of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

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

(1) Determine the obligation that would have been computed pursuant to § 1030.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to subdivision (i) of this subparagraph. Any such transfers remaining after the above allocation which are classified in Class I and on which an obligation is computed for the handler operating the partially regulated distributing plant pursuant to § 1030.70 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, in lieu of the obligation pursuant to § 1030.70(f) and the credit specified in § 1030.84(b)(2), the obligation for such handler shall include a similar obligation for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1030.11(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his report filed pursuant to § 1030.31(c) a similar report for each such nonpool supply plant;

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

(c) The obligation for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the obligation computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for bottling grade milk received at the plant during the month from dairy farmers;

(ii) If subparagraph (1)(iii) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for bottling grade milk received at the plant during the month from dairy farmers; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if subparagraph (1)(iii) of this paragraph applies.

15. In § 1030.61(b), subparagraph (2) is revised as follows:

§ 1030.61 Plants subject to other Federal orders.

* * * * *

(b) * * *

(2) Compute the value of the reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

16. Section 1030.70 is revised as follows:

§ 1030.70 Computation of the net pool obligation of each handler.

The monthly net pool obligation of each handler described in § 1030.13 (a), (d), (e), and (h) shall be determined for such handler, or for each pool plant of such handler if the allocations pursuant to § 1030.47 are on an individual plant basis and the handler requests separate statements. Such obligation shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class determined pursuant to § 1030.46 by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1030.47(a)(13) and the corresponding step of § 1030.47(b) by the respective class price applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1030.47(a)(8) and the corresponding step of § 1030.47(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1030.47(a)(6) (i) through (iv) and (vii) and the corresponding step of § 1030.47(b), excluding receipts of bulk fluid cream product from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1030.47(a)(6) (v) and (vi) and the corresponding step of § 1030.47(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest nonpool plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1030.47(a)(10) and the corresponding step of § 1030.47(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Subtract an amount equal to the minus location adjustment computed pursuant to § 1030.53(c)(13) or (d).

17. Section 1030.71 is revised as follows:

§ 1030.71 Computation of the uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of producer milk of 3.5 percent butterfat content at plants in Zone I, as follows:

(a) Combine into one total the values computed pursuant to § 1030.70 for all handlers, except those of handlers who failed to make payments required pursuant to § 1030.84 for the preceding month;

(b) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, the amount obtained by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential specified in § 1030.52, and multiply the result by the total hundredweight of such milk;

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1030.82(a);

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

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

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.70(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

18. In § 1030.80(a), the introductory text of subparagraph (1) is revised as follows:

§ 1030.80 Time and method of payment for producer milk.

(a) * * *

(1) On or before the 18th day of the following month to each producer, not less than the uniform price, as adjusted pursuant to §§ 1030.52 and 1030.82, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

* * * * *

§ 1031.81 [Revoked]

19. Section 1030.81 is revoked.

20. In § 1030.82, paragraph (b) is revised as follows:

§ 1030.82 Location differentials to producers and on nonpool milk.

* * * * *

(b) The uniform price applicable to other source milk shall be reduced at the rates set forth in § 1030.53(a), except that the adjusted uniform price shall not be less than the Class III price.

21. In § 1030.84(b), subparagraph (2) is revised as follows:

§ 1030.84 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the uniform price applicable at the location of the plants from which received of other source milk for which a value is computed pursuant to § 1030.70(f).

22. Section 1030.88 is revised as follows:

§ 1030.88 Expense of administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 18th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) His producer milk (including such handler's own farm production);

(b) Other source milk allocated to Class I pursuant to § 1030.47(a) (6) and (10) and the corresponding steps of § 1030.47(b), except such other source milk on which no handler obligation applies pursuant to § 1030.70(f); and

(c) Class I milk disposed of on a route in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1030.60(a)(2). A cooperative association handler pursuant to § 1030.13(e) shall make the payments set forth herein on the producer milk described in § 1030.16(c).

PART 1032—MILK IN THE SOUTHERN ILLINOIS MARKETING AREA

1. In § 1032.14, paragraphs (a)(2) and (b)(3) are revised as follows:

§ 1032.14 Producer milk.

* * * * *

(a) * * *

(2) By a cooperative association as a handler pursuant to § 1032.9(d) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1032.44(c) or as Class I shrinkage; or

(b) * * *

(3) Milk of a producer diverted during the month as Class II or Class III milk from a pool plant to an other order plant for not more days of production of producer milk by such producer than is received at a pool plant(s) pursuant to paragraph (a) of this section: *Provided*, That milk so diverted shall not be producer milk if, notwithstanding the provisions of this subparagraph, the milk is fully subject to the pricing and pooling provisions of the other order;

* * * * *

2. Section 1032.15 is revised as follows:

§ 1032.15 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source other than producers, cooperative associations acting as a handler pursuant to § 1032.9(d), pool plants, and inventory at the beginning of the month;

(b) Products (other than fluid milk products, bulk fluid cream products, and cottage cheese) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product (other than a fluid milk product or a bulk fluid cream product) that is in a form in which it may be converted into a Class I product and which is not otherwise accounted for under the order.

3. Section 1032.16 is revised as follows:

§ 1032.16 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means:

(1) Any of the following products in fluid or frozen form, including such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted: Milk, skim milk, lowfat milk, milk drinks, eggnog, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids; and

(2) Any milk product in fluid or frozen form that is not specified in subparagraph (1) of this pargaraph or in § 1032.42 or § 1032.43(a) (1) through (8), if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

(1) Evaporated or condensed milk or skim milk in plain or sweetened form, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

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

4. A new § 1032.16a is added as follows:

§ 1032.16a Fluid cream product.

"Fluid cream product" means cream or mixture of cream and milk or skim milk containing 9 percent or more butterfat.

5. Section 1032.17 is revised as follows:

§ 1032.17 Route.

"Route" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) or any fluid milk product to a retail or wholesale outlet other than (a) a pool plant or a nonpool plant, or (b) a commercial food processor pursuant to § 1032.43(b).

6. In § 1032.22, paragraphs (h), (k), (l), and (m) are revised as follows:

§ 1032.22 Duties.

* * * * *

(h) Publicly announce on or before:

(1) The sixth day of each month, the Class I price for the current month pursuant to § 1032.51(a);

(2) The sixth day of each month, the Class II and Class III prices pursuant to § 1032.51 (b) and (c) and the butterfat differential pursuant to § 1032.52, all for the preceding month; and

(3) The 12th day after the end of each month, the uniform price pursuant to § 1032.71;

* * * * *

(k) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1032.47(a) (11) and the corresponding step of § 1032.47(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(l) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products

from an other order plant, the class to which such receipts are allocated pursuant to § 1032.47 pursuant to such report, and, thereafter, any change in such allocation required to correct errors disclosed in verification of such report; and

(m) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any change in such allocation arising from the verification of such report.

7. In § 1032.30(a), subparagraphs (1) (iii) and (2) are revised as follows:

§ 1032.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(iii) Fluid milk products and bulk fluid cream products received from other pool plants; and

* * * * *

(2) Inventories at the beginning and the end of the month of the following products, showing separately such inventories in bulk form and in packaged form:

(i) Fluid milk products; and

(ii) Fluid cream products except those received in packaged form from another plant;

* * * * *

8. In § 1032.32, paragraph (b) is revised as follows:

§ 1032.32 Payroll reports.

* * * * *

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1032.62(a) shall report to the market administrator, on or before the 20th day after the end of the month for each dairy farmer from whom milk was received, the same information as required pursuant to paragraph (a) of this section.

9. Sections 1032.40 through 1032.46 are revoked and new §§ 1032.40 through 1032.48 are substituted therefor as follows:

§ 1032.40 Classification of all skim milk and butterfat.

All skim milk and butterfat to be reported by a handler pursuant to § 1032.30 shall be classified each month in accordance with §§ 1032.41 through 1032.48. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1032.41 Class I milk.

Except as provided in §§ 1032.43, 1032.45, and 1032.48, Class I milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid milk product;

(b) In inventory at the end of the month of packaged fluid milk products; and

(c) Not specifically accounted for as Class II or Class III milk.

§ 1032.42 Class II milk.

Except as provided in §§ 1032.43, 1032.45, and 1032.48, Class II milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid cream product;

(b) Used to produce:

(1) Yogurt, cottage cheese, creamed or partially creamed cottage cheese, sour cream, and any sour mixture of cream and milk or skim milk containing 9 percent or more butterfat; and

(2) Any product containing 6 percent or more nonmilk fat (or oil) that resembles any product specified in paragraphs (a) and (b)(1) of this section; and

(c) In inventory at the end of the month of packaged fluid cream products.

§ 1032.43 Class III milk.

Except as provided in §§ 1032.45 and 1032.48, Class III milk shall be all skim milk and butterfat:

(a) Used to produce:

(1) Cheese (other than cottage cheese and creamed or partially creamed cottage cheese);

(2) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(3) Any milk product in dry form;

(4) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(5) Custards, puddings, and pancake mixes;

(6) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(7) Evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(8) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in § 1032.42(b)(2); and

(9) Any product that is not a fluid milk product and that is not specified in subparagraphs (1) through (8) of this paragraph or in § 1032.42;

(b) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled mills plant) at which food products (other than milk products and filled milk) are processed and at which there is no disposition of fluid milk products other than those received in consumer-type packages;

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

(d) In fluid milk products and products specified in § 1032.42 that are disposed of by a handler for animal feed;

(e) In fluid milk products and products specified in § 1032.42 that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(f) In skim milk represented by the nonfat milk solids added to a fluid milk product that is in excess of the quantity of such skim milk included within the fluid milk product definition pursuant to § 1032.16; and

(g) In shrinkage that is:

(1) Assigned pursuant to § 1032.44(a) to the receipts specified in § 1032.44(a)(2); and

(2) Specified in § 1032.44(b) and (c).

§ 1032.44 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1032.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, in the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) The quantity of skim milk and butterfat, respectively, in receipts of other source milk in bulk fluid form, excluding any such receipts used in the computations pursuant to paragraph (b)(5) and (6) of this section;

(b) The quantity of skim milk and butterfat, respectively, that was assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph which is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in milk physically received at such plant directly from producers (excluding that received by diversion from another pool plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a cooperative association acting as a handler pursuant to § 1032.9(d) and in milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk purchases the milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no shrinkage shall be allowed;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1032.9 (c) or (d), but not to exceed 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of farm weights, no shrinkage shall be allowed.

§ 1032.45 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler (or to any pool plant if allocations pursuant to § 1032.47 are on an individual plant basis) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee or divertee plant after the computations pursuant to § 1032.47(a) (11) and the corresponding step of § 1032.47(b);

(2) If the transferor or divertor plant received during the month other source milk to be allocated pursuant to § 1032.47 (a)(6) or the corresponding step of § 1032.47(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor or divertor handler received during the month other source milk to be allocated pursuant to § 1032.47(a) (10) or (11) or the corresponding steps of § 1032.47(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee or divertee plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilizations available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of §§ 1032.41 through 1032.43.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified as Class I milk, subject to the following conditions:

(1) If the transferor or divertor handler so requests and the conditions described in subdivisions (i) and (ii) of this subparagraph are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subparagraphs (2) through (7) of this paragraph:

(i) The transferor or divertor handler claims such classification in his report of receipts and utilization filed pursuant to § 1032.30 for the month within which such transaction occurred; and

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

(2) Class I route disposition of the nonpool plant in the marketing area of each Federal milk order and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated under such order shall be assigned to the extent possible:

(i) First to receipts of packaged fluid milk products at such nonpool plant from pool plants; and

(ii) Any remaining such route disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(3) Class I disposition from the nonpool plant of packaged fluid milk products other than that described in subparagraph (2) of this paragraph shall be assigned pro rata to any receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants that remain unassigned after the assignment pursuant to subparagraph (2) of this paragraph;

(4) Class I disposition of packaged fluid milk products described in subparagraph (2) of this paragraph that was not assigned pursuant to such subparagraph and transfers of bulk fluid milk products from the nonpool plant to pool plants and other order plants, to the extent that such transfers and any remaining transfers of packaged fluid milk products to each such pool plant and other order plant exceed receipts of fluid milk products from such plant and that such excess is allocated to Class I at the transferee plant, shall be assigned to the extent possible:

(i) First to receipts of fluid milk products at such nonpool plant from pool plants that remain unassigned after the assignments pursuant to subparagraphs (2) and (3) of this paragraph; and

(ii) Any remaining such Class I disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(5) Any remaining unassigned Class I utilization at the nonpool plant shall be assigned to the extent possible:

(i) First to such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of bottling grade milk for such nonpool plant; and

(ii) Any remaining unassigned Class I utilization shall be assigned to the nonpool plant's receipts of bottling grade milk from plants not fully regulated under any Federal milk order;

(6) Any remaining unassigned receipts of fluid milk products and bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned pro rata to such remaining unassigned receipts from each source in sequence to any Class III utilization, then any Class II utilization, and then any remaining Class I utilization at the nonpool plant; and

(7) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1032.46 Classification of producer milk.

Each month the market administrator shall determine the classification of producer milk in the following manner:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to § 1032.30 and compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1032.9 (c) or (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1032.40 through 1032.45 and § 1032.48. For purposes of this paragraph and § 1032.47, fluid cream products that are received from another plant in packaged form and disposed of, or held in inventory, in the same container in which received shall not be included in a handler's receipts, inventory, or disposition unless such products become other source milk pursuant to § 1032.15 (b) or (c);

(b) For each handler described in § 1032.9(a), allocate in accordance with § 1032.47 such handler's receipts of skim milk and butterfat to his utilization of skim milk and butterfat in each class, subject to the following conditions:

(1) If the handler is a cooperative association, such receipts and utilization shall not include any milk for which it is the handler pursuant to § 1032.9 (c) or (d); and

(2) If the handler operates two or more pool plants, such receipts and utilization shall be for all of his pool plants combined unless the handler requests in his reports filed pursuant to § 1032.30 that the classification of producer milk be determined separately for each of his pool plants and he has no skim milk or butterfat that would be allocated under § 1032.47(a) (10) or (11) or the corresponding steps of § 1032.47(b); and

(c) The quantity of producer milk in each class shall be the following:

(1) For each cooperative association with respect to milk for which it is the handler pursuant to § 1032.9 (c) or (d), the combined pounds of skim milk and butterfat in each class that were determined pursuant to paragraph (a) of this section; and

(2) For each handler described in § 1032.9(a), the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1032.47(a)(13) and the corresponding step of § 1032.47(b).

§ 1032.47 Allocation of receipts to utilization.

For the purpose of § 1032.46, a handler's receipts shall be allocated to his utilization 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 milk pursuant to § 1032.43(g)(2);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to subparagraph (6)(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;

(4) With respect to a plant that was fully regulated in the immediately preceding month under any Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(i) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products that are in inventory at the beginning of the month; and

(ii) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1032.42;

(6) 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 (except that received in the form of a fluid milk product) that was not subtracted pursuant to subparagraph (5) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which bottling grade certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

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

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk 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 II and Class III, in sequence beginning with Class III, but not in excess of such quantities, 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 subparagraphs (2) and (6)(v) of this paragraph:

(*a*) For which the handler requests Class II or Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis), and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph; and

(ii) Receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory at the beginning of the month of fluid milk products and fluid cream products that were not subtracted pursuant to subparagraph (4) of this paragraph;

(9) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the

pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (6)(v), and (7)(i) of this paragraph and that were not offset by transfers of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(11) Subtract in the order specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (6)(v) and (7)(ii) of this paragraph;

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net 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 § 1032.22(k) or the percentage that the 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 remainder of such receipts;

(12) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) according to the classification of such products pursuant to § 1032.45(a); and

(13) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of milk remaining in each class in series beginning with Class III. 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.

§ 1032.48 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise. In the case of milk received from producers by a handler described in § 1032.9(d) for delivery to a pool plant, such handler shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1032.14(a)(2), and the operator of such pool plant shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1032.14(a)(1).

(b) Milk received by a pool plant operator from a handler described in § 1032.9(d) shall be classified according to the use or disposition of the milk at such pool plant and the value of the milk at class prices shall be included in the operator's pool obligation pursuant to § 1032.70.

(c) If verification by the market administrator discloses that the original classification of skim milk or butterfat was incorrect, such skim milk or butterfat shall be reclassified.

10. Section 1032.51 is revised as follows:

§ 1032.51 Class prices.

Subject to the provisions of §§ 1032.52 and 1032.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the Class I price pursuant to Part 1062 of this chapter (St. Louis-Ozarks) minus 7 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

11. Section 1032.52 is revised as follows:

§ 1032.52 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the class prices specified in § 1032.51 and the uniform price specified in § 1032.71 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by an amount, rounded to the nearest one-tenth cent, that is equal to the Chicago butter price for the month multiplied by 0.115.

12. Section 1032.53 is revised as follows:

§ 1032.53 Location adjustments to handlers.

(a) For producer milk received at a pool plant which is classified as Class I milk and eligible pursuant to paragraph (b) or (c) of this section for location adjustment, the Class I price specified in § 1032.51(a) shall be adjusted for the location of such plant by the following amount:

(1) At a plant in the southern zone, plus 7 cents;

(2) At a plant in the northern zone, minus 7 cents;

(3) At a plant outside the marketing area, minus 15 cents if such plant is 100 or more miles from the city or village limits of Alton, Robinson, or Vandalia, Ill., whichever is nearest, and minus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles: *Provided*, That the adjustment at a plant outside the marketing area and in the State of Illinois south of the northernmost boundaries of the Illinois counties of Adams and Schuyler and at a plant in the Indiana counties of Fountain, Parke, Vermillion, and Warren shall be the same as for a pool plant located in the northern zone; and

(4) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(b) If skim milk and butterfat are allocated on an individual plant basis pursuant to § 1032.47, the quantity of milk received at the plant as producer milk or by diversion from another pool plant that shall be subject to any location adjustment applicable at such plant shall be determined as follows:

(1) From the total pounds of Class I skim milk and butterfat, respectively, at such plant subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1032.47 (a) and (b) and any Class I transfers to other pool plants;

(2) The amount of Class I transfers from such plant to other pool plants that is eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) From the total pounds of Class I skim milk and butterfat, respectively, at such transferee plant (excluding Class I transfers to other pool plants that are not eligible for location adjustment as determined at such other pool plants) subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1032.47 (a) and (b);

(ii) From the remaining pounds of Class I skim milk and butterfat, respectively, subtract 95 percent of the skim milk and butterfat, respectively, in receipts at such transferee plant of producer milk and by diversion from other pool plants;

(iii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iv) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (iii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(3) The sum of the quantities determined pursuant to subparagraphs (1) and (2)(iv) of this paragraph, or the total pounds of milk received at the plant as producer milk and by diversion from another pool plant, whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(c) If skim milk and butterfat are allocated on a system basis pursuant to § 1032.47, the quantity of milk received at each plant as producer milk or by diversion from another pool plant that shall be subject to any location adjustment applicable at such plant shall be determined as follows:

(1) Assign to the skim milk and butterfat, respectively, in the combined Class II and Class III utilization at each plant of the handler (excluding any such utilization at each plant based on transfers to other pool plants of the handler) any beginning inventory and other source milk receipts at such plant of the respective category allocated to such combined class uses pursuant to each subparagraph of § 1032.47(a) and the corresponding step of § 1032.47(b). If the same category of other source milk

to be assigned to the combined Class II and Class III utilization was received at two or more plants of the handler, such other source milk shall be assigned first to the combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices (excluding in each case utilization based on transfers to his other pool plants). To the extent that combined Class II and Class III utilization of beginning inventory and other source milk remains unassigned, such remainder shall be assigned first to the remaining combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices;

(2) From the total pounds of Class I skim milk and butterfat, respectively, at each plant of the handler (excluding transfers to his other pool plants and Class I transfers to pool plants of other handlers) subtract the pounds of skim milk and butterfat in the respective category of other source milk received and beginning inventory at such plant which exceed the quantities assigned to Class II and Class III utilization at such plant pursuant to subparagraph (1) of this paragraph;

(3) The amount of transfers from each plant to other pool plants of the handler operating such plant and Class I transfers to pool plants of other handlers that are eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) To the pounds of Class I skim milk and butterfat, respectively, remaining at the transferee plant after the computation pursuant to subparagraph (2) of this paragraph add any Class I transfers from such plant to other pool plants that are eligible for location adjustment as determined at the plants to which such transfers were made, and then subtract 95 percent of the skim milk and butterfat, respectively, in receipts at such transferee plant of producer milk and by diversion from other pool plants;

(ii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iii) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (ii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(4) The sum of the quantities determined pursuant to subparagraphs (2) and (3)(iii) of this paragraph, or the total pounds of milk received at the plant as producer milk and by diversion from another pool plant, whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

13. In § 1032.61(e), subparagraph (2) is revised as follows:

§ 1032.61 Plants subject to other Federal orders.

* * * * *

(e) * * *

(2) Compute the value of the reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

14. Section 1032.62 is revised as follows:

§ 1032.62 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1032.30(c) and 1032.32(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

(1) Determine the pounds of skim milk and butterfat, respectively, in the partially regulated distributing plant's route disposition in the marketing area;

(2) Subtract the pounds of skim milk and butterfat, respectively, received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in the partially regulated distributing plant's route disposition in the marketing area;

(4) Combine the remaining pounds of skim milk and butterfat and multiply the total by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

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

(1) Determine the obligation that would have been computed pursuant to § 1032.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to subdivision (i) of this subparagraph. Any such transfers remaining after the above allocation which are classified in Class I and on which an obligation is computed for the handler operating the partially regulated distributing plant pursuant to § 1032.70 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, in lieu of the obligation pursuant to § 1032.70(f) and the credit specified in § 1032.84(b)(2), the obligation for such handler shall include a similar obligation for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1032.12 (b) and (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1032.30 (c) and 1032.32(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and rec-

ords showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The obligation for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the obligation computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for bottling grade milk received at the plant during the month from dairy farmers;

(ii) If subparagraph (1)(iii) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for bottling grade milk received at the plant during the month from dairy farmers; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if subparagraph (1)(iii) of this paragraph applies.

15. Section 1032.70 is revised as follows:

§ 1032.70 Computation of the net pool obligation of each handler.

The monthly net pool obligation of each handler described in § 1032.9 (a), (c), and (d) shall be determined for such handler, or for each pool plant of such handler if the allocations pursuant to § 1032.47 are on an individual plant basis and the handler requests separate statements. Such obligation shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class determined pursuant to § 1032.46 by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1032.47(a)(13) and the corresponding step of § 1032.47(b) by the respective class price applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundred-weight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1032.47(a)(8) and the corresponding step of § 1032.47(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1032.47(a)(6) (i) through (iv) and the corresponding step of § 1032.47(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1032.47(a)(6) (v) and (vi) and the corresponding step of § 1032.47 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest nonpool plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1032.47(a)(10) and the corresponding step of § 1032.47(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price for the preceding month and the Class II price for the current month by the hundredweight of skim milk and butterfat in any products specified in § 1032.42 (a) and (b) that were in Class I inventory at the end of the preceding month.

16. In § 1032.71, paragraph (c) is revised as follows:

§ 1032.71 Computation of the uniform price.

* * * * *

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, the amount obtained by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential specified in § 1032.52, and multiply the result by the total hundredweight of such milk;

* * * * *

17. In § 1032.72, paragraph (b) is revised as follows:

§ 1032.72 Notification of handlers.

* * * * *

(b) The uniform price computed pursuant to § 1032.71 and the butterfat differential computed pursuant to § 1032.52; and

* * * * *

18. In § 1032.80(a), subparagraph (1) and the introductory text of subparagraph (2) are revised as follows:

§ 1032.80 Time and method of payment for producer milk.

(a) * * *

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

(2) On or before the 20th day of the following month to each producer, an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1032.52 and 1032.82, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments;

* * * * *

§ 1032.81 [Revoked]

19. Section 1032.81 is revoked.

20. Section 1032.82 is revised as follows:

§ 1032.82 Location differentials to producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1032.53(a); and

(b) The weighted average price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted weighted average price shall not be less than the Class III price.

21. In § 1032.84(b), subparagraph (2) is revised as follows:

§ 1032.84 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price applicable at the location of the plants from which received of other source milk for which a value is computed pursuant to § 1032.70(f).

22. Section 1032.87 is revised as follows:

§ 1032.87 Expense of administration.

As his pro rata share of the expense of administering the order, each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1032.9(d) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

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

(b) Other source milk allocated to Class I pursuant to § 1032.47(a) (6) and (10) and the corresponding steps of § 1032.47(b), except such other source milk on which no handler obligation applies pursuant to § 1032.70(f); and

(c) Class I milk disposed of on a route in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1032.62(a)(2).

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.11 is revised as follows:

§ 1046.11 Country plant.

"Country plant" means a milk plant, other than a city plant, which is approved by a duly constituted health authority to supply milk or skim milk to a city plant(s) for disposition as "Grade A" milk and at which milk is received during the month from persons described in § 1046.7(a) or from a cooperative association in its capacity as a handler pursuant to § 1046.8(c).

2. In § 1046.12, paragraphs (b) and (c) are revised as follows:

§ 1046.12 Pool plant.

* * * * *

(b) A country plant during any of the months of October through March from which not less than 50 percent, and during other months not less than 40 percent, of the receipts of milk at such plant from persons described in § 1046.7(a) and from a cooperative association in its capacity as a handler pursuant to § 1046.8(c) is moved to and received at a city plant in the form of milk or skim milk;

(c) A country plant during the months of April through September from which not less than 50 percent of the combined receipts of milk from persons described in § 1046.7(a) and from a cooperative association in its capacity as a handler pursuant to § 1046.8(c) during the preceding period of October through March was moved to and received at a city plant(s) in the form of milk or skim milk, unless the operator of such plant notifies the market administrator in writing on or before March 15 of withdrawal of the plant from the pool for the months of April through September next following; and

* * * * *

3. Section 1046.15 is revised as follows:

§ 1046.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means:

(1) Any of the following products in fluid or frozen form, including such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted: Milk, skim milk, lowfat milk, milk drinks, eggnog, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids; and

(2) Any milk product in fluid or frozen form that is not specified in subparagraph (1) of this paragraph or in § 1046.42 or § 1046.43(a) (1) through (8), if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

(1) Evaporated or condensed milk or skim milk in plain or sweetened form, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

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

4. A new § 1046.15a is added as follows:

§ 1046.15a Fluid cream product.

"Fluid cream product" means cream or a mixture of cream and milk or skim milk containing 9 percent or more butterfat.

5. Section 1046.16 is revised as follows:

§ 1046.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source other than producers, cooperative associations acting as a handler pursuant to § 1046.8(c), pool plants, and inventory at the beginning of the month;

(b) Products (other than fluid milk products, bulk fluid cream products, and cottage cheese) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product (other than a fluid milk product or a bulk fluid cream product) that is in a form in which it may be converted into a Class I product and which is not otherwise accounted for under the order.

6. In § 1046.22, paragraphs (k), (m), (n), and (o) are revised as follows:

§ 1046.22 Duties.

* * * * *

(k) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate and notify each handler in writing the prices and butterfat differential determined for each month as follows:

(1) On or before the eighth day of each month, the Class I price for the current month pursuant to § 1046.51(a);

(2) On or before the eighth day of each month, the Class II and Class III prices pursuant to § 1046.51 (b) and (c) and the butterfat differential pursuant to § 1046.52, all for the preceding month; and

(3) On or before the 12th day after the end of each month, the uniform price pursuant to § 1046.71;

* * * * *

(m) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1046.47(a) (11) and the corresponding step of § 1046.47(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(n) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1046.47 pursuant to such report, and, thereafter, any change in such allocation required to correct errors disclosed in verification of such report; and

(o) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

7. In § 1046.30(a), subparagraphs (2) and (4) are revised as follows:

§ 1046.30 Reports of receipts and utilization.

(a) * * *

(2) The quantities of skim milk and butterfat contained in fluid milk products and bulk fluid cream products received from other pool plants and in milk received from a cooperative association in its capacity as a handler pursuant to § 1046.8(c);

* * * * *

(4) The quantities of skim milk and butterfat contained in inventories at the beginning and at the end of the month of the following products, showing separately such inventories in bulk form and in packaged form:

(i) Fluid milk products; and

(ii) Fluid cream products except those received in packaged form from another plant;

* * * * *

8. Section 1046.31 is revised as follows:

§ 1046.31 Payroll reports.

On or before the 20th day after the end of each month, each handler who received milk from producers or from a cooperative association of producers and each handler who is the operator of a partially regulated distributing plant and who does not elect to make payments pursuant to § 1046.62(a) shall submit to the market administrator for each of his plants his producer or dairy farmer payroll for deliveries during the month which shall show (a) the total pounds of milk received from each producer, producer cooperative association or dairy farmer, and the average butterfat content of such milk, (b) the prices paid and the amount of payment to each producer, producer cooperative association, or dairy farmer, and (c) the nature and amount of any credits, deductions, or charges involved in such payments.

9. Sections 1046.40 through 1046.46 are revoked and new §§ 1046.40 through 1046.48 are substituted therefor as follows:

§ 1046.40 Classification of all skim milk and butterfat.

All skim milk and butterfat to be reported by a handler pursuant to § 1046.30 shall be classified each month in accordance with §§ 1046.41 through 1046.48. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1046.41 Class I milk.

Except as provided in §§ 1046.43, 1046.45, and 1046.48, Class I milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid milk product;

(b) In inventory at the end of the month of packaged fluid milk products; and

(c) Not specifically accounted for as Class II or Class III milk.

§ 1046.42 Class II milk.

Except as provided in §§ 1046.43, 1046.45, and 1046.48, Class II milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid cream product;

(b) Used to produce:

(1) Yogurt, cottage cheese, creamed or partially creamed cottage cheese, sour cream, and any sour mixture of cream and milk or skim milk containing 9 percent or more butterfat; and

(2) Any product containing 6 percent or more nonmilk fat (or oil) that resembles any product specified in paragraph (a) of this section and subparagraph (1) of this paragraph; and

(c) In inventory at the end of the month of packaged fluid cream products.

§ 1046.43 Class III milk.

Except as provided in §§ 1046.45 and 1046.48, Class III milk shall be all skim milk and butterfat:

(a) Used to produce:

(1) Cheese (other than cottage cheese and creamed or partially creamed cottage cheese);

(2) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(3) Any milk product in dry form;

(4) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(5) Custards, puddings, and pancake mixes;

(6) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(7) Evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(8) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in § 1046.42(b)(2); and

(9) Any product that is not a fluid milk product and that is not specified in subparagraphs (1) through (8) of this paragraph or in § 1046.42;

(b) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and at which there is no disposition of fluid milk products other than those received in consumer-type packages;

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

(d) In fluid milk products and products specified in § 1046.42 that are disposed of by a handler for animal feed;

(e) In fluid milk products and products specified in § 1046.42 that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(f) In skim milk represented by the nonfat milk solids added to a fluid milk product that is in excess of the quantity of such skim milk included within the fluid milk product definition pursuant to § 1046.15; and

(g) In shrinkage that is:

(1) Assigned pursuant to § 1046.44(a) to the receipts specified in § 1046.44(a)(2); and

(2) Specified in § 1046.44(b) and (c).

§ 1046.44 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1046.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, that is equal to 50 times the maximum amount that may be computed pursuant to paragraph (b) of this section; and

(2) The quantity of skim milk and butterfat, respectively, in other source milk received in bulk form as fluid milk products, excluding any such receipts used in the computations pursuant to paragraph (b) (5) and (6) of this section;

(b) The quantity of skim milk and butterfat, respectively, that was assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph which is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in milk physically received at such plant directly from producers (excluding that received by diversion from another pool plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a cooperative association acting as a handler pursuant to § 1046.8(c) and in milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk purchases the milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no shrinkage shall be allowed;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1046.8 (b) or (c), but not to exceed 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of farm weights, no shrinkage shall be allowed.

§ 1046.45 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted by the operator of a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1046.8(c) in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler (or, in the case of such plant operator, to any pool plant if allocations pursuant to § 1046.47 are on an individual plant basis) shall be classified as Class I milk unless both handlers request the same classification in another class. The classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee or divertee plant after the computations pursuant to § 1046.47(a)(11) and the corresponding step of § 1046.47(b);

(2) If the transferor or divertor plant received during the month other source milk to be allocated pursuant to § 1046.47(a)(6) or the corresponding step of § 1046.47(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor or divertor handler received during the month other

source milk to be allocated pursuant to § 1046.47(a) (10) or (11) or the corresponding steps of § 1046.47(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee or divertee plant; and

(4) If a specified classification is not claimed by both handlers in the case of transfers or diversions by such a cooperative association, such skim milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the transferee or divertee handler after making the assignments pursuant to § 1046.47(a)(11) and the corresponding step of § 1046.47(b), and after the assignment of milk for which a specified classification has been claimed pursuant to this paragraph.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilizations available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of §§ 1046.41 through 1046.43.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified as Class I milk, subject to the following conditions:

(1) If the transferor or divertor handler so requests and the conditions described in subdivisions (i) and (ii) of this subparagraph are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subparagraphs (2) through (7) of this paragraph:

(i) The transferor or divertor handler claims such classification in his report of receipts and utilization filed pursuant to § 1046.30 for the month within which such transaction occurred; and

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

(2) Class I route disposition of the nonpool plant in the marketing area of each Federal milk order and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated under such order shall be assigned to the extent possible:

(i) First to receipts of packaged fluid milk products at such nonpool plant from pool plants; and

(ii) Any remaining such route disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(3) Class I disposition from the nonpool plant of packaged fluid milk products other than that described in subparagraph (2) of this paragraph shall be assigned pro rata to any receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants that remain unassigned after the assignment pursuant to subparagraph (2) of this paragraph;

(4) Class I disposition of packaged fluid milk products described in subparagraph (2) of this paragraph that was not assigned pursuant to such subparagraph and transfers of bulk fluid milk products from the nonpool plant to pool plants and other order plants, to the extent that such transfers and any remaining transfers of packaged fluid milk products to each such pool plant and other order plant exceed receipts of fluid milk products from such plant and that such excess is allocated to Class I at the transferee plant, shall be assigned to the extent possible:

(i) First to receipts of fluid milk products at such nonpool plant from pool plants that remain unassigned after the assignments pursuant to subparagraphs (2) and (3) of this paragraph; and

(ii) Any remaining such Class I disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(5) Any remaining unassigned Class I utilization at the nonpool plant shall be assigned to the extent possible:

(i) First to such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of bottling grade milk for such nonpool plant; and

(ii) Any remaining unassigned Class I utilization shall be assigned to the nonpool plant's receipts of bottling grade milk from plants not fully regulated under any Federal milk order;

(6) Any remaining unassigned receipts of fluid milk products and bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned pro rata to such remaining unassigned receipts from each source in sequence to any Class III utilization, then any Class II utilization, and then any remaining Class I utilization at the nonpool plant; and

(7) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1046.46 Classification of producer milk.

Each month the market administrator shall determine the classification of producer milk in the following manner:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to § 1046.30 and compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1046.8 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1046.40 through 1046.45 and 1046.48. For purposes of this paragraph and § 1046.47, fluid cream products that are received

from another plant in packaged form and disposed of, or held in inventory, in the same container in which received shall not be included in a handler's receipts, inventory, or disposition unless such products become other source milk pursuant to § 1046.16 (b) or (c);

(b) For each handler described in § 1046.8(a), allocate in accordance with § 1046.47 such handler's receipts of skim milk and butterfat to his utilization of skim milk and butterfat in each class, subject to the following conditions:

(1) If the handler is a cooperative association, such receipts and utilization shall not include any milk for which it is the handler pursuant to § 1046.8 (b) or (c); and

(2) If the handler operates two or more pool plants; such receipts and utilization shall be for all of his pool plants combined unless the handler requests in his reports filed pursuant to § 1046.30 that the classification of producer milk be determined separately for each of his pool plants and he has no skim milk or butterfat that would be allocated under § 1046.47(a) (10) or (11) or the corresponding steps of § 1046.47(b); and

(c) The quantity of producer milk in each class shall be the following:

(1) For each cooperative association with respect to milk for which it is the handler pursuant to § 1046.8 (b) or (c), the combined pounds of skim milk and butterfat in each class that were determined pursuant to paragraph (a) of this section; and

(2) For each handler described in § 1046.8(a), the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1046.47(a)(13) and the corresponding step of § 1046.47(b).

§ 1046.47 Allocation of receipts to utilization.

For the purpose of § 1046.46, a handler's receipts shall be allocated to his utilization 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 milk pursuant to § 1046.43(g)(2);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to subparagraph (6)(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;

(4) With respect to a plant that was fully regulated in the immediately preceding month under any Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(i) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products that are in inventory at the beginning of the month; and

(ii) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1046.42;

(6) 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 (except that received in the form of a fluid milk product) that was not subtracted pursuant to subparagraph (5) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which bottling grade certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

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

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk 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 II and Class III, in sequence beginning with Class III, but not in excess of such quantities, 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 subparagraphs (2) and (6)(v) of this paragraph:

(*a*) For which the handler requests Class II or Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, milk from a cooperative association acting as a handler pursuant to § 1046.8(c), fluid milk products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis), and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph; and

(ii) Receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory at the beginning of the month of fluid milk products and fluid cream products (and, for the first month that this subparagraph is effective, sour cream and Grade A sour mixtures) that were not subtracted pursuant to subparagraph (4) of this paragraph;

(9) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (6)(v), and (7)(i) of this paragraph and that were not offset by transfers of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(11) Subtract in the order specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (6)(vi) and (7)(ii) of this paragraph:

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net 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 § 1046.22(m) or the percentage that the 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 remainder of such receipts;

(12) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) and from a cooperative association acting as a handler pursuant to § 1046.8(c) according to the classifica-

tion of such products pursuant to §1046.45(a); and

(13) If the total 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 know as "overage"; and

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

§ 1046.48 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) If verification by the market administrator discloses that the original classification of skim milk or butterfat was incorrect, such skim milk or butterfat shall be reclassified.

10. Section 1046.51 is revised as follows:

§ 1046.51 Class prices.

Subject to the provisions of §§ 1046.52 and 1046.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $1.29, plus 20 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

11. Section 1046.52 is revised as follows:

§ 1046.52 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the class prices specified in § 1046.51 and the uniform price specified in § 1046.71 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by an amount, rounded to the nearest one-tenth cent, that is equal to the Chicago butter price for the month multiplied by 0.115.

12. Section 1046.53 is revised as follows:

§ 1046.53 Location differentials to handlers.

(a) For milk received from producers or from a cooperative association in its capacity as a handler pursuant to § 1046.8(c) at a pool plant located 85 miles or more from the city hall in Evansville, Ind., or Louisville, Lexington, Danville, Elizabethtown, or Madisonville, Ky., whichever is nearest, and classified as Class I milk and eligible pursuant to paragraph (c) or (d) of this section for location adjustment, the Class I price specified in § 1046.51(a) shall be reduced according to the location of such plant by 15 cents if such plant is less than 95 miles from such city hall, and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 95 miles.

(b) In determining location adjustments pursuant to this section, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(c) If skim milk and butterfat are allocated on an individual plant basis pursuant to § 1046.47, the quantity of milk received at the plant from producers, including receipts of a cooperative association handler pursuant to § 1046.8(c) delivered to such plant, that shall be subject to location adjustment shall be determined as follows:

(1) From the total pounds of Class I skim milk and butterfat, respectively, at such plant subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1046.47 (a) and (b) and any Class I transfers or diversions to other pool plants;

(2) The amount of Class I transfers or diversions from such plan to other pool plants that is eligible for a location adjustment shall be determined at the transferee or divertee plant as follows:

(i) From the total pounds of Class I skim milk and butterfat, respectively, at such transferee or divertee plant (excluding Class I transfers or diversions to other pool plants that are not eligible for location adjustment as determined at such other pool plants) subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1046.47 (a) and (b);

(ii) From the remaining pounds of Class I skim milk and butterfat, respectively, subtract the skim milk and butterfat, respectively, in receipts at such transferee or divertee plant from producers and from cooperative associations acting as a handler pursuant to § 1046.8(c);

(iii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer or diversion from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iv) The amount of Class I transfers and diversions eligible for location adjustment at each transferor or divertor plant shall be the quantity assigned pursuant to subdivision (iii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred or diverted from such plant to the transferee or divertee plant, whichever is less; and

(3) The sum of the quantities determined pursuant to subparagraphs (1) and (2)(iv) of this paragraph, or the total pounds of milk received at the plant from producers and from cooperative associations acting as a handler pursuant to § 1046.8(c), whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(d) If skim milk and butterfat are allocated on a system basis pursuant to § 1046.47, the quantity of milk received at each plant from producers, including receipts of a cooperative association handler pursuant to § 1046.8(c) delivered to such plant, that shall be subject to any location adjustment applicable at such plant shall be determined as follows:

(1) Assign to the skim milk and butterfat, respectively, in the combined Class II and Class III utilization at each plant of the handler (excluding any such utilization at each plant based on transfers or diversions to other pool plants of the handler) any beginning inventory and other source milk receipts at such plant of the respective category allocated to such combined class uses pursuant to each subparagraph of § 1046.47(a) and the corresponding step of § 1046.47(b). If the same category of other source milk to be assigned to the combined Class II and Class III utilization was received at two or more plants of the handler, such other source milk shall be assigned first to the combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices (excluding in each case utilization based on transfers or diversions to his other pool plants). To the extent that combined Class II and Class III utilization of beginning inventory and other source milk remains unassigned, such remainder shall be assigned first to the remaining combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices;

(2) From the total pounds of Class I skim milk and butterfat, respectively, at each plant of the handler (excluding transfers and diversions to his other pool plants and Class I transfers and diversions to pool plants of other handlers) subtract the pounds of skim milk and butterfat in the respective category of other source milk received and beginning inventory at such plant which exceed the quantities assigned to Class II and Class III utilization at such plant pursuant to subparagraph (1) of this paragraph;

(3) The amount of transfers and diversions from each plant to other pool plants of the handler operating such plant and Class I transfers and diversions to pool plants of other handlers that are eligible for a location adjustment shall be determined at the transferee or divertee plant as follows:

(i) To the pounds of Class I skim milk and butterfat, respectively, remaining at the transferee or divertee plant after the computation pursuant to subparagraph (2) of this paragraph add any Class I transfers and diversions from such plant to other pool plants that are eligible for location adjustmnt as determined at the plants to which such transfers and diversions were made, and then subtract the skim milk and butterfat, respectively, in receipts at such transferee plant from producers and from cooperative associations acting as a handler pursuant to § 1046.8(c);

(ii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer or diversion from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iii) The amount of Class I transfers and diversions eligible for location adjustment at each transferor or divertor plant shall be the quantity assigned pursuant to subdivision (ii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred or diverted from such plant to the transferee or divertee plant, whichever is less; and

(4) The sum of the quantities determined pursuant to subparagraphs (2) and (3)(iii) of this paragraph, or the total pounds of milk received at the plant from producers and from cooperative associations acting as a handler pursuant to § 1046.8(c), whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(e) The Class I price applicable to other source milk shall be reduced at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

13. In § 1046.61(b), subparagraph (2) is revised as follows:

§ 1046.61 Plants subject to other Federal orders.

* * * * *

(b) * * *

(2) Compute the value of the reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

14. Section 1046.62 is revised as follows:

§ 1046.62 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1046.30(b) and 1046.31 the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

(1) Determine the pounds of skim milk and butterfat, respectively, in the partially regulated distributing plant's route disposition in the marketing area;

(2) Subtract the pounds of skim milk and butterfat, respectively, received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in the partially regulated distributing plant's route disposition in the marketing area;

(4) Combine the remaining pounds of skim milk and butterfat and multiply the total by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

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

(1) Determine the obligation that would have been computed pursuant to § 1046.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to subdivision (i) of this subparagraph. Any such transfers remaining after the above allocation which are classified in Class I and on which an obligation is computed for the handler operating the partially regulated distributing plant pursuant to § 1046.70 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, in lieu of the obligation pursuant to § 1046.70(f) and the credit specified in § 1046.84(b)(2), the obligation for such handler shall include a similar obligation for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1046.12 (b) or (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1046.30(b) and 1046.31 similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The obligation for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the obligation computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for bottling grade milk received at the plant during the month from dairy farmers;

(ii) If subparagraph (1)(iii) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for bottling grade milk received at the plant during the month from dairy farmers; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if subparagraph (1)(iii) of this paragraph applies.

15. Section 1046.70 is revised as follows:

§ 1046.70 Computation of the net pool obligation of each handler.

The monthly net pool obligation of each handler described in § 1046.8 (a), (b), and (c) shall be determined for such handler, or for each pool plant of such handler if the allocations pursuant to § 1046.47 are on an individual plant basis and the handler requests separate statements. Such obligation shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class determined pursuant to § 1046.46 by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1046.47(a)(13) and the corresponding step of § 1046.47(b) by the resepective class price applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month

and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1046.47(a) (8) and the corresponding step of § 1046.47(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1046.47(a)(6) (i) through (iv) and the corresponding step of § 1046.47(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1046.47(a)(6) (v) and (vi) and the corresponding step of § 1046.47(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest nonpool plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1046.47(a)(10) and the corresponding step of § 1046.47(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

16. In § 1047.71, paragraphs (c) and (e)(2) are revised as follows:

§ 1046.71 Computation of weighted average and uniform prices.

* * * * *

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, the amount obtained by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential specified in § 1046.52, and multiply the result by the total hundredweight of such milk;

* * * * *

(e) * * *

(2) The total hundredweight for which a value is computed pursuant to § 1046.70(f);

* * * * *

17. In § 1046.80, paragraphs (a) and (b) are revised as follows:

§ 1046.80 Time and method of payment for producer milk.

* * * * *

(a) On or before the last day of each month for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler, an amount computed at not less than the Class III price for the preceding month without deduction for hauling;

(b) On or before the 17th day after the end of each month for milk received from such producer during such month, an amount computed at not less than the uniform price per hundredweight for the month, as adjusted pursuant to § 1046.52, and plus or minus adjustments for errors made in previous payments to such producer and less (1) the payment made pursuant to paragraph (a) of this section, (2) the location differential pursuant to § 1046.82, (3) marketing service deductions pursuant to § 1046.87, and (4) proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing the producer's milk, by such association;

* * * * *

§ 1046.81 [Revoked]

18. Section 1046.81 is revoked.

19. In § 1046.82, paragraph (b) is revised as follows:

§ 1046.82 Location differentials to producers and on nonpool milk.

* * * * *

(b) The weighted average price applicable to other source milk shall be reduced at the rates set forth in § 1046.53, except that the adjusted weighted average price shall not be less than the Class III price.

20. In § 1046.84, paragraph (b) is revised as follows:

§ 1046.84 Payments to the producer-settlement fund.

* * * * *

(b) The sum of:

(1) The value of such handler's producer milk at the applicable uniform prices as adjusted by the butterfat and location differentials pursuant to §§ 1046.52 and 1046.82, respectively; and

(2) The value at the weighted average price applicable at the location of the plants from which received of other source milk for which a value is computed pursuant to § 1046.70(f).

21. Section 1046.88 is revised as follows:

§ 1046.88 Expense of administration.

As his pro rata share of the expense of administering the order, each handler, excluding a cooperative association in its capacity as a handler pursuant to § 1046.8(c), shall pay to the market administrator on or before the 15th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) His producer milk (including such handler's own production) and milk received from a cooperative association in its capacity as a handler pursuant to § 1046.8(c);

(b) Other source milk allocated to Class I pursuant to § 1046.37(a) (6) and (10) and the corresponding steps of § 1046.47(b), except such other source milk on which no handler obligation applies pursuant to § 1046.70(f); and

(c) Class I milk disposed of on a route in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1046.62(a)(2).

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.11 is revised as follows:

§ 1049.11 Supply plant.

"Supply plant" means a plant in which during the month some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as milk or skim milk to a distributing plant.

2. Section 1049.15 is revised as follows:

§ 1049.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means:

(1) Any of the following products in fluid or frozen form, including such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted: Milk, skim milk, lowfat milk, milk drinks, eggnog, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids; and

(2) Any milk product in fluid or frozen form that is not specified in subparagraph (1) of this paragraph or in § 1049.42 or § 1049.43(a) (1) through (8), if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

(1) Evaporated or condensed milk or skim milk in plain or sweetened form, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

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

3. Section 1049.16 is revised as follows:

§ 1049.16 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source other than producers, pool plants, and inventory at the beginning of the month;

(b) Products (other than fluid milk products, bulk fluid cream products, and

cottage cheese) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product (other than a fluid milk product or a bulk fluid cream product) that is in a form in which it may be converted into a Class I product and which is not otherwise accounted for under the order.

4. Section 1049.17 is revised 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 milk pursuant to § 1049.41(a), other than a delivery in bulk form to any milk or filled milk processing plant.

5. A new § 1049.20 is added as follows:

§ 1049.20 Fluid cream product.

"Fluid cream product" means cream or a mixture of cream and milk or skim milk containing 9 percent or more butterfat.

6. In § 1049.27, paragraphs (j), (l)(1), (m), (n), and (o) are revised as follows:

§ 1049.27 Duties.

* * * * *

(j) Publicly announce on or before:

(1) The sixth day of each month, the Class I price for the current month pursuant to § 1049.51(a);

(2) The sixth day of each month, the Class II and Class III prices pursuant to § 1049.51 (b) and (c) and the butterfat differential pursuant to § 1049.52, all for the preceding month; and

(3) The 14th day after the end of each month, the uniform price pursuant to § 1049.71;

* * * * *

(l) * * *

(1) The amount and value of his milk in each class computed pursuant to §§ 1049.46 and 1049.70, respectively;

* * * * *

(m) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1049.47(a)(11) and the corresponding step of § 1049.47(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(n) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1049.47 pursuant to such report, and, thereafter, any change in such allocation required to correct errors disclosed in verification of such report; and

(o) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

7. In § 1049.30(a), subparagraphs (2) and (5) are revised as follows:

§ 1049.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(2) Fluid milk products and bulk fluid cream products received by transfer or diversion from other pool plants;

* * * * *

(5) Inventories at the beginning and the end of the month of the following products, showing separately such inventories in bulk form and in packaged form:

(i) Fluid milk products; and

(ii) Fluid cream products except those received in packaged form from another plant;

* * * * *

8. Sections 1049.40 through 1049.46 are revoked and new §§ 1049.40 through 1049.48 are substituted therefor as follows:

§ 1049.40 Classification of all skim milk and butterfat.

All skim milk and butterfat to be reported by a handler pursuant to §§ 1049.30 and 1049.31 shall be classified each month in accordance with §§ 1049.41 through 1049.48. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1049.41 Class I milk.

Except as provided in §§ 1049.43, 1049.45, and 1049.48, Class I milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid milk product;

(b) In inventory at the end of the month of packaged fluid milk products; and

(c) Not specifically accounted for as Class II or Class III milk.

§ 1049.42 Class II milk.

Except as provided in §§ 1049.43, 1049.45, and 1049.48, Class II milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid cream product;

(b) Used to produce:

(1) Yogurt, cottage cheese, creamed or partially creamed cottage cheese, sour cream, and any sour mixture of cream and milk or skim milk containing 9 percent or more butterfat; and

(2) Any product containing 6 percent or more nonmilk fat (or oil) that resembles any product specified in paragraph (a) of this section and subparagraph (1) of this paragraph; and

(c) In inventory at the end of the month of packaged fluid cream products.

§ 1049.43 Class III milk.

Except as provided in §§ 1049.45 and 1049.48, Class III milk shall be all skim milk and butterfat:

(a) Used to produce:

(1) Cheese (other than cottage cheese and creamed or partially creamed cottage cheese);

(2) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(3) Any milk product in dry form;

(4) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(5) Custards, puddings, and pancake mixes;

(6) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(7) Evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(8) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in § 1049.42(b)(2); and

(9) Any product that is not a fluid milk product and that is not specified in subparagraphs (1) through (8) of this paragraph or in § 1049.42;

(b) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and at which there is no disposition of fluid milk products other than those received in consumer-type packages;

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

(d) In fluid milk products and products specified in § 1049.42 that are disposed of by a handler for animal feed;

(e) In fluid milk products and products specified in § 1049.42 that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(f) In skim milk represented by the nonfat milk solids added to a fluid milk product that is in excess of the quantity of such skim milk included within the fluid milk product definition pursuant to § 1049.15; and

(g) In shrinkage that is:

(1) Assigned pursuant to § 1049.44(a) to the receipts specified in § 1049.44(a)(2); and

(2) Specified in § 1049.44 (b) and (c).

§ 1049.44 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a

handler pursuant to § 1049.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, in the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) The quantity of skim milk and butterfat, respectively, in receipts of other source milk in bulk fluid form, excluding any such receipts used in the computations pursuant to paragraph (b) (5) and (6) of this section;

(b) The quantity of skim milk and butterfat, respectively, that was assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph which is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in milk physically received at such plant directly from producers (excluding that received by diversion from another pool plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk purchases the milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no shrinkage should be allowed;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1049.8(b), but not to exceed 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of farm weights, no shrinkage shall be allowed.

§ 1049.45 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler (or to any pool plant if allocations pursuant to § 1049.47 are on an individual plant basis) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee or divertee plant after the computations pursuant to § 1049.47(a) (11) and the corresponding step of § 1049.47(b);

(2) If the transferor or divertor plant received during the month other source milk to be allocated pursuant to § 1049.47 (a)(6) or the corresponding step of § 1049.47(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor or divertor handler received during the month other source milk to be allocated pursuant to § 1049.47(a) (10) or (11) or the corresponding steps of § 1049.47(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee or divertee plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilizations available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of §§ 1049.41 through 1049.43.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified as Class I milk, subject to the following conditions:

(1) If the transferor or divertor handler so requests and the conditions described in subdivisions (i) and (ii) of this subparagraph are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subparagraphs (2) through (7) of this paragraph:

(i) The transferor or divertor handler claims such classification in his report of receipts and utilization filed pursuant to § 1049.30 for the month within which such transaction occurred; and

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

(2) Class I route disposition of the nonpool plant in the marketing area of

each Federal milk order and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated under such order shall be assigned to the extent possible:

(i) First to receipts of packaged fluid milk products at such nonpool plant from pool plants; and

(ii) Any remaining such route disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(3) Class I disposition from the nonpool plant of packaged fluid milk products other than that described in subparagraph (2) of this paragraph shall be assigned pro rata to any receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants that remain unassigned after the assignment pursuant to subparagraph (2) of this paragraph;

(4) Class I disposition of packaged fluid milk products described in subparagraph (2) of this paragraph that was not assigned pursuant to such subparagraph and transfers of bulk fluid milk products from the nonpool plant to pool plants and other order plants, to the extent that such transfers and any remaining transfers of packaged fluid milk products to each such pool plant and other order plant exceed receipts of fluid milk products from such plant and that such excess is allocated to Class I at the transferee plant, shall be assigned to the extent possible:

(i) First to receipts of fluid milk products at such nonpool plant from pool plants that remain unassigned after the assignments pursuant to subparagraphs (2) and (3) of this paragraph; and

(ii) Any remaining such Class I disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(5) Any remaining unassigned Class I utilization at the nonpool plant shall be assigned to the extent possible:

(i) First to such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of bottling grade milk for such nonpool plant; and

(ii) Any remaining unassigned Class I utilization shall be assigned to the nonpool plant's receipts of bottling grade milk from plants not fully regulated under any Federal milk order;

(6) Any remaining unassigned receipts of fluid milk products and bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned pro rata to such remaining unassigned receipts from each source in sequence to any Class III utilization, then any Class II utilization, and then any remaining Class I utilization at the nonpool plant; and

(7) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1049.46 Classification of producer milk.

Each month the market administrator shall determine the classification of producer milk in the following manner:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to § 1049.30 and compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1049.8(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1049.40 through 1049.45 and § 1049.48. For purposes of this paragraph and § 1049.47, fluid cream products that are received from another plant in packaged form and disposed of, or held in inventory, in the same container in which received shall not be included in a handler's receipts, inventory, or disposition unless such products become other source milk pursuant to § 1049.16 (b) or (c);

(b) For each handler described in § 1049.8(a), allocate in accordance with § 1049.47 such handler's receipts of skim milk and butterfat to his utilization of skim milk and butterfat in each class, subject to the following conditions:

(1) If the handler is a cooperative association, such receipts and utilization shall not include any milk for which it is the handler pursuant to § 1049.8(b); and

(2) If the handler operates two or more pool plants, such receipts and utilization shall be for all of his pool plants combined unless the handler requests in his reports filed pursuant to § 1049.30 that the classification of producer milk be determined separately for each of his pool plants and he has no skim milk or butterfat that would be allocated under § 1049.47(a) (10) or (11) or the corresponding steps of § 1049.47(b); and

(c) The quantity of producer milk in each class shall be the following:

(1) For each cooperative association with respect to milk for which it is the handler pursuant to § 1049.8(b), the combined pounds of skim milk and butterfat in each class that were determined pursuant to paragraph (a) of this section; and

(2) For each handler described in § 1049.8(a), the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1049.47(a)(13) and the corresponding step of § 1049.47(b).

§ 1049.47 Allocation of receipts to utilization.

For the purpose of § 1049.46, a handler's receipts shall be allocated to his utilization 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 milk pursuant to § 1049.43(g)(2);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to subparagraph (6)(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;

(4) With respect to a plant that was fully regulated in the immediately preceding month under any Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(i) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products that are in inventory at the beginning of the month; and

(ii) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1049.42;

(6) 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 (except that received in the form of a fluid milk product) that was not subtracted pursuant to subparagraph (5) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which bottling grade certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

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

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from another order plant that is regulated under any Federal milk 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 II and Class III, in sequence beginning with Class III, but not in excess of such quantities, 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 subparagraphs (2) and (6)(v) of this paragraph:

(*a*) For which the handler requests Class II or Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis), and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph; and

(ii) Receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory at the beginning of the month of fluid milk products and fluid cream products that were not subtracted pursuant to subparagraph (4) of this paragraph;

(9) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (6)(v), and (7)(i) of this paragraph and were not offset by transfers of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(11) Subtract in the order specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (6)(vi) and (7)(ii) of this paragraph:

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net 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 § 1049.27(m) or the percentage that the 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 remainder of such receipts;

(12) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) according to the classification of such products pursuant to § 1049.45(a); and

(13) If the total 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"; and

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

§ 1049.48 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) If verification by the market administrator discloses that the original classification of skim milk or butterfat was incorrect, such skim milk or butterfat shall be reclassified.

9. Section 1049.51 is revised as follows:

§ 1049.51 Class prices.

Subject to the provisions of §§ 1049.52 and 1049.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $1.27, plus 20 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

10. Section 1049.52 is revised as follows:

§ 1049.52 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the class prices specified in § 1049.51 and the uniform price specified in § 1049.71 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by an amount, rounded to the nearest one-tenth cent, that is equal to the butter price for the month multiplied by 0.115.

11. Section 1049.53 is revised as follows:

§ 1049.53 Location adjustments to handlers.

(a) For producer milk received at a pool plant which is classified as Class I milk and eligible pursuant to paragraph (b) or (c) of this section for location adjustment, the Class I price specified in § 1049.51(a) shall be reduced according to the location of such plant by the applicable amount set forth below:

(1) At any plant located within:

	Rate of adjustment per hundredweight (cents)
(i) The State of Ohio or any Indiana county not specifically named in subdivisions (ii) through (iv) of this subparagraph	0
(ii) Any of the Indiana counties of Adams, Allen, Blackford, Cass, Carroll, De Kalb, Huntington, Jay, La Grange, Miami, Noble, Steuben, Wabash, Wells, White, and Whitley	4
(iii) Any of the Indiana counties of Benton, Elkhart, Fulton, Jasper, Kosciusko, Marshall, Newton, Pulaski, and St. Joseph, and the Michigan counties of Berrien and Cass	8
(iv) Any of the Indiana counties of Lake, La Porte, Porter, and Starke	12

(2) For any plant located outside the area specified in subparagraph (1) of this paragraph, the applicable amount shall be 1.5 cents for each 10 miles or fraction thereof that such plant is from the nearest of the Monument Circle in Indianapolis or the main post offices of Fort Wayne, South Bend, or Valparaiso, all in Indiana, plus the location adjustment applicable at such nearest point pursuant to subparagraph (1) of this paragraph; and

(3) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(b) If skim milk and butterfat are allocated on an individual plant basis pursuant to § 1049.47, the quantity of milk received at the plant that shall be subject to location adjustment shall be determined as follows. In applying the following rules, diversions to pool plants pursuant to § 1049.14(c) shall be treated the same as producer milk at the divertee plant and shall be excluded from receipts at the divertor plant, except that in the case of diversions to a pool plant located in the marketing area or to a pool plant at which the location adjustment is zero such diversions shall be treated the same as a transfer from the divertor plant to the plant to which diverted;

(1) From the total pounds of Class I skim milk and butterfat, respectively, at such plant subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1049.47 (a) and (b) and any Class I transfers to other pool plants;

(2) The amount of Class I transfers from such plant to other pool plants that is eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) From the total pounds of Class I skim milk and butterfat, respectively, at

such transferee plant (excluding Class I transfers to other pool plants that are not eligible for location adjustment as determined at such other pool plants) subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1049.47 (a) and (b);

(ii) From the remaining pounds of Class I skim milk and butterfat, respectively, subtract the skim milk and butterfat, respectively, in receipts at such transferee plant of producer milk;

(iii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iv) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (iii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(3) The sum of the quantities determined pursuant to subparagraphs (1) and (2)(iv) of this paragraph, or the total pounds of milk received at the plant as producer milk, whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(c) If skim milk and butterfat are allocated on a system basis pursuant to § 1049.47, the quantity of milk received at each plant as producer milk that shall be subject to any location adjustment applicable at such plant shall be determined as follows:

(1) Assign to the skim milk and butterfat, respectively, in the combined Class II and Class III utilization at each plant of the handler (excluding any such utilization at each plant based on transfers to other pool plants of the handler) any beginning inventory and other source milk receipts at such plant of the respective category allocated to such combined class uses pursuant to each subparagraph of § 1049.47(a) and the corresponding step of § 1049.47(b). If the same category of other source milk to be assigned to the combined Class II and Class III utilization was received at two or more plants of the handler, such other source milk shall be assigned first to the combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices (excluding in each case utilization based on transfers to his other pool plants). To the extent that combined Class II and Class III utilization of beginning inventory and other source milk remains unassigned, such remainder shall be assigned first to the remaining combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices;

(2) From the total pounds of Class I skim milk and butterfat, respectively, at each plant of the handler (excluding transfers to his other pool plants and Class I transfers to pool plants of other handlers) subtract the pounds of skim milk and butterfat in the respective category of other source milk received and beginning inventory at such plant which exceed the quantities assigned to Class II and Class III utilization at such plant pursuant to subparagraph (1) of this paragraph;

(3) The amount of transfers from each plant to other pool plants of the handler operating such plant and Class I transfers to pool plants of other handlers that are eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) To the pounds of Class I skim milk and butterfat, respectively, remaining at the transferee plant after the computation pursuant to subparagraph (2) of this paragraph add any Class I transfers from such plant to other pool plants that are eligible for location adjustment as determined at the plants to which such transfers were made, and then subtract the skim milk and butterfat, respectively, in receipts at such transferee plant of producer milk;

(ii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iii) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (ii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(4) The sum of the quantities determined pursuant to subparagraphs (2) and (3)(iii) of this paragraph, or the total pounds of milk received at the plant as producer milk, whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(d) The Class I price applicable to other source milk shall be reduced at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

12. In § 1049.61(e), subparagraph (2) is revised as follows:

§ 1049.61 Plants subject to other Federal orders.

* * * * *

(e) * * *

(2) Compute the value of the reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

13. Section 1049.62 is revised as follows:

§ 1049.62 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1049.31(b) and 1049.32(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

(1) Determine the pounds of skim milk and butterfat, respectively, in the partially regulated distributing plant's route disposition in the marketing area;

(2) Subtract the pounds of skim milk and butterfat, respectively, received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in the partially regulated distributing plant's route disposition in the marketing area;

(4) Combine the remaining pounds of skim milk and butterfat and multiply the total by the difference between the Class I price and the weighted average price, both prices to be applicable at at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

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

(1) Determine the obligation that would have been computed pursuant to § 1049.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated

distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to subdivision (i) of this subparagraph. Any such transfers remaining after the above allocation which are classified in Class I and on which an obligation is computed for the handler operating the partially regulated distributing plant pursuant to § 1049.70 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, in lieu of the obligation pursuant to § 1049.70(f) and the credit specified in § 1049.82(b)(2), the obligation for such handler shall include a similar obligation for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1049.12(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1049.31(b) and 1049.32(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The obligation for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the obligation computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for bottling grade milk received at the plant during the month from dairy farmers;

(ii) If subparagraph (1)(iii) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for bottling grade milk received at the plant during the month from dairy farmers; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if subparagraph (1)(iii) of this paragraph applies.

14. Section 1049.70 is revised as follows:

§ 1049.70 Computation of the net pool obligation of each handler.

The monthly net pool obligation of each handler described in § 1049.8 (a) and (b) shall be determined for such handler, or for each pool plant of such handler if the allocations pursuant to § 1049.47 are on an individual plant basis and the handler requests separate statements. Such obligation shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class determined pursuant to § 1049.46 by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1049.47(a)(13) and the corresponding step of § 1049.47(b) by the respective class price applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1049.47(a)(8) and the corresponding step of § 1049.47(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.47(a)(6) (i) through (iv) and the corresponding step of § 1049.47 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1049.47(a)(6) (v) and (vi) and the corresponding step of § 1049.47 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest nonpool plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1049.47(a)(10) and the corresponding step of § 1049.47(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

15. In § 1049.71, paragraphs (c) and (e)(2) are revised as follows:

§ 1049.71 Computation of uniform prices.

* * * * *

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, the amount obtained by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential specified in § 1049.52, and multiply the result by the total hundredweight of such milk;

* * * * *

(e) * * *

(2) The total hundredweight for which a value is computed pursuant to § 1049.70(f);

* * * * *

§ 1049.72 [Revoked]

16. Section 1049.72 is revoked.

17. In § 1049.73, paragraph (b) is revised as follows:

§ 1049.73 Location differentials to producers and on nonpool milk.

* * * * *

(b) The weighted average price applicable to other source milk shall be reduced at the rates set forth in § 1049.53, except that the adjusted weighted average price shall not be less than the Class III price.

18. In § 1049.80(a), subparagraphs (1) and (2) are revised as follows:

§ 1049.80 Time and method of payment.

(a) * * *

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price adjusted pursuant to §§ 1049.52, 1049.73, and 1049.85, less any payment made pursuant to subparagraph (1) of this paragraph. If by such date the handler has not received full payment from the market administrator pursuant to § 1049.83 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

* * * * *

19. In § 1049.82(b), subparagraph (2) is revised as follows:

§ 1049.82 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price applicable at the location of

the plants from which received of other source milk for which a value is computed pursuant to § 1049.70(f).

20. Section 1049.86 is revised as follows:

§ 1049.86 Expense of administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) His producer milk (including such handler's own farm production);

(b) Other source milk allocated to Class I pursuant to § 1049.47(a) (6) and (10) and the corresponding steps of § 1049.47(b), except such other source milk on which no handler obligation applies pursuant to § 1049.70(f); and

(c) Class I milk disposed of on a route in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1049.62(a)(2).

PART 1050—MILK IN THE CENTRAL ILLINOIS MARKETING AREA

1. In § 1050.14, paragraph (a)(2) and the introductory text of paragraph (c) are revised as follows:

§ 1050.14 Producer milk.

* * * * *

(a) * * *

(2) By a cooperative association as a handler pursuant to § 1050.9(d) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1050.44(c) or as Class I shrinkage;

* * * * *

(c) Diverted from a pool plant to a nonpool plant that is not an other order plant or to a nonpool plant that is an other order plant if diverted as Class II or Class III milk, subject to the conditions of this paragraph. For pricing purposes, milk so diverted shall be deemed to be received at the plant from which diverted, unless the plant to which the milk is diverted is located more than 110 miles from the city hall in Peoria, Ill. (by the shortest highway distance as determined by the market administrator) in which case the milk shall be deemed to be received by the diverting handler at the location of the plant to which diverted:

* * * * *

2. Section 1050.15 is revised as follows:

§ 1050.15 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source other than producers, cooperative associations acting as a handler pursuant to § 1050.9(d), pool plants, and inventory at the beginning of the month;

(b) Products (other than fluid milk products, bulk fluid cream products, and cottage cheese) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product (other than a fluid milk product or a bulk fluid cream product) that is in a form in which it may be converted into a Class I product and which is not otherwise accounted for under the order.

3. Section 1050.16 is revised as follows:

§ 1050.16 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means:

(1) Any of the following products in fluid or frozen form, including such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted: Milk, skim milk, lowfat milk, milk drinks, eggnog, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids; and

(2) Any milk product in fluid or frozen form that is not specified in subparagraph (1) of this paragraph or in § 1050.42 or § 1050.43(a) (1) through (8), if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

(1) Evaporated or condensed milk or skim milk in plain or sweetened form, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

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

4. A new § 1050.16a is added as follows:

§ 1050.16a Fluid cream product.

"Fluid cream product" means cream or a mixture of cream and milk or skim milk containing 9 percent or more butterfat.

5. Section 1050.17 is revised as follows:

§ 1050.17 Route.

"Route" 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 product to a retail or wholesale outlet other than (a) a pool plant or a nonpool plant, or (b) a commercial food processor pursuant to § 1050.43(b).

6. In § 1050.22, paragraphs (h), (k), (l), and (m) are revised as follows:

§ 1050.22 Duties.

* * * * *

(h) Publicly announce on or before:

(1) The sixth day of each month, the Class I price for the current month pursuant to § 1050.51(a);

(2) The sixth day of each month, the Class II and Class III prices pursuant to § 1050.51 (b) and (c) and the butterfat differential pursuant to § 1050.52, all for the preceding month; and

(3) The 12th day after the end of each month, the uniform price pursuant to § 1050.71;

* * * * *

(k) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1050.47(a) (11) and the corresponding step of § 1050.47(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(l) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1050.47 pursuant to such report, and, thereafter, any change in such allocation required to correct errors disclosed in verification of such report; and

(m) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

7. In § 1050.30(a), subparagraphs (1) (iii) and (2) are revised as follows:

§ 1050.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(iii) Fluid milk products and bulk fluid cream products received from other pool plants; and

* * * * *

(2) Inventories at the beginning and end of the month of the following products, showing separately such inventories in bulk form and in packaged form:

(i) Fluid milk products; and

(ii) Fluid cream products except those received in packaged form from another plant;

* * * * *

8. In § 1050.32, paragraph (b) is revised as follows:

§ 1050.32 Payroll reports.

* * * * *

(b) Each handler operating a partially regulated distributing plant who does not elect to make payments pursuant to § 1050.62(a) shall report to the market administrator, on or before the 20th day after the end of the month for each dairy farmer from whom milk was received, the same information as re-

quired pursuant to paragraph (a) of this section.

9. Sections 1050.40 through 1050.46 are revoked and new §§ 1050.40 through 1050.48 are substituted therefor as follows:

§ 1050.40 Classification of all skim milk and butterfat.

All skim milk and butterfat to be reported by a handler pursuant to § 1050.30 shall be classified each month in accordance with §§ 1050.41 through 1050.48. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1050.41 Class I milk.

Except as provided in §§ 1050.43, 1050.45, and 1050.48, Class I milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid milk product;

(b) In inventory at the end of the month of packaged fluid milk products; and

(c) Not specifically accounted for as Class II or Class III milk.

§ 1050.42 Class II milk.

Except as provided in §§ 1050.43, 1050.45, and 1050.48, Class II milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid cream product;

(b) Used to produce:

(1) Yogurt, cottage cheese, creamed or partially creamed cottage cheese, sour cream, and any sour mixture of cream and milk or skim milk containing 9 percent or more butterfat; and

(2) Any product containing 6 percent or more nonmilk fat (or oil) that resembles any product specified in paragraphs (a) and (b)(1) of this section; and

(c) In inventory at the end of the month of packaged fluid cream products.

§ 1050.43 Class III milk.

Except as provided in §§ 1050.45 and 1050.48, Class III milk shall be all skim milk and butterfat:

(a) Used to produce:

(1) Cheese (other than cottage cheese and creamed or partially creamed cottage cheese);

(2) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(3) Any milk product in dry form;

(4) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(5) Custards, puddings, and pancake mixes;

(6) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(7) Evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(8) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in § 1050.42(b)(2); and

(9) Any product that is not a fluid milk product and that is not specified in subparagraphs (1) through (8) of this paragraph or in § 1050.42;

(b) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and at which there is no disposition of fluid milk products other than those received in consumer-type packages;

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

(d) In fluid milk products and products specified in § 1050.42 that are disposed of by a handler for animal feed;

(e) In fluid milk products and products specified in § 1050.42 that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(f) In skim milk represented by the nonfat milk solids added to a fluid milk product that is in excess of the quantity of such skim milk included within the fluid milk product definition pursuant to § 1050.16; and

(g) In shrinkage that is:

(1) Assigned pursuant to § 1050.44(a) to the receipts specified in § 1050.44(a)(2); and

(2) Specified in § 1050.44 (b) and (c).

§ 1050.44 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1050.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, in the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) The quantity of skim milk and butterfat, respectively, in receipts of other source milk in bulk fluid form, excluding any such receipts used in the computations pursuant to paragraph (b) (5) and (6) of this section;

(b) The quantity of skim milk and butterfat, respectively, that was assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph which is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in milk physically received at such plant directly from producers (excluding that received by diversion from another pool plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a cooperative association acting as a handler pursuant to § 1050.9(d) and in milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk purchases the milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no shrinkage shall be allowed;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1050.9 (c) or (d), but not to exceed 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of farm weights, no shrinkage shall be allowed.

§ 1050.45 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler (or to any pool plant if allocations pursuant to § 1050.47 are on an individual plant basis) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee or divertee plant after the computations pursuant to § 1050.47(a)(11) and the corresponding step of § 1050.47(b);

(2) If the transferor or divertor plant received during the month other source milk to be allocated pursuant to § 1050.47(a)(6) or the corresponding step of § 1050.47(b), the skim milk or butterfat so transferred or diverted shall be classi-

fied so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor or divertor handler received during the month other source milk to be allocated pursuant to § 1050.47(a) (10) or (11) or the corresponding steps of § 1050.47(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee or divertee plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilizations available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of §§ 1050.41 through 1050.43.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified as Class I milk, subject to the following conditions:

(1) If the transferor or divertor handler so requests and the conditions described in subdivisions (i) and (ii) of this subparagraph are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subparagraphs (2) through (7) of this paragraph:

(i) The transferor or divertor handler claims such classification in his report of receipts and utilization filed pursuant to § 1050.30 for the month within which such transaction occurred; and

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

(2) Class I route disposition of the nonpool plant in the marketing area of each Federal milk order and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated under such order shall be assigned to the extent possible:

(i) First to receipts of packaged fluid milk products at such nonpool plant from pool plants; and

(ii) Any remaining such route disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(3) Class I disposition from the nonpool plant of packaged fluid milk products other than that described in subparagraph (2) of this paragraph shall be assigned pro rata to any receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants that remain unassigned after the assignment pursuant to subparagraph (2) of this paragraph;

(4) Class I disposition of packaged fluid milk products described in subparagraph (2) of this paragraph that was not assigned pursuant to such subparagraph and transfers of bulk fluid milk products from the nonpool plant to pool plants and other order plants, to the extent that such transfers and any remaining transfers of packaged fluid milk products to each such pool plant and other order plant exceed receipts of fluid milk products from such plant and that such excess is allocated to Class I at the transferee plant, shall be assigned to the extent possible:

(i) First to receipts of fluid milk products at such nonpool plant from pool plants that remain unassigned after the assignments pursuant to subparagraphs (2) and (3) of this paragraph; and

(ii) Any remaining such Class I disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(5) Any remaining unassigned Class I utilization at the nonpool plant shall be assigned to the extent possible:

(i) First to such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of bottling grade milk for such nonpool plant; and

(ii) Any remaining unassigned Class I utilization shall be assigned to the nonpool plant's receipts of bottling grade milk from plants not fully regulated under any Federal milk order;

(6) Any remaining unassigned receipts of fluid milk products and bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned pro rata to such remaining unassigned receipts from each source in sequence to any Class III utilization, then any Class II utilization, and then any remaining Class I utilization at the nonpool plant; and

(7) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1050.46 Classification of producer milk.

Each month the market administrator shall determine the classification of producer milk in the following manner:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to § 1050.30 and compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1050.9 (c) or (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1050.40 through 1050.45 and § 1050.48. For purposes of this paragraph and § 1050.47, fluid cream products that are received from another plant in packaged form and disposed of, or held in inventory, in the same container in which received shall not be included in a handler's receipts, inventory, or disposition unless such products become other source milk pursuant to § 1050.15 (b) or (c);

(b) For each handler described in § 1050.9(a), allocate in accordance with

§ 1050.47 such handler's receipts of skim milk and butterfat to his utilization of skim milk and butterfat in each class, subject to the following conditions:

(1) If the handler is a cooperative association, such receipts and utilization shall not include any milk for which it is the handler pursuant to § 1050.9 (c) or (d); and

(2) If the handler operates two or more pool plants, such receipts and utilization shall be for all of his pool plants combined unless the handler requests in his reports filed pursuant to § 1050.30 that the classification of producer milk be determined separately for each of his pool plants and he has no skim milk or butterfat that would be allocated under § 1050.47(a) (10) or (11) or the corresponding steps of § 1050.47(b); and

(c) The quantity of producer milk in each class shall be the following:

(1) For each cooperative association with respect to milk for which it is the handler pursuant to § 1050.9 (c) or (d), the combined pounds of skim milk and butterfat in each class that were determined pursuant to paragraph (a) of this section; and

(2) For each handler described in § 1050.9(a), the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1050.47(a)(13) and the corresponding step of § 1050.47(b).

§ 1050.47 Allocation of receipts to utilization.

For the purpose of § 1050.46, a handler's receipts shall be allocated to his utilization 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 milk pursuant to § 1050.43(g)(2);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to subparagraph (6)(iv) 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;

(4) With respect to a plant that was fully regulated in the immediately preceding month under any Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(i) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products that are in inventory at the beginning of the month; and

(ii) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1050.42;

(6) 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 (except that received in the form of a fluid milk product) that was not subtracted pursuant to subparagraph (5) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which bottling grade certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

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

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk 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 II and Class III, in sequence beginning with Class III, but not in excess of such quantities, 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 subparagraphs (2) and (6)(v) of this paragraph:

(*a*) For which the handler requests Class II or Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis), and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph; and

(ii) Receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory at the beginning of the month of fluid milk products and fluid cream products that were not subtracted pursuant to subparagraph (4) of this paragraph;

(9) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (6)(v), and (7)(i) of this paragraph and that were not offset by transfers of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(11) Subtract in the order specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (6)(vi) and (7)(ii) of this paragraph:

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net 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 § 1050.22(k) or the percentage that the 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 remainder of such receipts;

(12) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) according to the classification of such products pursuant to § 1050.45(a); and

(13) If the total 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"; and

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

§ 1050.48 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise. In the case of milk received from producers by a handler described in § 1050.9(d) for delivery to a pool plant, such handler shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1050.14(a)(2), and the operator of such pool plant shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1050.14(a)(1).

(b) Milk received by a pool plant operator from a handler described in § 1050.9(d) shall be classified according to the use or disposition of the milk at such pool plant and the value of the milk at class prices shall be included in the operator's pool obligation pursuant to § 1050.70.

(c) If verification by the market administrator discloses that the original classification of skim milk or butterfat was incorrect, such skim milk or butterfat shall be reclassified.

10. Section 1050.51 is revised as follows:

§ 1050.51 Class prices.

Subject to the provisions of §§ 1050.52 and 1050.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $1.19, plus 20 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

11. Section 1050.52 is revised as follows:

§ 1050.52 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the class prices specified in § 1050.51 and the uniform price specified in § 1050.71 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by an amount, rounded to the nearest one-tenth cent, that is equal to the Chicago butter price for the month multiplied by 0.115.

12. Section 1050.53 is revised as follows:

§ 1050.53 Location adjustments to handlers.

(a) For producer milk received at a pool plant located outside Zone I which is classified as Class I milk and eligible pursuant to paragraph (b) or (c) of this section for location adjustment, the Class I price specified in § 1050.51(a) shall be reduced according to the location of such plant as follows:

(1) At a plant in Zone II or in the Illinois counties of Henry and Mercer, by 5 cents;

(2) At a plant located outside the State of Illinois, or in the State of Illinois but north of the northernmost boundaries of the Illinois counties of Mercer, Henry, Bureau, La Salle, Grundy, and Kankakee, by 7.5 cents if such plant is 50 or more miles from the city hall in Peoria, Ill., and by an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles; and

(3) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(b) If skim milk and butterfat are allocated on an individual plant basis pursuant to § 1050.47, the quantity of milk received at the plant as producer milk or by diversion from another pool plant that shall be subject to any location adjustment applicable at such plant shall be determined as follows:

(1) From the total pounds of Class I skim milk and butterfat, respectively, at such plant subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1050.47 (a) and (b) and any Class I transfers to other pool plants;

(2) The amount of Class I transfers from such plant to other pool plants that is eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) From the total pounds of Class I skim milk and butterfat, respectively, at such transferee plant (excluding Class I transfers to other pool plants that are not eligible for location adjustment as determined at such other pool plants) subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1050.47 (a) and (b);

(ii) From the remaining pounds of Class I skim milk and butterfat, respectively, subtract 95 percent of the skim milk and butterfat, respectively, in receipts at such transferee plant of producer milk and by diversion from other pool plants;

(iii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iv) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (iii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(3) The sum of the quantities determined pursuant to subparagraphs (1) and (2)(iv) of this paragraph, or the total pounds of milk received at the plant as producer milk and by diversion from another pool plant, whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(c) If skim milk and butterfat are allocated on a system basis pursuant to § 1050.47, the quantity of milk received at each plant as producer milk or by diversion from another pool plant that shall be subject to any location adjustment applicable at such plant shall be determined as follows:

(1) Assign to the skim milk and butterfat, respectively, in the combined Class II and Class III utilization at each plant of the handler (excluding any such utilization at each plant based on transfers to other pool plants of the handler) any beginning inventory and other source milk receipts at such plant of the respective category allocated to such combined class uses pursuant to each subparagraph of § 1050.47(a) and the corresponding step of § 1050.47(b). If the same category of other source milk to be assigned to the combined Class II and Class III utilization was received at two or more plants of the handler, such other source milk shall be assigned first to the combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices (excluding in each case utilization based on transfers to his other pool plants). To the extent that combined Class II and Class III utilization of beginning inventory and other source milk remains unassigned, such remainder shall be assigned first to the remaining combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices;

(2) From the total pounds of Class I skim milk and butterfat, respectively, at each plant of the handler (excluding transfers to his other pool plants and Class I transfers to pool plants of other handlers) subtract the pounds of skim milk and butterfat in the respective category of other source milk received and beginning inventory at such plant which exceed the quantities assigned to Class II and Class III utilization at such plant pursuant to subparagraph (1) of this paragraph;

(3) The amount of transfers from each plant to other pool plants of the handler operating such plant and Class I transfers to pool plants of other handlers that are eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) To the pounds of Class I skim milk and butterfat, respectively, remaining at the transferee plant after the computation pursuant to subparagraph (2) of this paragraph add any Class I transfers from such plant to other pool plants that are eligible for location adjustment as determined at the plants to which such transfers were made, and then subtract 95 percent of the skim milk and butterfat, respectively, in receipts at such transferee plant of producer milk and by diversion from other pool plants;

(ii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iii) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (ii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(4) The sum of the quantities determined pursuant to subparagraphs (2) and (3)(iii) of this paragraph, or the total pounds of milk received at the plant as producer milk and by diversion from another pool plant, whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(d) The Class I price applicable to other source milk shall be reduced at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

13. In § 1050.61(e), subparagraph (2) is revised as follows:

§ 1050.61 Plants subject to other Federal orders.

* * * * *

(e) * * *

(2) Compute the value of the reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

14. Section 1050.62 is revised as follows:

§ 1050.62 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1050.30(c) and 1050.32(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

(1) Determine the pounds of skim milk and butterfat, respectively, in the partially regulated distributing plant's route disposition in the marketing area;

(2) Subtract the pounds of skim milk and butterfat, respectively, received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in the partially regulated distributing plant's route disposition in the marketing area;

(4) Combine the remaining pounds of skim milk and butterfat and multiply the total by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

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

(1) Determine the obligation that would have been computed pursuant to § 1050.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to subdivision (i) of this subparagraph. Any such transfers remaining after the above allocation which are classified in Class I and on which an obligation is computed for the handler operating the partially regulated distributing plant pursuant to § 1050.70 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, in lieu of the obligation pursuant to § 1050.70(f) and the credit specified in § 1050.84(b)(2), the obligation for such handler shall include a similar obligation for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1050.12 (b) and (c), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1050.30(c) and 1050.32(b) similar reports for each such nonpool supply plant;

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

(c) The obligation for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the obligation computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for bottling grade milk received at the plant during the month from dairy farmers;

(ii) If subparagraph (1)(iii) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for bottling grade milk received at the plant during the month from dairy farmers; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if subparagraph (1)(iii) of this paragraph applies.

15. Section 1050.70 is revised as follows:

§ 1050.70 Computation of the net pool obligation of each handler.

The monthly net pool obligation of each handler described in § 1050.9 (a), (c), and (d) shall be determined for such handler, or for each pool plant of such handler if the allocations pursuant to § 1050.47 are on an individual plant basis and the handler requests separate statements. Such obligation shall be a sum or money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class determined pursuant to § 1050.46 by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1050.47(a)(13) and the corresponding step of § 1050.47(b) by the respective class price applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the

location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1050.47 (a)(8) and the corresponding step of § 1050.47(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1050.47(a)(6) (i) through (iv) and the corresponding step of § 1050.47 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1050.47(a)(6) (v) and (vi) and the corresponding step of § 1050.47 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest nonpool plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1050.47(a)(10) and the corresponding step of § 1050.47(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price for the preceding month and the Class II price for the current month by the hundredweight of skim milk and butterfat in any products specified in § 1050.42 (a) and (b) that were in Class I inventory at the end of the preceding month.

16. In § 1050.71, paragraph (c) is revised as follows:

§ 1050.71 Computation of the uniform price.

* * * * *

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, the amount obtained by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential specified in § 1050.52, and multiply the result by the total hundredweight of such milk;

* * * * *

17. In § 1050.72, paragraph (b) is revised as follows:

§ 1050.72 Notification of handlers.

* * * * *

(b) The uniform price computed pursuant to § 1050.71 and the butterfat differential computed pursuant to § 1050.52; and

* * * * *

18. In § 1050.80, paragraph (a) is revised as follows:

§ 1050.80 Time and method of payment for producer milk.

(a) On or before the 20th day of the following month, each handler shall make payment to each producer for milk received from such producer during such month an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1050.52, 1050.82, and 1050.88, multiplied by the hundredweight of milk received from such producer during the month, less proper deductions authorized in writing by such producer, and plus or minus adjustments for errors made in previous payments made to such producer. If by such date the handler has not received full payment from the market administrator pursuant to § 1050.85 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

* * * * *

§ 1050.81 [Revoked]

19. Section 1050.81 is revoked.

20. In § 1050.82, paragraph (b) is revised as follows:

§ 1050.82 Location differentials to producers and on nonpool milk.

* * * * *

(b) The weighted average price applicable to other source milk shall be reduced at the rates set forth in § 1050.53, except that the adjusted weighted average price shall not be less than the Class III price.

21. In § 1050.84(b), subparagraph (2) is revised as follows:

§ 1050.84 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price applicable at the location of the plants from which received of other source milk for which a value is computed pursuant to § 1050.70(f).

22. Section 1050.87 is revised as follows:

§ 1050.87 Expense of administration.

As his pro rata share of the expense of administering the order, each handler (excluding a cooperative association in its capacity as a handler pursuant to § 1050.9(d) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

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

(b) Other source milk allocated to Class I pursuant to § 1050.47(a) (6) and (10) and the corresponding steps of § 1050.47(b), except such other source milk on which no handler obligation applies pursuant to § 1050.70(f); and

(c) Class I milk disposed of on a route in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1050.62(a)(2).

PART 1062—MILK IN THE ST. LOUIS-OZARKS MARKETING AREA

1. In § 1062.7, paragraph (a) is revised as follows:

§ 1062.7 Producer.

* * * * *

(a) Received at a pool plant (excluding milk received as a diversion from an other order plant which is allocated to Class II or Class III pursuant to § 1062.47 (a)(7)(ii) and the corresponding step of § 1062.47(b); or

* * * * *

2. In § 1062.14, paragraphs (a)(1), (b)(2)(ii), and (c)(3) are revised as follows:

§ 1062.14 Producer milk.

* * * * *

(a) * * *

(1) Received at the pool plant from producers or from a cooperative association acting as a handler pursuant to § 1062.8(d), but excluding milk received as a diversion from an other order plant which is allocated to Class II or Class III pursuant to § 1062.47(a)(7)(ii) and the corresponding step of § 1062.47(b);

* * * * *

(b) * * *

(2) * * *

(ii) Is not so delivered and constitutes shrinkage pursuant to 1062.44(c) or Class I shrinkage; and

(c) * * *

(3) By the operator of a pool plant or by a cooperative association in its capacity as a handler pursuant to § 1062.8(c) as Class II or Class III milk to a nonpool plant(s) at which the handling of milk is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act for not more days of production of producer milk than is physically received at pool plants less the number of days' production diverted pursuant to subparagraph (2) of this paragraph, if such milk is not fully subject to the pricing and pooling provisions of such other order;

* * * * *

3. Section 1062.15 is revised as follows:

§ 1062.15 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source other than producers, cooperative associations acting as a handler pursuant to § 1062.8(d), pool plants, and inventory at the beginning of the month;

(b) Products (other than fluid milk products, bulk fluid cream products, and cottage cheese) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product (other than a fluid milk product or a bulk fluid cream product) that is in a form in which it may be converted into a Class I product and which is not otherwise accounted for under the order.

4. Section 1062.16 is revised as follows:

§ 1062.16 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means:

(1) Any of the following products in fluid or frozen form, including such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted: Milk, skim milk, lowfat milk, milk drinks, eggnog, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids; and

(2) Any milk product in fluid or frozen form that is not specified in subparagraph (1) of this paragraph or in § 1062.42 or § 1062.43(a) (1) through (8), if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

(1) Evaporated or condensed milk or skim milk in plain or sweetened form, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

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

5. Section 1062.17 is revised 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 a commercial food establishment pursuant to § 1062.43(b).

6. A new § 1062.19a is added as follows:

§ 1062.19a Fluid cream product.

"Fluid cream product" means cream or a mixture of cream and milk or skim milk containing 9 percent or more butterfat.

7. In § 1062.22, paragraphs (i), (l), (m), and (n) are revised as follows:

§ 1062.22 Duties.

* * * * *

(i) Publicly announce by posting in a conspicuous place in his office and by such other means as he deems appropriate and mail to each handler at his last known address the prices determined for each month as follows:

(1) On or before the fifth day of each month, the Class I price for the current month pursuant to § 1062.51(a);

(2) On or before the fifth day of each month, the Class II and Class III prices pursuant to § 1062.51 (b) and (c) and the butterfat differential pursuant to § 1062.52, all for the preceding month; and

(3) On or before the 10th day after the end of each month, the uniform price pursuant to § 1062.71;

* * * * *

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1062.47(a) (11) and the corresponding step of § 1062.47(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1062.47 pursuant to such report, and, thereafter, any change in such allocation required to correct errors disclosed in verification of such report. In the case of milk received from an other order market pool plant the classification of such milk shall be the quantities assigned to each class pursuant to § 1062.47. In the case of milk received from an other order handler pool plant, the market administrator shall report the allocation of skim milk and butterfat in the same percentage as the marketwide estimate for all handlers pursuant to paragraph (l) of this section; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any change in such allocation arising from the verification of such report.

8. In § 1062.30(a), subparagraphs (1)(ii), (2), and (3)(i) are revised as follows:

§ 1062.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(1) * * *

(ii) Fluid milk products and bulk fluid cream products received from other pool plants; and

* * * * *

(2) Inventories described in subparagraph (3)(i) of this paragraph that are on hand at the beginning of the month; (3) * * *

(i) Of inventories at the end of the month of the following products, showing separately such inventories in bulk form and in packaged form:

(a) Fluid milk products; and

(b) Fluid cream products except those received in packaged form from another plant;

* * * * *

9. In § 1062.31, the introductory text is revised as follows:

§ 1062.31 Payroll reports.

On or before the 20th day after the end of the month each handler described in § 1062.8(a), for each of his pool plants, and each cooperative association with respect to milk for which it is the handler pursuant to § 1062.8 (c) and (d) shall submit to the market administrator the producer payroll, and each handler making payments pursuant to § 1062.62(b) his payroll for dairy farmers delivering Grade A milk; which shall show for each producer or dairy farmer:

* * * * *

10. Sections 1062.40 through 1062.46 are revoked and new §§ 1062.40 through 1062.48 are substituted therefor as follows:

§ 1062.40 Classification of all skim milk and butterfat.

All skim milk and butterfat to be reported by a handler pursuant to § 1062.30 shall be classified each month in accordance with §§ 1062.41 through 1062.48. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1062.41 Class I milk.

Except as provided in §§ 1062.43, 1062.45, and 1062.48, Class I milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid milk product;

(b) In inventory at the end of the month of packaged fluid milk products; and

(c) Not specifically accounted for as Class II or Class III milk.

§ 1062.42 Class II milk.

Except as provided in §§ 1062.43, 1062.45, and 1062.48, Class II milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid cream product;

(b) Used to produce:

(1) Yogurt, cottage cheese, creamed or partially creamed cottage cheese, sour cream, and any sour mixture of cream and milk or skim milk containing 9 percent or more butterfat; and

(2) Any product containing 6 percent or more nonmilk fat (or oil) that resembles any product specified on paragraphs (a) and (b)(1) of this section; and

(c) In inventory at the end of the month of packaged fluid cream products.

§ 1062.43 Class III milk.

Except as provided in §§ 1062.45 and 1062.48, Class III milk shall be all skim milk and butterfat.

(a) Used to produce:

(1) Cheese (other than cottage cheese and creamed or partially creamed cottage cheese);

(2) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(3) Any milk product in dry form;

(4) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(5) Custards, puddings, and pancake mixes;

(6) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(7) Evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(8) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in § 1062.42(b)(2); and

(9) Any product that is not a fluid milk product and that is not specified in subparagraphs (1) through (8) of this paragraph or in § 1062.42;

(b) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and at which there is no disposition of fluid milk products other than those received in consumer-type packages;

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

(d) In fluid milk products and products specified in § 1062.42 that are disposed of by a handler for animal feed;

(e) In fluid milk products and products specified in § 1062.42 that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition;

(f) In skim milk represented by the nonfat milk solids added to a fluid milk product that is in excess of the quantity of such skim milk included within the fluid milk product definition pursuant to § 1062.16; and

(g) In shrinkage that is:

(1) Assigned pursuant to § 1062.44(a) to the receipts specified in § 1062.44(a)(2); and

(2) Specified in § 1062.44 (b) and (c).

§ 1062.44 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1062.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, in the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) The quantity of skim milk and butterfat, respectively, in receipts of other source milk in the form of fluid milk products, excluding any such receipts used in the computations pursuant to paragraph (b) (5) and (6) of this section;

(b) The quantity of skim milk and butterfat, respectively, that was assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph which is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in milk physically received at such plant directly from producers (excluding that received by diversion from another pool plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a cooperative association acting as a handler pursuant to § 1062.8 (d) and in milk diverted to such plant from another pool plant, except that if the plant operator receiving such milk purchases the milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no shrinkage shall be allowed;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid products transferred to other plants; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1062.8 (c) or (d), but not to exceed 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of farm weights, no shrinkage shall be allowed.

§ 1062.45 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler (or to any pool plant if allocations pursuant to § 1062.47 are on an individual plant basis) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee or divertee plant after the computations pursuant to § 1062.47(a)(11) and the corresponding step of § 1062.47(b);

(2) If the transferor or divertor plant received during the month other source milk to be allocated pursuant to § 1062.47(a)(6) or the corresponding step of § 1062.47(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor or divertor handler received during the month other source milk to be allocated pursuant to § 1062.47(a) (10) or (11) or the corresponding steps of § 1062.47(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee or divertee plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which

allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilizations available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of §§ 1062.41 through 1062.43.

(c) *Transfers to producer-handlers and transfers and diversions to Government agency plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a plant exempt pursuant to § 1062.60(b) shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's or diveretee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified as Class I milk, subject to the following conditions:

(1) If the transferor or divertor handler so requests and the conditions described in subdivisions (i) and (ii) of this subparagraph are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subparagraphs (2) through (7) of this paragraph:

(i) The transferor or divertor handler claims such classification in his report of receipts and utilization filed pursuant to § 1062.30 for the month within which such transaction occurred; and

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

(2) Class I route disposition of the nonpool plant in the marketing area of each Federal milk order and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated under such order shall be assigned to the extent possible:

(i) First to receipts of packaged fluid milk products at such nonpool plant from pool plants; and

(ii) Any remaining such route disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(3) Class I disposition from the nonpool plant of packaged fluid milk products other than that described in subparagraph (2) of this paragraph shall be assigned pro rata to any receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants that remain unassigned after the assignment pursuant to subparagraph (2) of this paragraph;

(4) Class I disposition of packaged fluid milk products described in subparagraph (2) of this paragraph that was not assigned pursuant to such subparagraph and transfers of bulk fluid milk products from the nonpool plant to pool plants and other order plants, to the extent that such transfers and any remaining transfers of packaged fluid milk products to each such pool plant and other order plant exceed receipts of fluid milk products from such plant and that such excess is allocated to Class I at the transferee plant, shall be assigned to the extent possible:

(i) First to receipts of fluid milk products at such nonpool plant from pool plants that remain unassigned after the assignments pursuant to subparagraphs (2) and (3) of this paragraph; and

(ii) Any remaining such Class I disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(5) Any remaining unassigned Class I utilization at the nonpool plant shall be assigned to the extent possible:

(i) First to such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of bottling grade milk for such nonpool plant; and

(ii) Any remaining unassigned Class I utilization shall be assigned to the nonpool plant's receipts of bottling grade milk from plants not fully regulated under any Federal milk order;

(6) Any remaining unassigned receipts of fluid milk products and bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned pro rata to such remaining unassigned receipts from each source in sequence to any Class III utilization, then any Class II utilization, and then any remaining Class I utilization at the nonpool plant; and

(7) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1062.46 Classification of producer milk.

Each month the market administrator shall determine the classification of producer milk in the following manner:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to § 1062.30 and compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1062.8 (c) or (d) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1062.40 through 1062.45 and § 1062.48. For purposes of this paragraph and § 1062.47, fluid cream products that are received from another plant in packaged form and disposed of, or held in inventory, in the same container in which received shall not be included in a handler's receipts, inventory, or disposition unless such products become other source milk pursuant to § 1062.15 (b) or (c);

(b) For each handler described in § 1062.8(a), allocate in accordance with § 1062.47 such handler's receipts of skim milk and butterfat to his utilization of skim milk and butterfat in each class, subject to the following conditions:

(1) If the handler is a cooperative association, such receipts and utilization shall not include any milk for which it is the handler pursuant to § 1062.8 (c) or (d); and

(2) If the handler operates two or more pool plants, such receipts and utilization shall be for all of his pool plants combined unless the handler requests in his reports filed pursuant to § 1062.30 that the classification of producer milk be determined separately for each of his pool plants and he has no skim milk or butterfat that would be allocated under § 1062.47(a) (10) or (11) or the corresponding steps of § 1062.47(b); and

(c) The quantity of producer milk in each class shall be the following:

(1) For each cooperative association with respect to milk for which it is the handler pursuant to § 1062.8 (c) or (d), the combined pounds of skim milk and butterfat in each class that were determined pursuant to paragraph (a) of this section; and

(2) For each handler described in § 1062.8(a), the combined pounds of skim

milk and butterfat remaining in each class after the computations pursuant to § 1062.47(a)(13) and the corresponding step of § 1062.47(b).

§ 1062.47 Allocation of receipts to utilization.

For the purpose of § 1062.46, a handler's receipt shall be allocated to his utilization 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 milk pursuant to § 1062.43(g)(2);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to subparagraph (6)(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;

(4) With respect to a plant that was fully regulated in the immediately preceding month under any Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(i) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products that are in inventory at the beginning of the month; and

(ii) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1062.42;

(6) 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 (except that received in the form of a fluid milk product) that was not subtracted pursuant to subparagraph (5) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which bottling grade certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order or from a plant exempt pursuant to § 1062.60(b);

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk 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 II and Class III, in sequence beginning with Class III, but not in excess of such quantities, the pounds of skim in each of the following:

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (6)(v) of this paragraph:

(*a*) For which the handler requests Class II or Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis), and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph; and

(ii) Receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory at the beginning of the month of fluid milk products and fluid cream products (and, for the first month that this subparagraph is effective Grade A sour cream and Grade A sour mixtures) that were not subtracted pursuant to subparagraph (4) of this paragraph;

(9) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (6)(v), and (7)(i) of this paragraph and that were not offset by transfers of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(11) Subtract in the order specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (6)(vi) and (7)(ii) of this paragraph:

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net 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 § 1062.22(1) or the percentage that the combined Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler;

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

(iii) The quantity of skim milk, if any, subtracted pursuant to subdivision (ii) of this subparagraph shall be assigned pro rata to the receipts from other order plants under market pool orders and under handler pool orders which were assigned pursuant to subdivisions (i) and (ii) of this subparagraph (the skim milk subtracted pursuant to subdivision (i) of this subparagraph shall be subject to the same proration);

(12) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) according to the classification of such products pursuant to § 1062.45(a); and

(13) If the total 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"; and

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

§ 1062.48 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise.

(b) For the purposes of §§ 1062.41 through 1062.48, §§ 1062.50 through 1062.54, and §§ 1062.70 through 1062.72, milk delivered by a cooperative association in its capacity as a handler pursuant to § 1062.8(d) shall be classified and allocated as producer milk according to the use or disposition by the receiving handler and the value thereof at class prices

shall be included in the receiving handler's net pool obligation pursuant to § 1062.70. For purposes of location adjustment pursuant to § 1062.53 and administrative expense pursuant to § 1062.88, such milk shall be treated as producer milk of the receiving handler.

(c) If verification by the market administrator discloses that the original classification of skim milk or butterfat was incorrect, such skim milk or butterfat shall be reclassified.

11. Section 1062.51 is revised as follows:

§ 1062.51 Class prices.

Subject to the provisions of §§ 1062.52 and 1062.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price at plants located in Zone I shall be the basic formula price for the preceeding month plus $1.40, plus 20 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

12. Section 1062.52 is revised as follows:

§ 1062.52 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the class prices specified in § 1062.51 and the uniform price specified in § 1062.71 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by an amount, rounded to the nearest one-tenth cent, that is equal to the Chicago butter price for the month multiplied by 0.115.

13. Section 1062.53 is revised as follows:

§ 1062.53 Location adjustments to handlers.

(a) For milk received at a pool plant from producers or from cooperative associations acting as a handler pursuant to § 1062.8(d) which is classified as Class I milk and eligible pursuant to paragraph (b) or (c) of this section for location adjustment, the Class I price at such pool plant, if located:

(1) In Zone I of the marketing area, shall be the price specified in § 1062.51 (a) except as provided in subparagraph (4) of this section;

(2) In Zone II of the marketing area, shall be the Zone I price plus a location adjustment of 15 cents;

(3) In Zone III of the marketing area, shall be the Zone I price plus a location adjustment of 17 cents;

(4) In Zone A (the Missouri counties of Barry, Christian, Douglas, Greene, Howell, Laclede, Lawrence, Ozark, Stone, Taney, Webster, Wright, and Texas), for any plant which does not dispose of fluid milk products in consumer-type packages and which is qualified as a pool plant pursuant to § 1062.12 (b) or (c) or a supply plant which qualifies pursuant to § 1062.12(d), shall be the price specified in § 1062.51(a) less 27 cents;

(5) Outside the marketing area and Texas County, Missouri, and more than 30 miles from the city hall, St. Louis, Mo., or the city hall in Springfield, Mo., whichever is nearer, shall be the Class I price applicable in Zone I, less a location adjustment of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the city hall, St. Louis, Mo., or the city hall in Springfield, Mo., whichever is nearer; and

(6) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(b) If skim milk and buttrfat are allocated on an individual plant basis pursuant to § 1062.47, the quantity of milk received at the plant that shall be subject to location adjustment shall be determined as follows. In applying the following rules, diversions to pool plants located more than 120 miles from the city hall in either Springfield or St. Louis, Mo., as determined pursuant to § 1062.14(c)(4), shall be treated the same as receipts from producers at the divertee plant and shall be excluded from receipts at the divertor plant, and diversions to pool plants located within 120 miles of the city hall in either Springfield or St. Louis, Mo., as determined pursuant to § 1062.14(c)(5), shall be treated the same as a transfer from the divertor plant to the plant to which diverted:

(1) From the total pounds of Class I skim milk and butterfat, respectively, at such plant subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1062.47 (a) and (b) and any Class I transfers to other pool plants;

(2) The amount of Class I transfers from such plant to other pool plants that is eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) From the total pounds of Class I skim milk and butterfat, respectively, at such transferee plant (excluding Class I transfers to other pool plants that are not eligible for location adjustment as determined at such other pool plants) subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1062.47 (a) and (b);

(ii) From the remaining pounds of Class I skim milk and butterfat, respectively, subtract 95 percent of the skim milk and butterfat, respectively, in receipts at such transferee plant from producers and cooperative associations acting as a handler pursuant to § 1062.8 (d);

(iii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iv) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (iii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(3) The sum of the quantities determined pursuant to subparagraphs (1) and (2)(iv) of this paragraph, or the total pounds of milk received at the plant from producers and cooperative associations acting as a handler pursuant to § 1062.8(d), whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(c) If skim milk and butterfat are allocated on a system basis pursuant to § 1062.47, the quantity of milk received at each plant from producers and cooperative associations acting as a handler pursuant to § 1062.8(d) that shall be subject to any location adjustment applicable at such plant shall be determined as follows:

(1) Assign to the skim milk and butterfat, respectively, in the combined Class II and Class III utilization at each plant of the handler (excluding any such utilization at each plant based on transfers to other pool plants of the handler) any beginning inventory and other source milk receipts at such plant of the respective category allocated to such combined class uses pursuant to each subparagraph of § 1062.47(a) and the corresponding step of § 1062.47(b). If the same category of other source milk to be assigned to the combined Class II and Class III utilization was received at two or more plants of the handler, such other source milk shall be assigned first to the combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices (excluding in each case utilization based on transfers to his other pool plants). To the extent that combined Class II and Class III utilization of beginning inventory and other source milk remains unassigned, such remainder shall be assigned first to the remaining combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices;

(2) From the total pounds of Class I skim milk and butterfat respectively, at each plant of the handler (excluding transfers to his other pool plants and Class I transfers to pool plants of other handlers) subtract the pounds of skim milk and butterfat in the respective category of other source milk received and beginning inventory at such plant which exceed the quantities assigned to Class II and Class III utilization at such plant pursuant to subparagraph (1) of this paragraph;

(3) The amount of transfers from each plant to other pool plants of the handler operating such plant and Class I transfers to pool plants of other handlers that are eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) To the pounds of Class I skim milk and butterfat, respectively, remaining at the transferee plant after the computation pursuant to subparagraph (2) of this paragraph add any Class I transfers

from such plant to other pool plants that are eligible for location adjustment as determined at the plants to which such transfers were made, and then subtract 95 percent of the skim milk and butterfat, respectively, in receipts at such transferee plant from producers and cooperative associations acting as a handler pursuant to § 1062.8(d);

(ii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iii) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (ii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(4) The sum of the quantities determined pursuant to subparagraphs (2) and (3)(iii) of this paragraph, or the total pounds of milk received at the plant from producers and cooperative associations acting as a handler pursuant to § 1062.8(d), whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

14. Section 1062.60 is revised as follows:

§ 1062.60 **Exemptions.**

(a) *Producer-handler.* Sections 1062.40 through 1062.48, 1062.50 through 1062.54, 1062.61, 1062.62, 1062.70 through 1062.72, 1062.80, and 1062.82 through 1062.89 shall not apply to a producer-handler; and

(b) *Governmental agency.* None of the provisions of this part except §§ 1062.13, 1062.45(c), and 1062.47(a)(6)(iv) and the corresponding step of § 1062.47(b) shall apply to a plant operated by a governmental agency.

15. In § 1062.61(e), subparagraph (2) is revised as follows:

§ 1062.61 **Plants subject to other Federal orders.**

* * * * *

(e) * * *

(2) Compute the value of the reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

16. Section 1062.62 is revised as follows:

§ 1062.62 **Obligation of handler operating a partially regulated distributing plant.**

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1062.30(b) and 1062.31 the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

(1) Determine the pounds of skim milk and butterfat, respectively, in the partially regulated distributing plant's route disposition in the marketing area;

(2) Subtract the pounds of skim milk and butterfat, respectively, received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in the partially regulated distributing plant's route disposition in the marketing area;

(4) Combine the remaining pounds of skim milk and butterfat and multiply the total by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

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

(1) Determine the obligation that would have been computed pursuant to § 1062.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to subdivision (i) of this subparagraph. Any such transfers remaining after the above allocation which are classified in Class I and on which an obligation is computed for the handler operating the partially regulated distributing plant pursuant to § 1062.70 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, in lieu of the obligation pursuant to § 1062.70(f) and the credit specified in § 1062.84(b)(2), the obligation for such handler shall include a similar obligation for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1062.12(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1062.30(b) and 1062.31 similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The obligation for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the obligation computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for bottling grade milk received at the plant during the month from dairy farmers;

(ii) If subparagraph (1)(iii) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for bottling grade milk received at the plant during the month from dairy farmers; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if subpara-

graph (1)(iii) of this paragraph applies.

17. Section 1062.70 is revised as follows:

§ 1062.70 Computation of the net pool obligation of each handler.

The monthly net pool obligation of each handler described in § 1062.8 (a), (c) and (d) shall be determined for such handler, or for each pool plant of such handler if the allocations pursuant to § 1062.47 are on an individual plant basis and the handler requests separate statements. Such obligation shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class determined pursuant to § 1062.46 by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1062.47(a)(13) and the corresponding step of § 1062.47(b) by the respective class price applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1062.47(a)(8) and the corresponding step of § 1062.47(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1062.47(a)(6) (i) through (iv) and the corresponding step of § 1062.47(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1062.47(a)(6) (v) and (vi) and the corresponding step of § 1062.47(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest nonpool plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1062.47(a)(10) and the corresponding step of § 1062.47(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) Add the amount obtained from multiplying the hundredweight of skim milk and butterfat in receipts of fluid milk products from a handler pool other order plant subtracted from each class pursuant to § 1062.47(a)(11)(iii) and the corresponding step of § 1062.47(b) by the applicable class price pursuant to this part adjusted for location of the plant from which received.

18. In § 1062.71, paragraphs (c) and (e)(2) are revised as follows:

§ 1062.71 Computation of uniform prices.

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, the amount obtained by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential specified in § 1062.52, and multiply the result by the total hundredweight of such milk;

* * * * *

(e) * * *

(2) The total hundredweight for which a value is computed pursuant to § 1062.70 (f) and (g);

* * * * *

19. In § 1062.80, paragraphs (a) and (b)(2) are revised as follows:

§ 1062.80 Time and method of payment.

* * * * *

(a) On or before the 17th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the applicable uniform price computed pursuant to § 1062.71 for such producer's deliveries of milk, adjusted pursuant to §§ 1062.52 and 1062.82, respectively, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment pursuant to § 1062.85, he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) * * *

(2) Who is still delivering Grade A milk to such handler, a partial payment with respect to milk received from him during the first 15 days of such month computed at not less than the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling;

* * * * *

§ 1062.81 [Revoked]

20. Section 1062.81 is revoked.

21. Section 1062.82 is revised as follows:

§ 1062.82 Location differentials to producers and on nonpool milk.

(a) For producer milk received at pool plants located outside Zone I and more than 30 miles from the city hall in St. Louis, Mo., or the city hall in Springfield, Mo., whichever is nearer, there shall be added or deducted, as the case may be, an adjustment for each such plant for all milk at the rates specified in § 1062.53(a) (2), (3), and (5); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1062.53 (a) (2), (3), and (5), except that the adjusted weighted average price shall note be less than the Class III price.

22. In § 1062.84(b), subparagraph (2) is revised as follows:

§ 1062.84 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price applicable at the location of the plants from which received of other source milk for which a value is computed pursuant to § 1062.70 (f) and (g), plus in the case of milk received from a handler pool market the amount of the location differential at the location of the plant from which received applied to the quantity of Class II and Class III milk reported pursuant to § 1062.22(m) which is in excess of the Class II and Class III milk pursuant to § 1062.70(g) except that for milk received from a handler pool market the value applicable pursuant to this subparagraph shall not exceed the value for such quantity calculated pursuant to § 1062.70(g).

23. Section 1062.88 is revised as follows:

§ 1062.88 Expense of administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 2.5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) His producer milk (including such handler's own production and milk received from a cooperative association acting as a handler pursuant to § 1062.8 (d));

(b) Other source milk allocated to Class I pursuant to § 1062.47(a) (6) and (10) and the corresponding steps of § 1062.47(b), except such other source milk on which no handler obligation applies pursuant to § 1062.70(f); and

(c) Class I milk disposed of on a route in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1062.62(a)(2).

PART 1099—MILK IN THE PADUCAH, KY., MARKETING AREA

1. In § 1099.8, paragraph (b) is revised as follows:

§ 1099.8 Pool plant.

* * * * *

(b) A distributing plant or supply plant from which the volume of milk and skim milk 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 and skim milk 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 terms of this proviso: *And provided further*, That in the case of a supply plant operated by a cooperative association which supplies to other pool plants at least two-thirds of the producer milk of its producer members (including both the milk delivered directly from the farms of member producers and that delivered from the plant of the association) delivered to all plants during the current month or during the immediately preceding 12-month period, the milk which such association causes to be delivered to the pool plants of other handlers in its capacity as a handler pursuant to § 1099.10(e), shall be considered as having been received first at the plant of such cooperative association for the purpose of qualifying such plant as a pool plant pursuant to this paragraph.

2. In § 1099.13, paragraph (b) is revised as follows:

§ 1099.13 Producer milk.

* * * * *

(b) Received by a cooperative association as a handler pursuant to § 1099.10 (e) but which is not delivered to a pool plant of another handler and which constitutes shrinkage pursuant to § 1099.44 (c) or as Class I shrinkage;

* * * * *

3. Section 1099.14 is revised as follows:

§ 1099.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Fluid milk products and bulk fluid cream products from any source other than producers, cooperative associations acting as a handler pursuant to § 1099.10 (e), pool plants, and inventory at the beginning of the month;

(b) Products (other than fluid milk products, bulk fluid cream products, and cottage cheese) from any source (including those products produced at the plant) which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Any disappearance of any product (other than a fluid milk product or a bulk fluid cream product) that is in a form in which it may be converted into a Class I product and which is not otherwise accounted for under the order.

4. Section 1099.15 is revised as follows:

§ 1099.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means:

(1) Any of the following products in fluid or frozen form, including such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted: Milk, skim milk, low fat milk, milk drinks, eggnog, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids; and

(2) Any milk product in fluid or frozen form that is not specified in subparagraph (1) of this paragraph or in § 1099.42 or § 1099.43(a) (1) through (8), if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

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

(1) Evaporated or condensed milk or skim milk in plain or sweetened form, formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, and any product that contains by weight less than 6.5 percent nonfat milk solids; and

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

5. A new § 1099.19a is added as follows:

§ 1099.19a Fluid cream product.

"Fluid cream product" means cream or a mixture of cream and milk or skim milk containing 9 percent or more butterfat.

6. In § 1099.22, paragraphs (k), (l), (m), and (n) are revised as follows:

§ 1099.22 Duties.

* * * * *

(k) Publicly announce, by posting in his office and by other means he deems appropriate, on or before:

(1) The fifth day of each month, the Class I price for the current month pursuant to § 1099.51(a);

(2) The fifth day of each month, the Class II and Class III prices pursuant to § 1099.51 (b) and (c) and the butterfat differential pursuant to § 1099.52, all for the preceding month; and

(3) The 10th day after the end of each month, the uniform price pursuant to § 1099.71;

(l) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1099.47(a) (11) and the corresponding step of § 1049.47(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose;

(m) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1099.47 pursuant to such report, and, thereafter, any change in such allocation required to correct errors disclosed in verification of such report; and

(n) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report of the receiving handler, and, as necessary, any change in such allocation arising from the verification of such report.

7. In § 1099.30(a), subparagraphs (1), (4), and (7) are revised as follows:

§ 1099.30 Reports of receipts and utilization.

* * * * *

(a) * * *

(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) Fluid milk products and bulk fluid cream products received from other pool plants; and

(iii) Other source milk;

* * * * *

(4) Inventories at the beginning and the end of the month of the following products, showing separately such inventories in bulk form and in packaged form:

(i) Fluid milk products; and

(ii) Fluid cream products except those received in packaged form from another plant;

* * * * *

(7) Each handler with respect to fluid milk products and produtcs specified in § 1099.42 that are disposed of for animal feed or dumped shall report to the market administrator such information and at such time as the market administrator may require.

* * * * *

8. In § 1099.31(c), the introductory text is revised as follows:

§ 1099.31 Payroll reports.

* * * * *

(c) On or before the 25th day after the end of the month each handler oper-

ating a partially regulated distributing plant, except one who elects at the time of reporting pursuant to § 1099.30 to make payments pursuant to § 1099.62(a), shall report his payments to dairy farmers qualified to be producers as if such plant were a pool plant, showing for each such dairy farmer:

* * * * *

9. Sections 1099.40 through 1099.46 are revoked and new §§ 1099.40 through 1099.48 are substituted therefor as follows:

§ 1099.40 Classification of all skim milk and butterfat.

All skim milk and butterfat to be reported by a handler pursuant to § 1099.30 shall be classified each month in accordance with §§ 1099.41 through 1099.48. If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

§ 1099.41 Class I milk.

Except as provided in §§ 1099.43, 1099.45, and 1099.48, Class I milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid milk product;

(b) In inventory at the end of the month of packaged fluid milk products; and

(c) Not specifically accounted for as Class II or Class III milk.

§ 1099.42 Class II milk.

Except as provided in §§ 1099.43, 1099.45, and 1099.48, Class II milk shall be all skim milk and butterfat:

(a) Disposed of in the form of a fluid cream product;

(b) Used to produce:

(1) Yogurt, cottage cheese, creamed or partially creamed cottage cheese, sour cream, and any sour mixture of cream and milk or skim milk containing 9 percent or more butterfat; and

(2) Any product containing 6 percent or more nonmilk fat (or oil) that resembles any product specified in paragraphs (a) and (b)(1) of this section; and

(c) In inventory at the end of the month of packaged fluid cream products.

§ 1099.43 Class III milk.

Except as provided in §§ 1099.45 and 1099.48, Class III milk shall be all skim milk and butterfat:

(a) Used to produce:

(1) Cheese (other than cottage cheese and creamed or partially creamed cottage cheese);

(2) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(3) Any milk product in dry form;

(4) Milk shake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(5) Custards, puddings, and pancake mixes;

(6) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(7) Evaporated or condensed milk or skim milk in plain or sweetened form that is in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(8) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in § 1099.42(b)(2); and

(9) Any product that is not a fluid milk product and that is not specified in subparagraphs (1) through (8) of this paragraph or in § 1099.42;

(b) In bulk fluid milk products and bulk fluid cream products disposed of to any commercial food processing establishment (other than a milk or filled milk plant) at which food products (other than milk products and filled milk) are processed and at which there is no disposition of fluid milk products other than those received in consumer-type packages;

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

(d) In fluid milk products and products specified in § 1099.42 that are disposed of by a handler for animal feed;

(e) In fluid milk products and products specified in § 1099.42 that are dumped by a handler if the market administrator is notified of such dumping in advance and is given opportunity to verify such dispositions;

(f) In skim milk represented by the nonfat milk solids added to a fluid milk product that is in excess of the quantity of such skim milk included within the fluid milk product definition pursuant to § 1099.15; and

(g) In shrinkage that is:

(1) Assigned pursuant to § 1099.44(a) to the receipts specified in § 1099.44(a)(2); and

(2) Specified in § 1099.44 (b) and (c).

§ 1099.44 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1099.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, in the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) The quantity of skim milk and butterfat, respectively, in other source milk received in the form of bulk fluid milk products, excluding any such receipts used in the computations pursuant to paragraph (b) (5) and (6) of this section;

(b) The quantity of skim milk and butterfat, respectively, that was assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph which is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in milk physically received at such plant directly from producers;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a cooperative association acting as a handler pursuant to § 1099.10(e), except that if the plant operator receiving such milk purchases the milk on the basis of farm weights, the applicable percentage shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the other plant purchases such milk on the basis of farm weights, no shrinkage shall be allowed;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products transferred to other plants; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1099.10 (d) or (e) but not to exceed 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of farm weights, no shrinkage shall be allowed.

§ 1099.45 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to the pool plant of another handler (or to any pool plant if allocations pursuant to § 1099.47 are on an individual plant basis) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. The classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee plant after the computations pursuant to § 1099.47(a)(11) and the corresponding step of § 1099.47(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1099.47(a)(6) or the corresponding step of § 1099.47(b) the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1099.74(a) (10) or (11) or the corresponding steps of § 1099.47(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee plant.

(b) *Transfers to other order plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as Class II or Class III milk to the extent of such utilizations available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim fluid milk product under such other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of §§ 1099.41 through 1099.43.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat trasnferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified as Class I milk, subject to the following conditions:

(1) If the transferor or divertor handler so requests and the conditions described in subdivisions (i) and (ii) of this subparagraph are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subparagraphs (2) through (7) of this paragraph:

(i) The transferor or divertor handler claims such classification in his report of receipts and utilization filed pursuant to § 1099.30 for the month within which such transaction occurred; and

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

(2) Class I route disposition of the nonpool plant in the marketing area of each Federal milk order and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated under such order shall be assigned to the extent possible:

(i) First to receipts of packaged fluid milk products at such nonpool plant from pool plants; and

(ii) Any remaining such route disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(3) Class I disposition from the nonpool plant of packaged fluid milk products other than that described in subparagraph (2) of this paragraph shall be assigned pro rata to any receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants that remain unassigned after the assignment pursuant to subparagraph (2) of this paragraph;

(4) Class I disposition of packaged fluid milk products described in subparagraph (2) of this paragraph that was not assigned pursuant to such subparagraph and transfers of bulk fluid milk products from the nonpool plant to pool plants and other order plants, to the extent that such transfers and any remaining transfers of packaged fluid milk products to each such pool plant and other order plant exceed receipts of fluid milk products from such plant and that such excess is allocated to Class I at the transferee plant, shall be assigned to the extent possible:

(i) First to receipts of fluid milk products at such nonpool plant from pool plants that remain unassigned after the assignments pursuant to subparagraphs (2) and (3) of this paragraph; and

(ii) Any remaining such Class I disposition and transfers from the nonpool plant shall be assigned pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(5) Any remaining unassigned Class I utilization at the nonpool plant shall be assigned to the extent possible:

(i) First to such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of bottling grade milk for such nonpool plant; and

(ii) Any remaining unassigned Class I utilization shall be assigned to the nonpool plant's receipts of bottling grade milk from plants not fully regulated under any Federal milk order;

(6) Any remaining unassigned receipts of fluid milk products and bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned pro rata to such remaining unassigned receipts from each source in sequence to any Class III utilization, then any Class II utilization, and then any remaining Class I utilization at the nonpool plant; and

(7) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1099.46 Classification of producer milk.

Each month the market administrator shall determine the classification of producer milk in the following manner:

(a) Correct for mathematical and other obvious errors all reports filed pursuant to § 1099.30 and compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1099.10 (d) or (e) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1099.40 through 1099.45, and § 1099.48. For purposes of this paragraph and § 1099.47, fluid cream products that are received from another plant in packaged form and disposed of, or held in inventory, in the same container in which received shall not be included in a handler's receipts, inventory, or disposition unless

such products become other source milk pursuant to § 1099.14 (b) or (c);

(b) For each handler described in § 1099.10(a), allocate in accordance with § 1099.47 such handler's receipts of skim milk and butterfat to his utilization of skim milk and butterfat in each class, subject to the following conditions:

(1) If the handler is a cooperative association, such receipts and utilization shall not include any milk for which it is the handler pursuant to § 1099.10 (d) and (e); and

(2) If the handler operates two or more pool plants, such receipts and utilization shall be for all of his pool plants combined unless the handler requests in his reports filed pursuant to § 1099.30 that the classification of producer milk be determined separately for each of his pool plants and he has no skim milk or butterfat that would be allocated under § 1099.47(a) (10) or (11) or the corresponding steps of § 1099.47(b); and

(c) The quantity of producer milk in each class shall be the following:

(1) For each cooperative association with respect to milk for which it is the handler pursuant to § 1099.10 (d) or (e), the combined pounds of skim milk and butterfat in each class that were determined pursuant to paragraph (a) of this section; and

(2) For each handler described in § 1099.10(a), the combined pounds of skim milk and butterfat remaining in each class after the computation, pursuant to § 1099.47(a)(13) and the corresponding step of § 1099.47(b).

§ 1099.47 Allocation of receipts to utilization.

For the purpose of § 1099.46, a handler's receipts shall be allocated to his utilization 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 milk pursuant to § 1099.43(g)(2);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to subparagraph (6)(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;

(4) With respect to a plant that was fully regulated in the immediately preceding month under any Federal milk order providing for a similar allocation of beginning inventories of packaged fluid milk products:

(i) Subtract from the remaining pounds of skim milk in Class I the pounds of skim milk in packaged fluid milk products that are in inventory at the beginning of the month; and

(ii) Subtract from the pounds of skim milk in Class II the pounds of skim milk in packaged fluid cream products that are in inventory at the beginning of the month;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is added to, or used to produce, any product specified in § 1099.42;

(6) 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 (except that received in the form of a fluid milk product) that was not subtracted pursuant to subparagraph (5) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which bottling grade certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

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

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk 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 II and Class III, in sequence beginning with Class III, but not in excess of such quantities, 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 subparagraphs (2) and (6)(v) of this paragraph:

(*a*) For which the handler requests Class II or Class III classification; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis), and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph; and

(ii) Receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (6)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler;

(8) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in inventory at the beginning of the month of fluid milk products and fluid cream products (and, for the first month that this subparagraph is effective, sour cream) that were not subtracted pursuant to subparagraph (4) of this paragraph;

(9) Add to the remaining pounds of skim milk in Class III the pounds subtracted pursuant to subparagraph (1) of this paragraph;

(10) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (6)(v), and (7)(i) of this paragraph and that were not offset by transfers of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(11) Subtract in the order specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (6)(vi) and (7)(ii) of this paragraph:

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net 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 § 1099.22(l) or the percentage that the 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 remainder of such receipts;

(12) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products and bulk fluid cream products from pool plants of other handlers (or any pool plant if allocation is on an individual plant basis) according to the classification of such products pursuant to § 1099.45(a); and

(13) If the total 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"; and

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

§ 1099.48 Responsibility of handlers and reclassification of milk.

(a) All skim milk and butterfat shall be classified as Class I milk unless the handler who first receives such skim milk or butterfat proves to the market administrator that such skim milk or butterfat should be classified otherwise. In the case of milk received from producers by a handler described in § 1099.10(e) for delivery to a pool plant, such handler shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1099.13(b), and the operator of such pool plant shall have the burden of proving the classification of skim milk and butterfat in the milk specified in § 1099.13(a).

(b) Milk received by a pool plant operator from a handler described in § 1099.10(e) shall be classified according to the use or disposition of the milk at such pool plant and the value of the milk at class prices shall be included in the operator's pool obligation pursuant to § 1099.70.

(c) If verification by the market administrator discloses that the original classification of skim milk or butterfat was incorrect, such skim milk or butterfat shall be reclassified.

10. Section 1099.51 is revised as follows:

§ 1099.51 Class prices.

Subject to the provisions of §§ 1099.52 and 1099.53, the class prices per hundredweight for the month shall be as follows:

(a) *Class I price.* The Class I price shall be the Class I price pursuant to Part 1062 of this chapter (St. Louis–Ozarks) plus 25 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

11. Section 1099.52 is revised as follows:

§ 1099.52 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the class prices specified in § 1099.51 and the uniform price specified in § 1099.71 shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by an amount, rounded to the nearest one-tenth cent, that is equal to the Chicago butter price for the month multiplied by 0.115.

12. Section 1099.53 is revised as follows:

§ 1099.53 Location adjustments to handlers.

(a) For producer milk received at a pool plant located more than 40 miles from the nearest county courthouse in any of the counties included in the marketing area which is classified as Class I milk and eligible pursuant to paragraph (c) or (d) of this section for location adjustment, the Class I price specified in § 1099.51(a) shall be reduced by 7.5 cents, and by an additional 1.5 cents for each 10 miles or fraction thereof that such plant is located beyond 50 miles of the respective courthouse.

(b) In determining location adjustments pursuant to this section, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(c) If skim milk and butterfat are allocated on an individual plant basis pursuant to § 1099.47, the quantity of milk received at the plant as producer milk that shall be subject to location adjustment shall be determined as follows:

(1) From the total pounds of Class I skim milk and butterfat, respectively, at such plant subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1099.47 (a) and (b) and any Class I transfers to other pool plants;

(2) The amount of Class I transfers from such plant to other pool plants that is eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) From the total pounds of Class I skim milk and butterfat, respectively, at such transferee plant (excluding Class I transfers to other pool plants that are not eligible for location adjustment as determined at such other pool plants) subtract any beginning inventory and other source milk allocated to Class I pursuant to § 1099.47 (a) and (b);

(ii) From the remaining pounds of Class I skim milk and butterfat, respectively, subtract 95 percent of the skim milk and butterfat, respectively, in receipts at such transferee plant of producer milk;

(iii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iv) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (iii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(3) The sum of the quantities determined pursuant to subparagraphs (1) and (2)(iv) of this paragraph, or the total pounds of milk received at the plant as producer milk, whichever is less, shall be the total quantity of milk eligible for location adjustment at such plant.

(d) If skim milk and butterfat are allocated on a system basis pursuant to § 1099.47, the quantity of milk received at each plant as producer milk that shall be subject to any location adjustment applicable at such plant shall be determined as follows:

(1) Assign to the skim milk and butterfat, respectively, in the combined Class II and Class III utilization at each plant of the handler (excluding any such utilization at each plant based on transfers to other pool plants of the handler) any beginning inventory and other source milk receipts at such plant of the respective category allocated to such combined class uses pursuant to each subparagraph of § 1099.47(a) and the corresponding step of § 1099.47(b). If the same category of other source milk to be assigned to the combined Class II and Class III utilization was received at two or more plants of the handler, such other source milk shall be assigned first to the combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices (excluding in each case utilization based on transfers to his other pool plants). To the extent that combined Class II and Class III utilization of beginning inventory and other source milk remains unassigned, such remainder shall be assigned first to the remaining combined Class II and Class III utilization at the plant where the lowest Class I price applies and then in sequence to such utilization at plants having the next higher Class I prices;

(2) From the total pounds of Class I skim milk and butterfat, respectively, at each plant of the handler (excluding transfers to his other pool plants and Class I transfers to pool plants of other handlers) subtract the pounds of skim milk and butterfat in the respective category of other source milk received and beginning inventory at such plant which exceed the quantities assigned to Class II and Class III utilization at such plant pursuant to subparagraph (1) of this paragraph;

(3) The amount of transfers from each plant to other pool plants of the handler operating such plant and Class I transfers to pool plants of other handlers that are eligible for a location adjustment shall be determined at the transferee plant as follows:

(i) To the pounds of Class I skim milk and butterfat, respectively, remaining at the transferee plant after the computation pursuant to subparagraph (2) of this paragraph add any Class I transfers from such plant to other pool plants that are eligible for location adjustment as determined at the plants to which such transfers were made, and then subtract 95 percent of the skim milk and butterfat, respectively, in receipts at such transferee plant of producer milk;

(ii) Assign the remaining amount of Class I skim milk and butterfat to fluid milk products received by transfer from other pool plants in sequence beginning with receipts from the plant having the highest Class I price; and

(iii) The amount of Class I transfers eligible for location adjustment at each transferor plant shall be the quantity assigned pursuant to subdivision (ii) of this subparagraph or the quantity of Class I skim milk and butterfat transferred from such plant to the transferee plant, whichever is less; and

(4) The sum of the quantities determined pursuant to subparagraphs (2) and (3)(iii) of this paragraph, or the total pounds of milk received at the plant as producer milk, whichever is less,

shall be the total quantity of milk eligible for location adjustment at such plant.

(e) The Class I price applicable to other source milk shall be reduced at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

13. In § 1099.61(e), subparagraph (2) is revised as follows:

§ 1099.61 Plants subject to other Federal orders.

* * * * *

(e) * * *

(2) Compute the value of the reconstituted skim milk assigned in subparagraph (1) of this paragraph to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

14. Section 1099.62 is revised as follows:

§ 1099.62 Obligation of handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1099.30(b) and 1099.31(c) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

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

(1) Determine the pounds of skim milk and butterfat, respectively, in the partially regulated distributing plant's route disposition in the marketing area;

(2) Subtract the pounds of skim milk and butterfat, respectively, received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in the partially regulated distributing plant's route disposition in the marketing area;

(4) Combine the remaining pounds of skim milk and butterfat and multiply the total by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

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

(1) Determine the obligation that would have been computed pursuant to § 1099.70 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to subdivision (i) of this subparagraph. Any such transfers remaining after the above allocation which are classified in Class I and on which an obligation is computed for the handler operating the partially regulated distributing plant pursuant to § 1099.70 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, in lieu of the obligation pursuant to § 1099.70(f) and the credit specified in § 1099.82(b)(2), the obligation for such handler shall include a similar obligation for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1099.8(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1099.30(b) and 1099.31(c) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The obligation for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the obligation computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for bottling grade milk received at the plant during the month from dairy farmers;

(ii) If subparagraph (1)(iii) of this paragraph applies, the gross payments by the operator of such nonpool supply plant for bottling grade milk received at the plant during the month from dairy farmers; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another order under which such plant is also a partially regulated distributing plant and like payments by the operator of the nonpool supply plant if subparagraph (1)(iii) of this paragraph applies.

15. Section 1099.70 is revised as follows:

§ 1099.70 Computation of the net pool obligation of each handler.

The monthly net pool obligation of each handler described in § 1099.10 (a), (d), and (e) shall be determined for such handler, or for each pool plant of such handler if the allocations pursuant to § 1099.47 are on an individual plant basis and the handler requests separate statements. Such obligation shall be a sum of money computed by the market administrator as follows:

(a) Multiply the pounds of producer milk in each class determined pursuant to § 1099.46 by the applicable class price and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1099.47(a)(13) and the corresponding step of § 1099.47(b) by the respective class price applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1099.47(a)(8) and the corresponding step of § 1099.47(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1099.47(a)(6) (i) through (iv)

and the corresponding step of § 1099.47 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1099.47(a)(6) (v) and (vi) and the corresponding step of § 1099.47 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest nonpool plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1099.47(a)(10) and the corresponding step § 1099.47(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

16. In § 1099.71, paragraphs (c) and (e)(2) are revised as follows:

§ 1099.71 Computation of the uniform price.

* * * * *

(c) Subtract, if the average butterfat content of the milk specified in paragraph (e) of this section is more than 3.5 percent, or add, if such butterfat content is less than 3.5 percent, the amount obtained by multiplying the amount by which the average butterfat content of such milk varies from 3.5 percent by the butterfat differential specified in § 1099.52, and multiply the the result by the total hundredweight of such milk;

* * * * *

(e) * * *

(2) The total hundredweight for which a value is computed pursuant to § 1099.70(f);

* * * * *

17. In § 1099.80, paragraphs (a) (1) and (2) and (c) (1) and (2) are revised as follows:

§ 1099.80 Time and method of payment for producer milk.

(a) * * *

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

(2) On or before the 17th day of the following month, an amount equal to not less than the uniform price adjusted pursuant to §§ 1099.52 and 1099.86, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made such producer pursuant to subparagraph (1) of this paragraph, (ii) less marketing service deductions made pursuant to § 1099.87, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment pursuant to § 1099.83 from the market administrator for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

* * * * *

(c) * * *

(1) On or before the 28th day of the month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk so received from such cooperative association during the first 15 days of the month, less proper deductions authorized in writing by the cooperative association;

(2) On or before the 14th day of the following month not less than the uniform price adjusted by the butterfat and location differentials pursuant to §§ 1099.52 and 1099.86 multiplied by the hundredweight of milk so received from the cooperative association during the month, subject to the following adjustments (i) less payments made to such cooperative association pursuant to subparagraph (1) of this paragraph, (ii) less proper deductions authorized in writing by such cooperative association: *Provided*, That if by such date the handler has not received full payment pursuant to § 1099.83 from the market administrator for such month, he may reduce pro rata his payments on such milk as in the case of payments to producers pursuant to paragraph (a) of this section, and payments hereunder shall be completed not later than the date for making payments pursuant to this subparagraph next following the receipt of the balance due from the market administrator; and

* * * * *

18. In § 1099.82(b), subparagraph (2) is revised as follows:

§ 1099.82 Payments to the producer-settlement fund.

* * * * *

(b) * * *

(2) The value at the weighted average price applicable at the location of the plants from which received of other source milk for which a value is computed pursuant to § 1099.70(f).

§ 1099.85 [Revoked]

19. Section 1099.85 is revoked.

20. In § 1099.86, paragraph (c) is revised as follows:

§ 1099.86 Location differentials to producers and on nonpool milk.

* * * * *

(c) The weighted average price applicable to other source milk shall be reduced at the rates set forth in § 1099.53, except that the adjusted weighted average price shall not be less than the Class III price.

21. Section 1099.88 is revised as follows:

§ 1099.88 Expense of administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) His producer milk (including such handler's own production) and milk received from a cooperative association acting as a handler pursuant to § 1099.10(e);

(b) Other source milk allocated to Class I pursuant to § 1099.47(a) (6) and (10) and the corresponding steps of § 1099.47(b), except such other source milk on which no handler obligation applies pursuant to § 1099.70(f); and

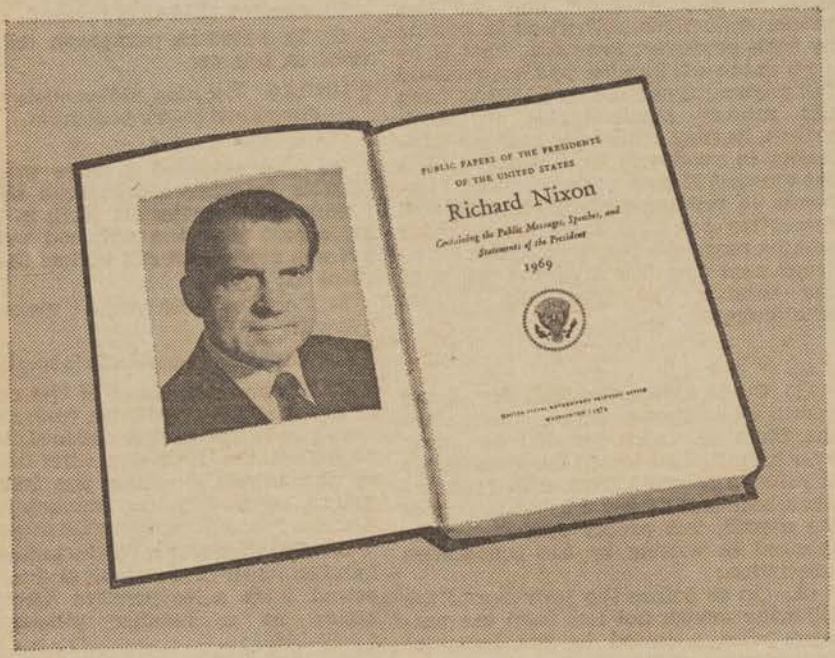
(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted to § 1099.62(a)(2).

Signed at Washington, D.C., on June 4, 1971.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

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