Archives of the U.S. Government Information GPO

federal register

SATURDAY, SEPTEMBER 16, 1972

WASHINGTON, D.C.

Volume 37 ■ Number 181

Pages 18883–19107

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LIST OF CFR SECTIONS AFFECTED

1949–1963

This volume contains a compilation of the "List of Sections Affected" for all titles of the Code of Federal Regulations for the years 1949 through 1963. All sections of the CFR which have been expressly affected by documents published in the daily Federal Register are enumerated.

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

Price: $6.75

Compiled by Office of the Federal Register, National Archives and Records Service, General Services Administration

Order from Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

FEDERAL REGISTER

Area Code 202 Phone 962-8626

Published daily, Tuesday through Saturday (no publication on Sundays, Mondays, or on the day after an official Federal holiday), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U.S.C., Ch. 15), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended (44 U.S.C. 1510). The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

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Title 3—The President

PROCLAMATION 4154

National Employ the Handicapped Week, 1972

By the President of the United States of America

A Proclamation

Twenty-five years ago our Nation made a commitment to eliminating the prejudice which plagued our handicapped citizens.

Following the end of World War II, a national effort was initiated to bring job equality to handicapped men and women. We decided to substitute voluntary responsibility for the compulsion of law, and to mount a citizens' campaign nationwide to persuade employers to hire the handicapped.

In 1947 volunteers from industry and business, from labor organizations and government, from civic, fraternal, veterans, and professional groups, and from other areas of the public were organized as the President's Committee on Employment of the Handicapped. The record of their achievements is compelling testimony to the power of voluntarism. Since the formation of that Committee, an estimated eight million handicapped men and women have entered the world of work, the result of neighbor talking to neighbor.

Our appeal to employers, through national, State and local channels, emphasized the business advantages of hiring handicapped workers—their exceptional performance and their outstanding characteristics as employees. Over the years, handicapped workers have merited that description and justified that claim. Their talents and energies have contributed to all areas of production. As scientists, teachers, aerospace technicians, government officials, professional persons, clerks, tradesmen—in fact, in nearly every occupation—they have contributed to America's progress and to their communities' progress.

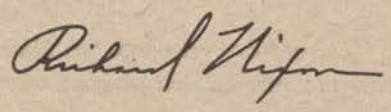
It is appropriate during this anniversary year to acknowledge the great strides we have made towards our goal, to express our gratitude to the volunteers in this program, and re-emphasize our admiration for good work done by the handicapped themselves. Although much has been done there is more that must be done.

We have not yet erased all the prejudice against the handicapped. We have not yet convinced every employer of their worth. We have not yet eliminated all the barriers that hamper their mobility. We have a continuing responsibility to help them towards these ends.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, in accordance with the joint resolution of the Congress approved August 11, 1945, as amended (36 U.S.C. 155), designating the first full week of October of each year as National Employ the Handicapped Week, do hereby call upon the people of the United States to observe the week beginning October 1, 1972, for such purpose.

I urge the Nation's Governors, mayors, and all other public officials, as well as leaders in every area of American life, to join with the handicapped themselves and to take an active part in this observance.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of September, in the year of our Lord nineteen hundred seventy-two, and of the Independence of the United States of America the one hundred ninety-seventh.



[FR Doc.72-15888 Filed 9-14-72;12:55 pm]

PROCLAMATION 4155

Child Health Day, 1972

By the President of the United States of America

A Proclamation

This Nation's children represent our greatest responsibility and our greatest hope. We all share a continuous obligation to do all we can to safeguard and promote their health and well-being. Since 1928, we have given special recognition to this obligation by setting aside one day a year as Child Health Day.

It is a day to consider the miracle of life, and to realize that all of America's children are in a way the responsibility of every American because they represent this Nation's future.

It is a day for each of us to consider what he or she can do to further the healthy development of those young lives which will shape the future.

It is, above all, a day to renew our quest for a world of peace in which all children can grow and live as brothers and sisters.

The Congress, showing its concern by a joint resolution of May 18, 1928, as amended (36 U.S.C. 143), requested the President to issue annually a proclamation declaring the first Monday in October as Child Health Day.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby proclaim Monday, October 2, 1972, as Child Health Day.

I invite all agencies and organizations interested in child welfare to unite upon that day in the observance of such activities as will awaken the people of the Nation to the fundamental necessity of a year-round program for the protection and development of the health of the Nation's children.

In addition, Child Health Day is an appropriate time to salute the work which the United Nations, through its specialized agencies, and the United Nations Children's Fund are doing to improve the health of children around the world.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord nineteen hundred seventy-two, and of the Independence of the United States of America the one hundred ninety-seventh.

Richard Nixon

[FR Doc.72-15961 Filed 9-15-72; 12:05 pm]

Rules and Regulations

Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of the Air Force

Section 213.3109 is amended to show that 12 positions of engineers, GS–14–15, at the Aeronautical Systems Division, Wright-Patterson Air Force Base, are excepted under Schedule A when filled temporarily by persons serving under an agreement with aerospace contractors. Employment under this authority is limited to 4 years.

Effective on publication in the FEDERAL REGISTER (9–16–72), paragraph (e) is added to § 213.3109 as set out below.

§ 213.3109 Department of the Air Force.

* * * * *

(e) *Air Force Systems Command.* (1) Not to exceed 12 positions of engineer, GS–14–15, at the Aeronautical Systems Division, Wright-Patterson Air Force Base, when filled on a temporary basis by persons serving under an agreement with aerospace contractors. Employment under this authority is limited to 4 years.

(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.72–15843 Filed 9–15–72;8:50 am]

PART 213—EXCEPTED SERVICE

Administrative Office of the U.S. Courts

Section 213.3172 is added to show that up to four positions of Federal Probation System Administrator in the Division of Probation are excepted under Schedule A when filled by Federal probation officers on active service in the U.S. courts.

Effective on publication in the FEDERAL REGISTER (9–16–72), § 213.3172 is added as set out below:

§ 213.3172 Administrative Office of the U.S. courts.

(a) Not to exceed four positions of Federal Probation System Administrator in the Division of Probation, when filled by Federal probation officers on active service in the U.S. courts.

(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.72–15803 Filed 9–15–72;8:47 am]

PART 213—EXCEPTED SERVICE

Department of Labor

Section 213.3315 of Schedule C is amended to reflect the following title change, from Confidential Assistant to the Special Assistant to the Secretary for Legislative Affairs to Confidential Assistant to the Special Assistant to the Secretary, Office of Legislative Liaison.

Effective on publication in the FEDERAL REGISTER (9–16–72), subparagraph (17) of paragraph (a) is amended under § 213.3315 as set out below.

§ 213.3315 Department of Labor.

(a) *Office of the Secretary.* * * *

(17) One Confidential Assistant to the Special Assistant to the Secretary, Office of Legislative Liaison.

* * * * *

(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.72–15805 Filed 9–15–72;8:47 am]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one position of Special Assistant to the Commissioner on Aging is excepted under Schedule C.

Effective on publication in the FEDERAL REGISTER (8–16–72), subparagraph (2) is added to paragraph (i) of § 213.3316 as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

* * * * *

(i) *Administration on Aging.* * * *

(2) One Special Assistant to the Commissioner on Aging.

* * * * *

(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.72–15804 Filed 9–15–72;8:47 am]

PART 213—EXCEPTED SERVICE

General Services Administration

Section 213.3337 of Schedule C is amended to reflect the following organizational redesignation; from Transportation and Communications Service to Automated Data and Telecommunications Service.

Effective on publication in the FEDERAL REGISTER (9–16–72), the headnote of paragraph (h) and subparagraph (2) of paragraph (h) are amended under § 213.3337 as set out below.

§ 213.3337 General Services Administration.

* * * * *

(h) *Automated Data and Telecommunications Service.* * * *

(2) The Commissioner.

(5 U.S.C. secs. 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.72–15844 Filed 9–15–72;8:50 am]

Title 6—ECONOMIC STABILIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Public Utilities

The purpose for this amendment is to establish a new Subpart C, "Public Utilities" to Part 300 of the regulations of the Price Commission, which will replace and expand upon former §§ 300.16 and 300.16a. The new subpart is intended to contain all Price Commission regulations for public utilities.

The effective date of the new subpart is September 18, 1972. However, rate increases authorized to be placed into effect, or legally placed into effect, before September 18, 1972, remain subject to §§ 300.16 and 300.16a., as appropriate. The change does not affect any action taken by a certificated regulatory agency before September 18, 1972.

In addition to certain editorial changes and other clarification, the new regulations contain the following changes of a substantive nature.

The terms "regulatory agency" and "public utility" have been redefined. Only State and Federal agencies qualify as regulatory agencies. The term does not include local, municipal, and city bodies with jurisdiction over public utilities. Thus, only State and Federal regulatory agencies will be certificated by the Price Commission.

The term "public utilities" is defined as those firms which furnish certain services to the public regardless of whether their rates are approved by a regulatory agency. Since § 300.16a(h), classifying "unregulated" parts of public utilities as service organizations, has been deleted, all public utilities are subject to the new subpart, regardless of the status of their regulatory bodies.

The specific mathematical criteria formerly existing under § 300.16(d) have been eliminated and replaced by the general criteria which existed under § 300.16 a(c). The general criteria are now set forth in § 300.303. The specific criteria are no longer needed to process the backlog of cases which had built up during the 60 days suspension of utility rates. The general criteria will hereafter apply to all public utility price increases.

The regulatory agency certification process has been modified to make it conform more closely with the actual practices followed by the Price Commission. The changes were made necessary by the differences in local law and the need for more uniform reporting by agencies which have been certificated. The procedures for revoking of certificates of compliance are substantially identical to the prior regulations.

Price increases for public utilities subject to the jurisdiction of a certificated regulatory agency are covered by §§ 300.304 through 300.307. All other price increases are covered by §§ 300.308 through 300.310. Section 300.308 provides that all price increases of more than 1 percent of aggregate annual revenues by prenotification firm public utilities, whether regulated or unregulated, must be reported to the Price Commission. As to all other price increases, the public utility must certify that the increase complies with the general criteria and must keep that certification and substantiating information available for inspection upon the reasonable request of any person. The Price Commission has 60 working days, or a longer period of time if it so notifies the public utility, within which to review the price increase for compliance with the Economic Stabilization Program.

The provisions relating to interim rates for public utilities under the jurisdiction of a regulatory agency (§ 300.307) have been restated as one rule. Due to the passage of time since their issuance, there is no longer any necessity for three separate rules, based upon time of implementation of the rates. In addition, a change has been made to allow such rates to be placed into effect, if otherwise in conformity the section, in cases of nonsuspension for the maximum period, on grounds of undue hardship or gross inequity, as well as the former emergency grounds.

Section 300.308(e) provides that public utilities covered by that section will be allowed to pass through certain costs, including fuel costs pursuant to a fuel adjustment clause, without complying with the certification and reporting procedures, provided that the pass through is authorized by a statute, ordinance, order, or tariff provision. Public utilities operating under certificated agencies will be allowed to pass through these costs in accordance with their agency's certificated rules.

Section 300.309 provides that the nonutility and nonregulated activities of public utilities will not be subject to the public utility regulations, but will be subject to other appropriate provisions of the Price Commission regulations.

Section 300.311(b) contains language authorizing a "show cause" proceeding by the Price Commission in the case of certain rates. There is no specific procedure which applies to any investigation undertaken by the Price Commission pursuant to a show-cause order. A show-cause order may be issued at any time to a public utility whose financial status might indicate an excessive level of rates, even though the rates of the public utility have not been raised. However, the authority is limited so that it will not be used against specific rate increases which have been finally approved by a regulatory agency for which a certificate of compliance is in effect.

Since the purpose of this amendment is to consolidate and perfect existing provisions and to provide immediate information and guidance with respect to compliance with price stabilization rules, it is hereby found that notice and public procedure is impracticable and that good cause exists for making it effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth below, effective September 18, 1972.

Issued in Washington, D.C., on September 14, 1972.

C. JACKSON GRAYSON, Jr.,
Chairman, Price Commission.

§§ 300.16, 300.16a [Deleted]

1. Sections 300.16 and 300.16a are deleted except for price increases authorized under law to be placed into effect or legally placed into effect before September 18, 1972.

2. The following new subpart is inserted after Subpart B:

Subpart C—Public Utilities

Sec.
300.301 Applicability.
300.302 Definitions.
300.303 General criteria for public utility price increases.
300.304 Certification.
300.305 Reporting procedures.
300.306 Revocation of certificates of compliance.
300.307 Interim rates for public utilities under the jurisdiction of a regulatory agency.
300.308 Final rates not subject to § 300.304 and interim rates for public utilities not under the jurisdiction of a regulatory agency.
300.309 Nonutility activities of public utilities.
300.310 Rate bureaus, conferences, and similar organizations.
300.311 Price Commission actions.

AUTHORITY: The provisions of this Subpart C issued under the Economic Stabilization Act of 1970, as amended, Public Law 90-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1486; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Economic Stabilization Act Amendments of 1971, Public Law 92-210, 85 Stat. 743; Executive Order No. 11640, 37 F.R. 1213, January 27, 1972; Cost of Living Council Order No. 4, 36 F.R. 20202, October 16, 1971.

Subpart C—Public Utilities

§ 300.301 Applicability.

(a) This subpart applies to each price increase authorized under law to be placed into effect or legally placed into effect after September 17, 1972, by any publicly, privately, cooperatively, or municipally owned public utility, whether or not that price increase is approved by a regulatory agency. Each price increase authorized by law to be placed into effect or legally placed into effect before September 18, 1972, by such a public utility remains subject to §§ 300.16 and 300.16(a) as in existence before that date.

(b) This subpart does not apply to any public benefit corporation covered by § 300.51(k).

§ 300.302 Definitions.

For the purposes of this subpart:

"Final rate" means any rate that is not an interim rate. It includes any rate which at the time it first may be charged is not pending, under the laws and regulations applicable to the regulatory agency concerned, a final determination by that agency. Such a rate is considered to be a final rate even though under those laws and regulations it may later be challenged by the regulatory agency or any other person.

"Interim rate" means an increased rate allowed to go into effect by operation of law, or by action or inaction of a regulatory agency, pending a final determination by that agency on the requested increase. A rate may be an interim rate whether or not it is placed into effect subject to accounting and refund.

"Public utility" means a person that furnishes service to the public or a recognized segment of the public whether or not that person is under the jurisdiction of a regulatory agency. This includes gas, electric, telephone, telegraph, public transportation by vehicle or pipeline, water, and sewage disposal services, but not including water or sewage disposal services furnished by a government agency or instrumentality.

"Regulatory agency" means any commission, board, or other legal body existing exclusively under State or Federal law which has jurisdiction to regulate prices and services offered by a public utility. It does not include any local, municipal, county, or similar body having jurisdiction over a public utility.

§ 300.303 General criteria for public utility price increases.

(a) *General.* The criteria for a public utility price increase are:

(1) The increase is cost-justified and does not reflect future inflationary expectations;

(2) The increase is the minimum required to assure continued adequate and

safe service or to provide for necessary expansion to meet future requirements;

(3) The increase will achieve the minimum rate of return needed to attract capital at reasonable costs and will not impair the credit of the public utility;

(4) The increase does not reflect labor costs in excess of those allowed by Price Commission policies;

(5) The increase takes into account expected and obtainable productivity gains, as determined under Price Commission policies; and

(6) The procedures of the regulatory agency provide for reasonable opportunity for participation by all interested persons, or their representatives in the agency's proceedings.

(b) *Special circumstances.* In any case, the Price Commission may determine that there are special circumstances which make the price increase conform to the Economic Stabilization Program although it does not meet the criteria in paragraph (a) of this section.

(c) *Information submitted by public utilities.* Public utilities shall submit information as prescribed on the appropriate forms to the Price Commission for its use in determining whether the rate increase meets the requirements of this section.

§ 300.304 Certification.

(a) Each regulatory agency shall submit to the Price Commission proposed rules for use by that regulatory agency in considering requests for price increases for each kind of utility service under its jurisdiction.

(b) The proposed rules must encompass the general criteria of § 300.303(a) for public utility price increases, so far as those criteria are consistent with the constitutional and statutory provisions under which the regulatory agency operates.

(c) If the Price Commission approves the proposed rules of an agency, it will notify the agency that when those proposed rules are finally adopted by the agency in accordance with applicable laws, the Price Commission will issue a certificate of compliance to that agency.

(d) A public utility may place in effect, in accordance with the orders of a regulatory agency to which a certificate of compliance has been issued, any final rate authorized or allowed to go into effect by that agency.

(e) The decisions of a regulatory agency pursuant to rules covered by a certificate of compliance issued under paragraph (c) of this section are not subject to review by the Price Commission, or by any judicial or other body which would not be authorized to review the decisions of the regulatory agency in the absence of the Economic Stabilization Program. The rules shall be considered to be the rules of the regulatory agency and shall not displace any other rules or laws to which the agency is subject or which it has adopted which are not consistent with those rules.

§ 300.305 Reporting procedures.

Each regulatory agency to which a certificate of compliance has been issued under § 300.304 shall also agree to furnish periodically to the Price Commission such information as the Commission may prescribe for the Commission's use in determining whether the agency is following the rules it adopted pursuant to § 300.304 in its decisions and practices.

§ 300.306 Revocation of certificates of compliance.

The Price Commission may revoke a certificate of compliance issued under § 300.304 at any time, or take such other action with respect to the certificate as it considers appropriate, if it determines that the rules to which the certificate applies are not being followed or are not serving the purposes of the Economic Stabilization Program. Price increases which a regulatory agency has finally approved, before a revocation or other action by the Price Commission under this section, pursuant to rules which have received a Price Commission certificate of compliance shall in no way be affected by the Commission's revocation of, or other action with respect to, the certificate.

§ 300.307 Interim rates for public utilities under the jurisdiction of a regulatory agency.

(a) *General.* Each public utility under the jurisdiction of a regulatory agency shall, before placing an interim rate in effect, comply with the applicable paragraphs of this section, regardless of whether the regulatory agency having jurisdiction over those rates has been certificated under § 300.304.

(b) *Applicability.* This section applies to each interim rate request except for any interim rate that increases or would increase the revenues of a public utility from its utility operations by a rate of less than $5 million a year. Any interim rate that does not or would not increase such revenues by $5 million or more a year may, except as provided in the following sentence, be placed into effect without regard to this section. If a regulatory agency issues regulations setting standards for minimum amounts below which this section will not apply to public utilities under its jurisdiction, and the Price Commission approves those regulations, then this section will not apply to any case in which the increase in a public utility's annual revenues from its utility operations is below the minimum stated in those regulations.

(c) *Interim rates after September 17, 1972.* Any interim rate which is authorized by a regulatory agency, or otherwise allowed to be placed into effect after September 17, 1972, may not be placed into effect until—

(1) The regulatory agency has suspended the interim rate for the maximum period authorized by law, and such suspension period has run unless—(i) it is otherwise required for emergency reasons or to prevent an undue hardship or gross inequity, so found in an order of that agency; or (ii) it represents a price increase of the same or a lesser amount than a previously filed rate for the same or equivalent service which has been suspended for the maximum period, and that suspension period has run.

(2) The public utility has furnished in writing, to the regulatory agency, with a copy to the Price Commission, a statement that the rate complies with the criteria in § 300.303(a), or in a case in which the regulatory agency having jurisdiction over the public utility has been certificated by the Price Commission, a statement that the request complies with the regulations adopted by that agency pursuant to § 300.304.

(3) The public utility has furnished to the regulatory agency, with a copy to the Price Commission, proof of publication, in a newspaper of general circulation in the area to be affected by the interim rate request, of a statement that the interim rate and supporting data have been filed with the regulatory agency and that members of the public may request a public proceeding on the increase to the extent provided by the regulatory agency's rules of practice and procedure. However, the regulatory agency may authorize a different method of notice to the public, if that different method is approved by the Price Commission.

§ 300.308 Final rates not subject to § 300.304 and interim rates for public utilities not under the jurisdiction of a regulatory agency.

(a) *Applicability.* Each public utility that has received final approval of a rate increase by a regulatory agency which has not, at the time of that final approval, been certificated pursuant to § 300.304, or whose certificate of compliance has been revoked pursuant to § 300.306, and each public utility that is not regulated by a regulatory agency, may place the increase into effect only after compliance with the applicable paragraphs of this section.

(b) *Prenotification firms with final rate increases of more than 1 percent.* In the case of a final rate which would cause an increase of more than 1 percent in the aggregate annual revenues of a public utility which requested the increase, regardless of whether the utility is regulated by a regulatory agency, the increase must, if that public utility itself is a prenotification firm, be reported to the Price Commission on a prescribed form within 3 working days after the date of the decision authorizing the increase and may not be put into effect during the 60-working-day period after the date of that decision, unless, at an earlier date, the Commission determines that the increase complies with § 300.303. During the period it is subject to Commission review, the Commission may take any action authorized by § 300.311(a).

(c) *Prenotification firms, with final rate increases of 1 percent or less, and*

nonprenotification firms, subject to noncertificated regulatory agencies. In the case of any final rate increase which is not covered by paragraph (b) of this section, a public utility under the jurisdiction of a regulatory agency that is not certificated under § 300.304 may place the increase into effect according to the terms of the regulatory agency's order or applicable regulations. However, the public utility shall immediately certify that the rate is in compliance with § 300.303(a). The public utility shall keep that certification and substantiating information available for inspection on the reasonable request of any person. During the 60-working-day period after the date of the certification, or a longer period of time if the Price Commission so notifies the public utility, the increase is subject to determination by the Price Commission as to whether it complies with § 300.303, and during that period the Commission may take any action authorized by § 300.311(a).

(d) *Public utilities not regulated by a regulatory agency, except for prenotification firms subject to paragraph (b) of this section.* Except for a prenotification firm which is subject to paragraph (b) of this section, any public utility which is not regulated by a regulatory agency may place an increased rate (final or interim) into effect after notice to the customers affected. The notice may be by letter or by publication in a newspaper of general circulation in the area to be affected by the rate increase. However, the public utility shall immediately certify that it is in compliance with § 300.303(a) and shall keep that certification and substantiating information available for inspection upon the reasonable request of any person. During the 60-working-day period after the date of the certification, or a longer period of time if the Price Commission so notifies the public utility, the increase is subject to determination by the Price Commission as to whether it complies with § 300.303, and during that period the Commission may take any action authorized by § 300.311(a).

(e) *Certain allowable costs.* A public utility may place in effect, without regard to the reporting and certification requirements of this section, any price increase resulting from the pass-through of specific allowable costs, including taxes (except income taxes) and fuel costs, but not including labor costs, if the increase is authorized by statute, regulation, or order of the appropriate regulatory agency, or by an approved tariff provision (e.g., a fuel adjustment clause).

§ 300.309 Nonutility activities of public utilities.

Those activities and subsidiaries of a regulated public utility which are not regulated by a regulatory agency and the revenues of which are not included by a regulatory agency in the rate-making process for that public utility, are not subject to this subpart, but are subject to other provisions of Price Commission regulations, as appropriate.

§ 300.310 Rate bureaus, conferences, and similar organizations.

Whenever any price increase is proposed by a rate bureau, conference, or similar organization authorized by law to act on behalf of its members, which is subject to the jurisdiction of a regulatory agency which has not been certificated pursuant to § 300.304, or whose certificate of compliance has been revoked pursuant to § 300.306, the rate bureau, conference, or similar organization must prenotify the Price Commission of the price increase on a prescribed form. The Price Commission shall have 60 working days from receipt of the notice of proposed rate increase, or a longer period of time if the Price Commission so notifies the rate bureau, conference, or similar organization to determine if the increase complies with § 300.303. During that period, the Price Commission may take any action authorized by § 300.311(a).

§ 300.311 Price Commission actions.

(a) With respect to any price increase of a public utility covered by § 300.308 or § 300.310, and within any time limits specified in this subpart, the Price Commission may—

(1) Require the public utility, rate bureau, conference, or similar organization to furnish additional information regarding the increase;

(2) Suspend all or part of the increase, pending further action by the Price Commission or by the regulatory agency; or

(3) Limit, refuse, rescind, reduce, or modify the increase.

(b) The Price Commission may, on its own motion, cause any public utility or rate bureau, conference, or similar organization acting on behalf of a public utility, to file with the Commission, within a time prescribed by it, evidence to show cause why a particular rate or rates should not be reduced from levels in effect for that public utility. This paragraph does not apply to any rate authorized or allowed to go into effect by a regulatory agency for which a certificate of compliance is in effect under § 300.304.

[FR Doc.72-15881, Filed 9-15-72;8:52 am]

Title 7—AGRICULTURE

Chapter III—Animal and Plant Health Inspection Service, Department of Agriculture

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—European Chafer

TERMINATION OF QUARANTINE AND REGULATIONS

The European chafer quarantine and regulations thereunder, in 7 CFR 301.77, 301.77–1 through 301.77–10, are hereby terminated effective September 30, 1972. However, such provisions shall be deemed to continue in full force and effect for the purpose of sustaining any action or other proceeding with respect to any right that accrued, liability that was incurred, or violation that occurred prior to said date.

Pesticides used to combat other insects also are effective in controlling the European chafer; therefore, it is unnecessary in many situations to apply a specific treatment to control this pest. Based on a review of the economic impact of pests subject to Federal quarantines, it has been determined that other programs have higher priorities. In view of this information, it has been decided that Federal funding for this program should be discontinued and, therefore, the quarantine is terminated.

This action relieves restrictions and it does not appear that public participation in rulemaking procedures concerning this action would make additional relevant information available to the Department. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public participation with respect to this action is impracticable and unnecessary, and this action may be made effective less than 30 days after publication hereof in the FEDERAL REGISTER.

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 29 F.R. 16210 as amended; 37 F.R. 6327, 6505)

The termination of quarantine and regulations thereunder shall become effective September 30, 1972.

Done at Washington, D.C., this 13th day of September 1972.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-15859 Filed 9-15-72;8:51 am]

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Soybean Cyst Nematode

TERMINATION OF QUARANTINE AND REGULATIONS

The soybean cyst nematode quarantine and regulations thereunder, in 7 CFR 301.79, 310.79–1 through 301.79–10, are hereby terminated effective September 30, 1972. However, such provisions shall be deemed to continue in full force and effect for the purpose of sustaining any action or other proceeding with respect to any right that accrued, liability that was incurred, or violation that occurred prior to said date.

The soybean cyst nematode has now spread throughout most of the area where monocultural practices are followed in soybean production. This nematode can be controlled through a crop rotation system and in some areas through the use of resistant varieties. In view of this information and the fact that other programs have a higher priority, it has been decided that Federal funding for this program should be discontinued; therefore, the soybean cyst nematode quarantine is terminated.

This action relieves restrictions and it does not appear that public participation in rulemaking procedures concerning this action would make additional relevant information available to the Department. Therefore, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that such public participation with respect to this action is impracticable and unnecessary, and this action may be made effective less than 30 days after publication hereof in the FEDERAL REGISTER.

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 29 F.R. 16210 as amended; 37 F.R. 6327, 6505)

The termination of quarantine and regulations thereunder shall become effective September 30, 1972.

Done at Washington, D.C., this 13th day of September 1972.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-15858 Filed 9-15-72;8:51 am]

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

[Orange Reg. 70; Grapefruit Reg. 72; Tangerine Reg. 43; Tangelo Reg. 43; Export Reg. 21]

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

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Navel oranges (but not including Temple and Murcott Honey oranges), grapefruit, tangerines, and tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) In accordance with § 905.50(c) of the said amended marketing agreement and order, the Shippers Advisory Committee and Growers Administrative Committee have adopted a marketing policy for the 1972–73 shipping season setting forth a schedule of proposed regulations for each specified variety of fruit. The recommendations by the Growers Administrative Committee for regulation of shipments of the specified varieties of oranges, grapefruit, tangerines, and tangelos by grade and size correspond with said schedule of proposed regulations and reflect the available supply and the current and prospective demand for such fruits.

The minimum grade and size requirements specified for early and midseason type oranges are prescribed during the present stage of maturity and development of such oranges to guard against the shipment of lower quality fruit which could adversely affect the overall price structure for better quality fruit. The U.S. No. 1 Golden grade requirement specified herein for Navel oranges is consistent with the fact that when the Navel orange attains maturity the fruit often does not possess the color required for the U.S. No. 1 grade.

The distinction between the U.S. No. 1 grade requirement for seedless grapefruit grown in Regulation Area I and the Improved No. 2 grade requirement for seedless grapefruit grown in Regulation Area II is based on the differences in grading practices between the two grapefruit production areas. In Regulation Area II, grapefruit is separated and packed by degrees of discoloration; whereas in Regulation Area I, only U.S. No. 1 grade grapefruit is generally packed. Regulation Area II produces practically no seeded type of grapefruit. The specified size limitations for shipments of seeded and seedless grapefruit are imposed to insure the handling of fruit sizes preferred by the trade.

The size and grade requirements specified herein for tangerines and tangelos are necessary during the early part of the season to prevent the handling of such fruits that are of a lower grade or smaller size in order to provide good quality fruit to consumers and improve returns to producers.

The specified grade and size requirements for export shipments of oranges, other than Navel, Temple, and Murcott Honey oranges, and grapefruit are necessary to assure the exportation of good quality fruit and thereby aid the expansion of export markets.

(3) 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 these regulations until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which these sections are based became available and the time when these sections must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, grapefruit, tangerines, and tangelos, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on September 7, 1972, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of these sections, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such fruits; it is necessary to make these sections effective on September 18, 1972, to preclude the shipment of lower quality oranges, grapefruit, tangerines, and tangelos, as hereinafter set forth, and to otherwise effectuate the declared policy of the act; and compliance with these sections will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

§ 905.540 Orange Regulation 70.

(a) Order: Orange Regulation 69 (36 F.R. 20215, 22054, 22666, 23353, 23617, 23575, 25401; 37 F.R. 2660, 5813, 6729, 7582, 11966, 13698) is hereby terminated on September 18, 1972.

(b) During the period September 18, 1972, through October 15, 1972, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(1) Any oranges, except Navel, Temple, and Murcott Honey oranges, grown in the production area, which do not grade at least U.S. No. 1: *Provided,* That Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type may be shipped if they grade at least U.S. No. 2;

(2) Any oranges, except Navel, Temple, and Murcott Honey oranges grown in the production area, which are of a size smaller than 2$^{8}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the U.S. Standards for Florida Oranges and Tangelos: *Provided,* That in determining the percentage of oranges in any lot which are smaller than 2$^{8}/_{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size 2$^{1}/_{16}$ inches in diameter or smaller;

(3) Any Navel oranges, grown in the production area, which do not grade at least U.S. No. 1 Golden; or

(4) Any Navel oranges, grown in the production area, which are of a size smaller than 2$^{8}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the U.S. Standards for Florida Oranges and Tangelos.

§ 905.541 Grapefruit Regulation 72.

(a) Order: Grapefruit Regulation 71 (36 F.R. 20215, 22054, 24111; 37 F.R. 7582, 9756, 13697) is hereby terminated on September 18, 1972.

(b) During the period September 18, 1972, through October 15, 1972, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

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

(2) Any seeded grapefruit, grown in the production area, which are of a size smaller than 3 15/16 inches in diameter, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the U.S. Standards for Florida Grapefruit;

(3) Any seedless grapefruit, grown in Regulation Area I, which do not grade at least U.S. No. 1;

(4) Any seedless grapefruit, grown in Regulation Area II, which do not grade at least Improved No. 2; or

(5) Any seedless grapefruit, grown in the production area, which are of a size smaller than 3 9/16 inches in diameter, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the U.S. Standards for Florida Grapefruit.

§ 905.542 Tangerine Regulation 43.

(a) Order: Tangerine Regulation 42 (36 F.R. 20215, 22054, 22667, 23354, 24111, 6729) is hereby terminated on September 18, 1972.

(b) During the period September 18, 1972, through October 15, 1972, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

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

(2) Any tangerines, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the U.S. Standards for Florida Tangerines.

§ 905.543 Tangelo Regulation 43.

(a) Order: Tangelo Regulation 42 (36 F.R. 20215, 22054, 24111) is hereby terminated on September 18, 1972.

(b) During the period September 18, 1972, through October 15, 1972, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

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

(2) Any tangelos, grown in the production area, which are of a size smaller than 2 9/16 inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the U.S. Standards for Florida Oranges and Tangelos.

§ 905.544 Export Regulation 21.

(a) Order: Export Regulation 20 (36 F.R. 20215, 9756, 13698) is hereby terminated on September 18, 1972.

(b) During the period September 18, 1972, through October 15, 1972, no handler shall ship to any destination outside the continental United States other than to Canada or Mexico:

(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. 1: *Provided*, That Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type may be shipped if they grade at least U.S. No. 2 Russet;

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

(3) Any oranges, except Navel, Temple, and Murcott Honey oranges, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the amended U.S. Standards for Florida Oranges and Tangelos; or

(4) Any grapefruit, grown in the production area, which are of a size smaller than 3 9/16 inches in diameter, except that a tolerance of 10 percent, by count, of grapefruit smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the revised U.S. Standards for Florida Grapefruit.

Terms used in the amended marketing agreement and order shall, when used herein, have the same meanings as are given to the respective terms in said amended marketing agreement and order; and terms relating to grade and diameter, as used in §§ 905.540 through 905.544, shall have the same meanings as are given to the respective terms in the following U.S. standards, as applicable: U.S. Standards for Florida Oranges and Tangelos (7 CFR 51.1140–51.1178), the revised U.S. Standards for Florida Grapefruit (7 CFR 51.750–51.783), or the U.S. Standards for Florida Tangerines (7 CFR 51.1810–51.1834).

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

Dated: September 14, 1972.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-15904 Filed 9-15-72;8:53 am]

[Lemon Reg. 551]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.851 Lemon Regulation 551.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 36 F.R. 9061), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on September 12, 1972.

(b) *Order.* (1) The quantity of lemons grown in California and Arizona which

may be handled during the period September 17, through September 23, 1972, is hereby fixed at 200,000 cartons.

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

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

Dated: September 14, 1972.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72–15875, Filed 9–15–72;8:52 am]

[Avocado Reg. 14, Amdt. 1]

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Limitation of Shipments

Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South 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 recommendation of the Avocado Administrative Committee, established under the aforesaid marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of avocados, 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 rulemaking procedure, and postpone the effective date of this regulation until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this regulation is based became available and the time when this regulation must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of Florida avocados are currently regulated pursuant to Avocado Regulation 14 (37 F.R. 11465) and, unless sooner modified or terminated, will continue to be so regulated until February 12, 1973. The recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Avocado Administrative Committee on September 13, 1972; such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the recommended regulation and information upon which the regulation is based were received by the Department on September 13, 1972; the provisions of this regulation, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of avocados; it is necessary, in order to effectuate the declared policy of the act, to make this regulation effective during the period and in the manner hereinafter set forth so as to provide for the continued regulation of the handling of such avocados; and compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

The need for the amendment to Avocado Regulation 14 stems from the current avocado crop maturity situation. Because of current climatic and growing conditions in the production area, varieties of the West Indian and Guatemalan types of avocados are maturing later than the dates such types of avocados are permitted to be handled pursuant to the provisions of such regulation. Therefore, the Avocado Administrative Committee, on September 13, 1972, unanimously recommended the amendment of the aforesaid regulation, as hereinafter set forth, so as to prevent the handling of immature avocados of the West Indian and Guatemalan types.

Order. The provisions of § 915.314 (Avocado Regulation 14; 37 F.R. 11465) are amended as follows:

1. The provisions of paragraph (a)(7)(v) and (8)(ii) and (iii) are amended to read as follows:

§ 915.314 Avocado Regulation 14.

(a) *Order.* * * *

(7) * * *

(v) From September 18, 1972, through September 25, 1972, the individual fruit in each lot of such avocados shall weigh at least 14 ounces.

(8) * * *

(ii) From September 18, 1972, through October 15, 1972, the individual fruit in each lot of such avocados shall weigh at least 16 ounces.

(iii) From October 16, 1972, through December 17, 1972, the individual fruit in each lot of such avocados shall weight at least 14 ounces.

* * * * *

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

Dated, September 14, 1972, to become effective September 18, 1972.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72–15921 Filed 9–15–72;9:16 am]

PART 948—IRISH POTATOES GROWN IN COLORADO

Area No. 2; Limitation of Shipments

Notice of rule making with respect to a proposed limitation of shipments regulation to be made effective under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR Part 948), regulating the handling of Irish potatoes grown in Area No. 2 (San Luis Valley, Colo.), and Vegtables, Imports (7 CFR Part 980), was published in the FEDERAL REGISTER August 31, 1972 (37 F.R. 17761). This program (7 CFR Part 948) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.). Interested persons were afforded an opportunity to file written data, views, or arguments pertaining thereto not later than September 10, 1972. None was filed.

Statement of consideration. The notice was based on the recommendation and information submitted by the Area No. 2 Committee, established pursuant to the said amended marketing agreement and order, and other available information. The recommendations of the committee reflect its appraisal of the composition of the 1972 crop in Area No. 2 and of the marketing prospects for this season.

The regulation provided herein is necessary to prevent potatoes of lower grades, undesirable sizes, and potatoes of lesser maturities from being distributed in the channels of commerce and to improve the returns to producers for preferred grades and sizes. The specific requirements, hereinafter set forth, regulate the handling of potatoes by grade, size, and maturity so as to (1) promote orderly marketing, (2) establish minimum quality standards for potatoes shipped from the production area, (3) provide consumers with good quality potatoes consistent with the overall quality of the crop, and (4) maximize returns to the producers pursuant to the declared policy of the act.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

Shipments may be made to certain special purpose outlets without regard to the grade, size, maturity, and inspection requirements, provided that safeguards are met to prevent such potatoes from reaching unauthorized outlets. Certified seed is so exempted because requirements for this outlet differ greatly from those for fresh market. Shipments for use as livestock feed are likewise exempt. Since no purpose would be served by regulating potatoes used for relief or charity purposes, such shipments are exempt. Potatoes for canning, freezing, and "other processing" have a mandatory exemption under the legislative authority for this part.

Findings. After consideration of all relevant matter presented, including

that in the aforesaid notice which was based upon the recommendations of the Area No. 2 Committee, and other available information, it is hereby found that the limitation of shipments regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for making this regulation effective at the time herein provided and for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) volume shipments of 1972 crop potatoes grown in Area No. 2 will begin on or about the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the effective period, (3) similar regulations have been in effect during previous marketing seasons for potatoes produced in Area No. 2, (4) producers and handlers have been notified that such a regulation was proposed and have not adjusted to such regulation or the effective date thereof, and (5) compliance with this regulation will not require any special preparation on the part of persons subject thereto which cannot be completed by such effective date.

§ 948.368 Limitation of shipments.

During the period September 18, 1972, through June 30, 1973, no person shall handle any lot of potatoes grown in Area No. 2 unless such potatoes meet the requirements of paragraphs (a), (b), and (f) of this section, or unless such potatoes are handled in accordance with paragraphs (c), (d), and (e) of this section. The maturity requirements specified in paragraph (b) of this section shall terminate October 31, 1972, at 11:59 p.m. m.s.t.

(a) *Minimum grade and size requirements*—(1) *Round varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter.

(2) *Long varieties.* U.S. No. 2, or better grade, 2 inches minimum diameter, or 4 ounces minimum weight.

(3) *All varieties.* Size B, if U.S. No. 1, or better grade.

(b) *Maturity (skinning) requirements*—(1) *Russet Burbank and Red McClure varieties.* For U.S. No. 2 grade not more than "moderately skinned" and for other grades not more than "slightly skinned."

(2) *All other varieties.* Not more than "moderately skinned."

(c) *Special purpose shipments.* (1) The grade, size, maturity, and inspection requirements of paragraphs (a), (b), and (f) of this section and the assessment requirements of this part shall not be applicable to shipments of potatoes for:

(i) Livestock feed;

(ii) Relief or charity; or

(iii) Canning, freezing, and "other processing" as hereinafter defined.

(2) The grade, size, maturity, and inspection requirements of paragraphs (a), (b), and (f) of this section shall not be applicable to shipments of seed pursuant to § 948.6 but such shipments shall be subject to assessments.

(d) *Safeguards.* Each handler of potatoes which do not meet the grade, size, and maturity requirements of paragraphs (a) and (b) of this section and which are handled pursuant to paragraph (c) of this section for any of the special purposes set forth therein shall,

(1) Prior to handling, apply for and obtain a certificate of privilege from the committee,

(2) Furnish the committee such reports and documents as requested, including certification by the buyer or receiver as to the use of such potatoes, and

(3) Bill each shipment directly to the applicable processor or receiver.

(e) *Minimum quantity.* For purposes of regulation under this part, each person may handle up to but not to exceed 1,000 pounds of potatoes without regard to the requirements of paragraphs (a), (b), and (f) of this section, but this exception shall not apply to any shipment which exceeds 1,000 pounds of potatoes.

(f) *Inspection.* (1) No handler shall handle any potatoes for which inspection is required unless an appropriate inspection certificate has been issued with respect thereto and the certificate is valid at the time of shipment. For purposes of operation under this part it is hereby determined pursuant to paragraph (d) of § 948.40 that each inspection certificate shall be valid for a period not to exceed 5 days following the date of inspection as shown on the inspection certificate.

(2) No handler may transport or cause the transportation by motor vehicle of any shipment of potatoes for which an inspection certificate is required unless each shipment is accompanied by, and made available for examination at any time upon request, a copy of the inspection certificate applicable thereto.

(g) *Definitions.* The terms "U.S. No. 1," "U.S. No. 2," "slightly skinned," and "moderately skinned" shall have the same meaning as when used in the U.S. Standards for Potatoes (§§ 51.1540–51.1566 of this title, effective September 1, 1971, as amended February 5, 1972, 37 F.R. 2745), including the tolerances set for therein. The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, or dicing, or the application of material to prevent oxidation does not constitute "other processing." Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.* Pursuant to section 608e–1 of the act and § 980.1, *Import regulations* of this chapter (7 CFR 980.1), Irish potatoes of the red skinned round type, except certified seed potatoes, imported into the United States during the period September 18, 1972, through June 30, 1973, shall meet the grade, size, and quality requirements specified in paragraph (a) (1) or (3) of this section, and during the period September 18, 1972, through October 31, 1972, shall meet the minimum maturity requirement of paragraph (b) of this section, namely not more than "moderately skinned."

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

Dated: September 13, 1972, to become effective September 18, 1972.

CHARLES R. BRADER,
Acting Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc.72–15855 Filed 9–15–72;8:51 am]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

PART 1446—PEANUTS

Subpart—1972 Crop Peanut Warehouse Storage Loans and Sheller Purchases

On page 2844 of the FEDERAL REGISTER of February 8, 1972, there was published a notice of proposed rule making relating to a Loan and Purchase Program for 1972 crop peanuts. Interested persons were given 30 days in which to submit in writing data, views and recommendations regarding the proposed determinations. All such written data, views and recommendations received were considered.

Concerning the national level of support, no recommendations were received. Concerning price relationships among the different types of peanuts, there were differences in the views presented. After considering all of the recommendations and all of the pertinent data available, it was decided that the price relationships established for the 1971 crop of peanuts would be continued for the 1972 crop program. The effect is that there will be a uniform pricing system for Runner and Spanish type kernels, that the premium for the Virginia type will be maintained as in 1971, and that the national average loan rate per ton for Valencia type peanuts will be the same as for the Virginia type.

The following regulations reflect this determination:

The General Regulations Governing 1967 and Subsequent Crop Peanut Warehouse Storage Loans and Sheller Purchases (32 F.R. 9950) and any amendments thereto (hereinafter called the General Regulations), which contain terms and conditions under which CCC will make warehouse storage loans on and sheller purchases of peanuts, are supplemented by revising §§ 1446.40–44 and 1446.50–53 to read as follows, effective as to the 1972 crop of peanuts. The material previously appearing in these sections remains in full force and effect as to the crops to which it was applicable.

WAREHOUSE STORAGE LOANS

Sec.
1446.40 Associations through which producers may obtain price support.
1446.41 Applicability.
1446.42 National average support value.
1446.43 Average support values by type.
1446.44 Calculation of support values.

SHELLER PURCHASES

1446.50 Eligible sheller—filing time.
1446.51 Period of offering.
1446.52 CCC purchases of eligible peanuts and prices.
1446.53 Peanut seed residual.

AUTHORITY: The provisions of this subpart issued under secs. 4 and 5, 62 Stat. 1070, as amended; 15 U.S.C. 714 b and c. Interpret or apply secs. 101, 401, 63 Stat. 1051, as amended, 7 U.S.C. 1441, 1421.

WAREHOUSE STORAGE LOANS

§ 1446.40 Associations through which producers may obtain price support.

Eligible producers may obtain price support by means of warehouse storage loans on eligible 1972 crop farmers stock peanuts through, in the Southeastern area, GFA Peanut Association, Camilla, Georgia; Southwestern area, Southwestern Peanut Growers' Association, Gorman, Tex.; and Virginia-Carolina area, Peanut Growers Cooperative Marketing Association, Franklin, Va.

§ 1446.41 Applicability.

The support values specified in this subpart apply to 1972 crop farmers stock peanuts in bulk or in bags, net weight basis, eligible for price support advances under the General Regulations.

§ 1446.42 National average support value.

The national average support value for 1972 crop peanuts is $285 per ton.

§ 1446.43 Average support values by type.

The support values by type per average grade ton of 1972 crop peanuts are:

Type:	Dollars per ton
Virginia	$292.27
Runner	287.55
Southeast Spanish	280.15
Southwest Spanish	276.11
Valencia, in the Southwest area suitable for cleaning or roasting	292.27

The price for all Valencia type peanuts in the Southeast and Virginia-Carolina areas and those in the Southwest area which are not suitable for cleaning and roasting will be the same as for Spanish type peanuts in the same area.

§ 1446.44 Calculation of support values.

The support value per ton for 1972 crop peanuts of a particular type and quality shall be calculated on the basis of the following rates, premiums, and discounts (with no value being assigned to damaged kernels), except that the minimum support value for any lot of eligible peanuts of any type shall be 4 cents per pound of kernels in the lot:

(a) *Kernel value per net ton excluding loose shelled kernels.* (1) Price for each percent of sound mature and sound split kernels shall be:

Type:	Dollars per ton
Virginia	$4.040
Runner	4.001
Southeast Spanish	4.001
Southwest Spanish	4.001
Valencia:	
Southwest area—suitable for cleaning and roasting	4.427
Southwest area—not suitable for cleaning and roasting	4.001
Areas other than Southwest	4.001

(2) Price for each percent of other kernels:

All types	$1.40

(3) Premium for each 1 percent extra large kernels in Virginia type peanuts shall be 45 cents, except that no premium shall be applicable to any lot of such peanuts containing more than 7 percent damaged kernels.

(b) *Value of loose shelled kernels per pound.*

All types	$0.07

(c) *Damaged kernel discount.* For all types of peanuts, the discount per ton for damaged kernels shall be as follows:

Peanuts containing damaged kernels of—	Discount
1 percent	None
2 percent	$3.40
3 percent	7.00
4 percent	11.00
5 percent	25.00
6 percent	40.00
7 percent	60.00
8–9 percent	80.00
10 percent and over	100.00

(d) *Sound split kernel discounts.* For all types of peanuts, the discount per ton for sound split kernels shall be as follows:

Peanuts containing sound split kernels of—	Discount
1 through 4 percent	None
5 percent	$1.00
6 percent	1.60

Plus 80 cents for each percent of sound split kernels in excess of 6 percent.

(e) *Foreign material discount.* The discount for each full 1 percent foreign material in excess of 4 percent and not over 10 percent shall be $1 per ton.

(f) *Price adjustment for peanuts sampled with other than a pneumatic sampler.* The support price for Virginia type peanuts sampled with other than a pneumatic sampler shall be reduced by $0.100 per percent sound mature and sound split kernels.

(g) *Mixed type discount.* Individual lots of farmers stock peanuts containing mixtures of two or more types in which there is less than 90 percent of any one type will be supported at a rate which is $10 per ton less than the support price applicable to the type in the mixture having the lowest support price.

(h) *Location adjustments to support prices.* Farmers stock peanuts delivered to the association for price support advances in the States specified, where peanuts are not customarily shelled or crushed, shall be discounted as follows:

(1) Arizona, $25 per ton.
(2) Arkansas, $10 per ton.
(3) California, $33 per ton.
(4) Louisiana, $7 per ton.
(5) Mississippi, $10 per ton.
(6) Missouri, $10 per ton.
(7) Tennessee, $25 per ton.

(i) *Virginia type peanuts.* Virginia type peanuts, to receive peanut price support as Virginia type, must contain 40 percent or more "fancy" size peanuts, as determined by a presizer with the rollers set at $^{34}/_{64}$-inch space. Virginia type peanuts so determined to contain less than 40 percent "fancy" size peanuts will be supported (but not classed) as though they were Runner type.

SHELLER PURCHASES

§ 1446.50 Eligible sheller—filing time.

To be eligible to sell 1972-crop peanuts to CCC under this subpart, the sheller shall file with the Association not later than February 28, 1973, or such later date as may be approved by CCC, the notice of participation required under § 1446.11 (a) of the General Regulations.

§ 1446.51 Period of offering.

Unless a later date is approved in writing by CCC, written offers to sell 1972-crop peanuts to CCC, on the form prescribed by CCC may be filed with the Association from time of harvest through:

(a) July 31, 1973, for shelled peanuts not U.S. grade described in § 1446.52(c), and for farmers stock peanuts described in § 1446.52(d).

(b) October 31, 1973, for U.S. grade shelled peanuts and shelled peanuts with splits described in § 1446.52(b).

§ 1446.52 CCC purchases of eligible peanuts and prices.

(a) *Basis of purchase.* Except as otherwise provided in § 1446.13 of the General Regulations, CCC will purchase from eligible shellers 1972-crop peanuts which meet the specifications contained in this section. The peanuts will be purchased on the basis of the net weight determined at the time of delivery and the prices specified in paragraphs (b), (c), and (d) of this section. CCC will also pay a carrying charge for farmers stock and U.S. grade shelled peanuts which are delivered to CCC after November 1972 in the Southeastern area, and December 1972 in the Southwestern and Virginia-Carolina areas. The carrying charge will commence on December 1, 1972, in the Southeastern area, and January 1, 1973, in the Southwestern and Virginia-Carolina areas, and will accrue at the rate of (1) $1.40 per ton net weight per calendar month or fraction thereof for U.S. grade shelled peanuts, but shall not exceed a total of $7 per ton net weight, and (2) $1 per ton net weight per calendar month or fraction thereof for farmers stock peanuts but shall not exceed a total of $5 per ton net weight.

(b) *U.S. grade shelled peanuts and shelled peanuts with splits.* (Shelled peanuts with splits means Runner, Spanish, or Virginia type shelled peanuts which meet the specifications for U.S. No. 1 grade except that such peanuts contain not more than 15 percent splits, and 2.00 percent whole kernels which, for Runners or Spanish, will pass through $^{15}/_{64}$ x $^{3}/_{4}$ slot screen, and

for Virginias, will pass through a $^{15}/_{64}$ x 1 slot screen.)

(1) U.S. No. 1 (all types) 21.2 cents per pound.

(2) U.S. Extra Large Virginia 25.3 cents per pound.

(3) U.S. Medium Virginia 22.7 cents per pound.

(4) U.S. Splits (all types) 20.7 cents per pound.

(5) Shelled peanuts with splits (all types) 21.0 cents per pound.

The price for any lot of shelled peanuts described in this paragraph (b) which have been unsuccessfully remilled to remove aflatoxin, which are certified by the Peanut Administrative Committee office to be eligible for indemnification under the Peanut Marketing Agreement and which otherwise meet the outgoing quality regulations specified in the peanut marketing agreement, will be discounted by 5.25 cents per pound. U.S. grade shelled peanuts shall meet the U.S. standards for such peanuts, except that they shall not contain more than 1.25 percent damaged or unshelled kernels other than minor defects and not more than 2 percent total damaged or unshelled and minor defects.

(c) *Shelled peanuts—not U.S. grade.* (1) No. 1 size; i.e., ride U.S. No. 1 screens—20.2 cents per pound.

(2) Large whole kernels which will not pass through screens with the following size openings—19.3 cents per pound:

Virginia	$^{14}/_{64}$ x 1" slot.
Runner	$^{14}/_{64}$ x $^{3}/_{4}$" slot.
Spanish	$^{13}/_{64}$ x $^{3}/_{4}$" slot.

(3) Large split kernels (i.e. separated halves) which will not pass through screens with the following size openings—19.9 cents per pound:

Virginia	$^{17}/_{64}$" round.
Runner	$^{17}/_{64}$" round.
Spanish	$^{16}/_{64}$" round.

(4) Small whole kernels which will not pass through screens with the following size openings—11 cents per pound:

Virginia	$^{12}/_{64}$ x 1" slot.
Runner	$^{12}/_{64}$ x $^{3}/_{4}$" slot.
Spanish	$^{11}/_{64}$ x $^{3}/_{4}$" slot.

(5) In addition to the other prices specified in this paragraph (c), CCC shall pay the sheller for "fall through" not exceeding 3 percent at the rate of 6 cents per pound. "Fall through" means all kernels or portions thereof which will pass through screens with the following size openings:

	Whole kernels	Split and portions
Virginia	$^{12}/_{64}$ x 1" slot	$^{17}/_{64}$" round.
Runner	$^{12}/_{64}$ x $^{3}/_{4}$" slot	$^{17}/_{64}$" round
Spanish and Valencia	$^{11}/_{64}$ x $^{3}/_{4}$" slot	$^{16}/_{64}$" round

(6) Quality conditions: Any lot of shelled peanuts of the sizes described in subparagraphs (1) through (4) of this paragraph (c) shall not contain more than (i) 4 percent damaged or unshelled kernels other than minor defects, (ii) 8 percent total damaged or unshelled and minor defects, (iii) 9 percent moisture in the Southeastern and Southwestern areas, or 10 percent moisture in the Virginia-Carolina area, (iv) 6 percent "fall through," as defined in subparagraph (5) of this paragraph (c) but CCC will not pay for any "fall through" in excess of 3 percent), and (v) 2 percent foreign material. The peanuts in any bag(s) in any lot of such peanuts shall also meet the quality conditions set forth above in this subparagraph (6). If a sheller offers to CCC any lot of such peanuts which contains peanuts of different sizes (i.e., No. 1 size large whole, small whole, or large split kernels) bagged separately, the sheller (*a*) shall mark or tag each bag in the lot to show the size of the peanuts therein, and (*b*) shall stack the bags of each size of peanuts separately to make them readily available for sampling.

(7) The prices specified for shelled peanuts described in this paragraph (c) shall be discounted (i) for damaged and unshelled kernels and minor defects at the rate prescribed in the table appearing at the end of this subpart, (ii) for foreign material at the rate of one-tenth of 1 cent per pound for each full one-tenth of 1 percent by which the foreign material is in excess of 1 percent, and (iii) for aflatoxin, in lots containing more than 25 parts per billion, at the rate of 1.25 cents per net pound. The sheller shall cause a representative sample of each lot of peanuts to be drawn by an inspector and sent for aflatoxin assay to a CCC-approved laboratory. Such sample shall be drawn and analyzed in the same manner as that provided in the Peanut Marketing Agreement. The sheller shall pay the laboratory for such assay(s); however, CCC will reimburse the sheller for the cost of the assay of one sample only on each lot of peanuts delivered to and accepted by CCC.

(d) *Farmers stock peanuts.* Farmers stock support price, outweight-outgrade basis, plus $6 per net ton.

§ 1446.53 Peanut seed residual.

The sheller shall (a) furnish written reports to the Association monthly on forms prescribed by CCC showing the quantity of shelled peanuts acquired by him during the period covered by the report which have been produced from 1972 crop farmers stock peanuts shelled for seed purposes by a seed sheller, producer, or any other person who has not signed the Peanut Marketing Agreement, and (b) pay to CCC an amount equal to 1.25 cents per gross pound for the total quantity of such peanuts. Any amount due CCC under this section will be deducted from amounts due the sheller from time to time on purchase program peanuts sold to CCC, and if any amount is due CCC over and above the amount due the sheller such amount will be paid to CCC upon receipt of an invoice from the Association.

DISCOUNT SCHEDULE FOR 1972-CROP SHELLED PEANUTS

(Cents per pound deduction)

Percent damage of unshelled	Percent minor defects											
	0-1.4	1.5-1.9	2.0-2.4	2.5-2.9	3.0-3.4	3.5-3.9	4.0-4.4	4.5-4.9	5.0-5.4	5.5-5.9	6.0-6.4	6.5-8.0
0-1.0		0.05	0.11	0.17	0.23	0.29	0.36	0.43	0.51	0.60	0.69	1.00
1.1	0.04	.09	.15	.21	.27	.33	.40	.47	.55	.64	.73	1.04
1.2	.08	.13	.19	.25	.31	.37	.44	.51	.59	.68	.77	1.08
1.3	.12	.17	.23	.29	.35	.41	.48	.55	.63	.72	.81	1.12
1.4	.16	.21	.27	.33	.39	.45	.52	.59	.67	.76	.85	1.16
1.5	.20	.25	.31	.37	.43	.49	.56	.63	.71	.80	.89	1.20
1.6	.24	.29	.35	.41	.47	.53	.60	.67	.75	.84	.93	
1.7	.28	.33	.39	.45	.51	.57	.64	.71	.79	.88	.97	
1.8	.32	.37	.43	.49	.55	.61	.68	.75	.83	.92	1.01	
1.9	.36	.41	.47	.53	.59	.65	.72	.79	.87	.96	1.05	
2.0	.40	.45	.51	.57	.63	.69	.76	.83	.91	1.00	1.09	
2.1	.46	.51	.57	.63	.69	.75	.82	.89	.97	1.06		
2.2	.53	.58	.64	.70	.76	.82	.89	.96	1.04	1.13		
2.3	.61	.66	.72	.78	.84	.90	.97	1.04	1.12	1.21		
2.4	.70	.75	.81	.87	.93	.99	1.06	1.13	1.21	1.30		
2.5	.80	.85	.91	.97	1.03	1.09	1.16	1.23	1.31	1.40		
2.6	.90	.95	1.01	1.07	1.13	1.19	1.26	1.33	1.41			
2.7	1.00	1.05	1.11	1.17	1.23	1.29	1.36	1.43	1.51			
2.8	1.10	1.15	1.21	1.27	1.33	1.39	1.46	1.53	1.61			
2.9	1.20	1.25	1.31	1.37	1.43	1.49	1.56	1.63	1.71			
3.0	1.30	1.35	1.41	1.47	1.53	1.59	1.66	1.73	1.81			
3.1	1.40	1.45	1.51	1.57	1.63	1.69	1.76	1.83				
3.2	1.50	1.55	1.61	1.67	1.73	1.79	1.86	1.93				
3.3	1.60	1.65	1.71	1.77	1.83	1.89	1.96	2.03				
3.4	1.70	1.75	1.81	1.87	1.93	1.99	2.06	2.13				
3.5	1.80	1.85	1.91	1.97	2.03	2.09	2.16	2.23				
3.6	1.90	1.95	2.01	2.07	2.13	2.19	2.26					
3.7	2.00	2.05	2.11	2.17	2.23	2.29	2.36					
3.8	2.10	2.15	2.21	2.27	2.33	2.39	2.46					
3.9	2.20	2.25	2.31	2.37	2.43	2.49	2.56					
4.0	2.30	2.35	2.41	2.47	2.53	2.59	2.66					

Effective date: Upon publication in the FEDERAL REGISTER (9-16-72).

Signed at Washington, D.C., on September 8, 1972.

KENNETH E. FRICK,
Executive Vice-President,
Commodity Credit Corporation.

[FR Doc.72-15736 Filed 9-15-72;8:51 am]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Animal and Plant Health Inspection Service, Department of Agriculture

SUBCHAPTER C—INTERSTATE TRANSPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

[Docket No. 72-552]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

Pursuant to provisions of the Act of May 29, 1884, as amended, the Act of February 2, 1903, as amended, the Act of March 3, 1905, as amended, the Act of September 6, 1961, and the Act of July 2, 1962 (21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f), Part 76, Title 9, Code of Federal Regulations, restricting the interstate movement of swine and certain products because of hog cholera and other communicable swine diseases, is hereby amended in the following respects:

In § 76.2, in paragraph (e)(11) relating to the State of Ohio, subdivisions (i) and (iii) relating to Darke County are deleted and a new subdivision (i) relating to Darke County is added to read:

(e) * * *

(11) *Ohio.* (i) That portion of Darke County bounded by a line beginning at the junction of U.S. Highway 127 and Horatio-Harris Creek Road; thence, following Horatio-Harris Creek Road in an easterly direction to New Harrison Road; thence, following New Harrison Road in a northerly direction to the Wayne-Adams Township line; thence, following the Wayne-Adams Township line in an easterly direction to the Darke-Miami County line; thence, following the Darke-Miami County line in a southerly direction to U.S. Highway 36; thence, following U.S. Highway 36 in a generally southwesterly direction to Bypass U.S. Highway 127; thence, following Bypass U.S. Highway 127 in a northwesterly direction to U.S. Highway 127; thence, following U.S. Highway 127 in a northeasterly direction to its junction with Horatio-Harris Creek Road.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; sec. 1, 75 Stat. 481; secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 29 F.R. 16210, as amended; 37 F.R. 6327, 6505)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment quarantines an additional portion of Darke County, Ohio, because of the existence of hog cholera. This action is deemed necessary to prevent further spread of the disease. The restrictions pertaining to the interstate movement of swine and swine products from or through quarantined areas as contained in 9 CFR Part 76, as amended, will apply to the quarantined area.

The amendment imposes certain further restrictions necessary to prevent the interstate spread of hog cholera, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rule making proceeding would make additional relevant information available to the Department.

Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable, unnecessary and contrary to the public interest, and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 13th day of September 1972.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.72-15857 Filed 9-15-72;8:51 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Airspace Docket 72-EA-52]

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

Alteration of Control Zone and Transition Area

On page 9492 of the FEDERAL REGISTER for May 11, 1972, the Federal Aviation Administration published a proposed rule which would alter the Martinsburg, Pa., control zone (37 F.R. 2104) and transition area (37 F.R. 2236). A correction was published on page 10077 of the FEDERAL REGISTER for May 19, 1972.

Interested parties were given 30 days in which to submit comments. A Mr. Wilson of Roaring Spring, Pa., has objected on the grounds that the proposed control is unnecessary and impractical. However, a review of the proposal establishes that it meets the minimum requirements for controlled airspace protecting instrument approach facilities as found in the Standard for Terminal Instrument Procedures (TERPS), which criteria are premised on safety. A Mr. Hugo Bartel, as owner of Cove Valley Airport, objected on the grounds that the 700-foot transition area would overlie Cove Valley Airport and restrict flight operations because of a need to obtain air traffic clearance. It appears, however, that a transition area has overlain the airport since 1967 without adverse effect on operations. In any event the transition area must meet the TERPS safety criteria. Additional review fails to disclose any deviation from the criteria. It is suggested that the control zone which does not encompass Cove Valley Airport will not enhance safety because the requirement to contact the FSS at Blair County Airport only applies to radio-equipped aircraft. This is not a point of merit since such a requirement was dropped in 1965 for the very reason expressed by the objection. The purpose is, however, clearly apparent in that under IFR conditions there will not be a mixture of IFR and VFR traffic.

In view of the foregoing the proposed regulation is hereby adopted, effective 0901 G.m.t. November 9, 1972.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on September 6, 1972.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

1. Amend § 71.171 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Martinsburg, Pa., control zone and insert the following in lieu thereof:

Within a 5-mile radius of the center 40°17'-51" N., 78°19'10" W. of Blair County Airport, Martinsburg, Pa., extending clockwise from a 090° bearing to a 137° bearing from the airport; within a 7.5-mile radius of the center of the airport, extending clockwise from a 137° bearing to a 163° bearing from the airport; within a 10-mile radius of the center of the airport, extending clockwise from a 163° bearing to a 258° bearing from the airport; within a 7.5-mile radius of the center of the airport, extending clockwise from a 258° bearing to a 323° bearing from the airport; within an 8-mile radius of the center of the airport, extending clockwise from a 323° bearing to a 065° bearing from the airport; within a 7.5-mile radius of the center of the airport, extending clockwise from a 065° bearing to a 090° bearing from the airport and within 3 miles each side of the Altoona, Pa., VOR 026° radial, extending from the VOR to 8.5 miles northeast of the VOR.

2. Amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to delete the description of the Martinsburg, Pa., 700-foot floor transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the center 40°17'51" N., 78°19'10" W. of Blair County Airport, Martinsburg, Pa., extending clockwise from 061° bearing to a 076° bearing from the airport; within an 11-mile radius of the center of the airport, extending clockwise from a 076° bearing to a 096° bearing from the airport; within a 15-mile radius of the center of the airport, extending clockwise from a 096° bearing to a 128° bearing from the airport; within a 15.5-mile radius of the center of the airport, extending clockwise from a 128° bearing to a 158° bearing from the airport; within an 11-mile radius of the center of the airport, extending clockwise from a 158° bearing to a 180° bearing from the airport; within a 15-mile radius of the center of the airport, extending clockwise from a 180° bearing to a 245° bearing from the airport, within an 11-mile radius of the center of the airport, extending clockwise from a 245° bearing to a 260° bearing from the airport; within a 10-mile radius of

the center of the airport, extending clockwise from a 260° bearing to a 314° bearing from the airport; within a 9-mile radius of the center of the airport, extending clockwise from a 314° bearing to a 357° bearing from the airport; within an 11.5-mile radius of the center of the airport, extending clockwise from a 357° bearing to a 031° bearing from the airport; within a 13-mile radius of the center of the airport, extending clockwise from a 031° bearing to a 061° bearing from the airport; and within 9.5 miles northwest and 4.5 miles southeast of the Altoona, Pa., VOR 026° radial, extending from the VOR to 18.5 miles northeast of the VOR.

[FR Doc.72-15792 Filed 9-15-72;8:46 am]

[Airspace Docket No. 72-GL-19]

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

Designation of a Reporting Point

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate Mount Pleasant, Mich., VOR as a reporting point for air traffic control purposes. Due to nonradar coverage below 10,000 feet in the vicinity of the area involved, the designation of this reporting point is necessary to effect safe and orderly flow of instrument flight rule air traffic.

Since this amendment simply designates a compulsory reporting point without altering any route structure and does not involve the designation of airspace, it is minor in nature and effects no substantive change; therefore, notice and public procedure are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, this amendment will become effective more than 30 days after publication.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., November 9, 1972, as hereinafter set forth.

Section 71.203 (37 F.R. 2311) is amended by adding:

MOUNT PLEASANT, MICH.

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

Issued in Washington, D.C., on September 11, 1972.

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

[FR Doc.72-15794 Filed 9-15-72;8:46 am]

[Airspace Docket No. 72-EA-65]

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

Alteration of Control Zone and Transition Area

On page 12152 of the FEDERAL REGISTER for June 20, 1972, the Federal Aviation Administration published a proposed rule which would alter the Richmond, Va., control zone (37 F.R. 2123) and transition area (37 F.R. 2273).

Interested parties were given 30 days in which to submit comments on the proposal. A Mr. Arthur Worley, owner of New Kent County Airport, Quinton, Va., objected to the proposal essentially because of undue restriction of operations. He suggested that operations between New Kent and Byrd Field would conflict. However, the control zone as established is 2 miles from New Kent. As to the transition area, a review permits deletion of a half mile from the area, making the closest point to New Kent approximately 2.2 miles from the center of New Kent. Further modification is not feasible since the controlled area must comply with criteria established by the Standard for Terminal Instrument Procedures. The foregoing deletion is less restrictive in nature and therefore does not require notice and public procedure.

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t. November 9, 1972, except as follows:

1. Delete from the proposal the description in item 2 and insert in lieu thereof the following as set forth below.

(Sec. 307(a), Federal Aviation Act of 1958, 72 Stat. 749; 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on September 6, 1972.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

1. Amend § 71.171 of the Federal Aviation Regulations so as to delete the description of the Richmond, Va., control zone and insert the following in lieu thereof:

Within a 5.5-mile radius of the center 37°30'16" N., 77°19'11" W. of Richard Evelyn Byrd International Airport, Richmond, Va.; within 3.5 miles each side of the Richmond VORTAC 342° radial extending from the 5.5-mile-radius zone to 10 miles north of the VORTAC; within 3.5 miles each side of the Richmond VORTAC, 359° radial extending from the 5.5-mile-radius zone to 10 miles north of the VORTAC; within 3 miles each side of the Richmond VORTAC 065° radial extending from the 5.5-mile-radius zone to 8.5 miles northeast of the VORTAC; within 3.5 miles each side of the Richmond VORTAC 134° radial extending from the 5.5-mile-radius zone to 10 miles southeast of the VORTAC; and within 2 miles each side of the Richmond VORTAC 137° radial extending from the 5.5-mile-radius zone to 10 miles southeast of the VORTAC.

2. Amend § 71.181 of the Federal Aviation Regulations so as to delete the description of the Richmond, Va., 700-foot floor transition area and insert the following in lieu thereof:

That airspace extending upward from 700 feet above the surface within a 9-mile radius of the center 37°30'16" N., 77°19'11" W. of Richard Evelyn Byrd International Airport, Richmond, Va., extending clockwise from a 245° bearing from the airport to a 045° bearing from the airport; within an 8.5-mile radius of the center of the airport, extending clockwise from a 045° bearing to a 245° bearing from the airport; within 3.5 miles each side of the Richmond VORTAC 134° radial, extending from the VORTAC to 11.5 miles southeast of the VORTAC; within 2 miles each side of the Richmond VORTAC 137° radial, extending from the VORTAC to 11.5 miles southeast of the VORTAC; within 3.5 miles each side of the Richard Evelyn Byrd International Airport ILS localizer southwest course, extending from the OM to 11.5 miles southwest of the OM; within 3.5 miles each side of the Richmond VORTAC 342° radial, extending from the VORTAC to 11.5 miles north of the VORTAC; within 3.5 miles each side of the Richmond VORTAC 359° radial, extending from the VORTAC to 11.5 miles north of the VORTAC.

[FR Doc.72-15793 Filed 9-15-72;8:46 am]

[Airspace Docket No 72-SW-45]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Jet Route Segments

On August 4, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 15708) stating that the Federal Aviation Administration (FAA) was considering an amendment to Part 75 of the Federal Aviation Regulations that would realine segments of Jet Route No. 102 and Jet Route No. 161; revoke Jet Route No. 157, Jet Route No. 163, and a portion of Jet Route No. 161.

Interested persons were afforded an opportunity to participate in the proposed rule making through the submission of comments. No adverse comments were received.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., November 9, 1972, as hereinafter set forth.

Section 75.100 (37 F.R. 2382, 667) is amended as follows:

a. Jet Route No. 102 is amended to read "Jet Route No. 102 (Phoenix, Ariz., to Salina, Kans.). From Phoenix, Ariz., via INT of Phoenix 066° and Zuni, N. Mex., 226° radials; Zuni; Alamosa, Colo.; Lamar, Colo.; to Salina, Kans."

b. Jet Route No. 161 is amended to read "Jet Route No. 161 (Zuni, N. Mex., to Farmington, N. Mex.) From Zuni, N. Mex., to Farmington, N. Mex."

c. Delete Jet Route No. 157 (St. Johns, Ariz., to Alamosa, Colo.)

d. Delete Jet Route No. 163 (St. Johns, Ariz., to Farmington, N. Mex.)

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

Issued in Washington, D.C., on September 12, 1972.

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

[FR Doc.72-15795 Filed 9-15-72;8:46 am]

[Reg. Docket No. 12222, Amdt. 95-224]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

The purpose of this amendment to Part 95 of the Federal Aviation Regulations is to make changes in the IFR altitudes at which all aircraft shall be flown

over a specified route or portion thereof. These altitudes, when used in conjunction with the current changeover points for the routes or portions thereof, also assure navigational coverage that is adequate and free of frequency interference for that route or portion thereof.

As a situation exists which demands immediate action in the interest of safety, I find that compliance with the notice and procedure provisions of the Administrative Procedure Act is impracticable and that good cause exists for making this amendment effective within less than 30 days from publication.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 F.R. 5662), Part 95 of the Federal Aviation Regulations is amended, effective October 12, 1972, as follows:

1. By amending Subpart C as follows:

Section 95.1001 *Direct routes—United States* is amended by adding:

From, To, and MEA

Ashley, S.C., RBN; Smelt INT, S.C. (via Control 1152); 2,500.

Grand Isle, La., RBN; Egmont Key, Fla., RBN (via Control 1226); 2,500.

Galveston, Tex., NDB; Tampico, Mexico, VOR/DME; *#1,500. *1,400—MOCA.
#For that portion over U.S. territory.

Lake Charles, La., VOR; Lufkin, Tex., VOR; *3,000. *1,600—MOCA.

Lufkin, Tex., VOR; Monroe, La., VOR; *8,000. *2,000—MOCA.

Austin, Tex., VOR; Leona, Tex., VOR; *3,000. *2,100—MOCA.

Abilene, Tex., VOR; Guthrie, Tex., VOR; *3,700. *3,000—MOCA.

Oakland, Calif., VORTAC; Napa, Calif., VORTAC; 4,000.

Stinson Beach INT, Calif.; Napa, Calif., VORTAC; 4,600.

Middleton Island, Alaska, LF/RBN; Porpoise INT, Alaska (via Control 1310); *3,000. *2,000—MOCA.

Porpoise INT, Alaska; Shrimp INT, Alaska (via Control 1310); *3,000. *2,000—MOCA. VHF/UHF communications available 10,000 feet and above, HF only below 10,000 feet.

Shrimp INT, Alaska; Carp INT, Alaska (via Control 1310); *3,000. *2,000—MOCA. VHF/UHF communications available 10,000 feet and above, HF only below 10,000 feet.

Carp INT, Alaska; Halibut INT, Alaska (via Control 1310); *3,000. *2,000—MOCA. VHF/UHF communications available 10,000 feet and above, HF only below 10,000 feet.

Section 95.1001 *Direct routes—United States* is amended to delete:

Woodstown, N.J., VOR; Coyle, N.J., VOR; 2,000.

Section 95.1001 *Direct routes—United States* is amended to read in part:

Eglin AFB, Fla., VOR; Panama City, Fla., VOR; 1,600.

Dinsmore, Fla., RBN; Carp INT, Fla. (via Control 1153); 2,500.

Marathon, Fla., RBN; Tadpole INT, Fla. (via Control 1233); 2,500.

Bahama Routes

55–V:

Palm Beach, Fla., VOR; Bimini, Bahamas, VOR; *2,000. *1,500—MOCA.

57–V:

Palm Beach, Fla., VOR; Bimini, Bahamas, VOR; *2,000. *1,500—MOCA.

Bimini, Bahamas, RBN; Carolina Beach, N.C., RBN; (via Control 1150); 2,500.

Nassau, Bahamas, RBN; Carolina Beach, N.C., RBN; (via Control 1151); 2,500.

Panama Routes

V–11:

*Bejuco INT, R.P.; Taboga Island, R.P., VOR; 2,100. *3,800—MCA Bejuco INT, southwest-bound.

V–11A:

Int 078° M rad, DAV VOR/DME and 12 NM DAV; *Int 078° M rad, DAV VOR/DME and 30 NM DAV 6,000. *10,500/MCA Int 078° M rad, DAV VOR/DME and 30 NM DAV, east-bound.

*La Mitra INT, R.P.; Taboga Island, R.P., VOR; 2,100. *3,800—MCA La Mitra INT, southwest-bound.

V–19:

*Chame INT, R.P.; Taboga Island, R.P., VOR; 2,100. *3,200—MCA Chame INT, southwest-bound.

Section 95.5000 *High altitude RNAV routes.*

From/to; total distance; changeover point, distance from geographic location; track angle; MEA; and MAA.

J811R is added to read:

Judyville, Ind. W/P, Elmwood, Tenn. W/P; 245.4; 145.0, Judyville, 37°55'49" N., 86°-26'53" W.; 162°/342° to COP, 161°/341° to Elmwood; 18,000; 45,000.

Elmwood, Tenn. W/P, Rockmart, Ga. W/P; 128.6; 78.6, Elwood, 35°04'06" N., 85°22'-58" W.; 161°/341° to COP, 160°/340° to Rockmart; 18,000; 45,000.

Rockmart, Ga. W/P, Mauk, Ga. W/P; 112.0; 56.0, Rockmart, 33°22'40" N., 84°45'09" W.; 158°/338° to COP, 162°/342° to Mauk; 18,000; 45,000.

Mauk, Ga. W/P, Peninsula, Fla. W/P; 148.0; 100.0, Mauk, 30°53'39" N., 83°49'32" W.; 162°/342° to COP, 162°/342° to Peninsula; 18,000; 45,000.

Peninsula, Fla. W/P, Reptile, Fla. W/P; 269.0; 157.0, Peninsula, 27°49'25" N., 82°06'24" W.; 150°/330° to COP, 152°/332° to Reptile; 18,000; 45,000.

J812R is added to read:

Hialeah, Fla. W/P, Apopka, Fla., W/P; 148.8; 74.4, Hialeah, 27°18'31" N., 81°18'42" W.; 334°/154° to COP, 334°/154° to Apopka; 18,000; 45,000.

Apopka, Fla. W/P, Archer, Fla. W/P; 76.0; 38.0, Apopka, 28°59'56" N., 82°14'16" W.; 335°/155° to COP, 335°/155° to Archer; 18,000; 45,000.

Archer, Fla. W/P, Alma, Ga. W/P; 117.4; 70.0, Archer, 30°44'30" N., 82°13'32" W.; 001°/181° to COP, 002°/182° to Alma; 18,000; 45,000.

Alma, Ga. W/P, Russell, Ga. W/P; 146.3; 73.2, Alma, 32°40'42" N., 83°01'19" W.; 341°/161° to COP, 337°/157° to Russell; 18,000; 45,000.

Russell, Ga. W/P, Shutout, Ky. W/P; 223.9; 95.0, Russell, 35°16'33" N., 84°18'00" W.; 336°/156° to COP, 338°/158° to Shutout; 18,000; 45,000.

Shutout, Ky. W/P, Borden, Ind. W/P; 88.2; 16.0, Shutout, 37°29'49" N., 85°29'03" W.; 341°/161° to COP, 335°/155° to Borden; 18,000; 45,000.

Borden, Ind. W/P, Foresman, Ind. W/P; 144.3; 52.3, Borden, 39°25'55" N., 86°26'50" W.; 335°/155° to COP, 339°/059° to Foresman; 18,000; 45,000.

Foresman, Ind. W/P, Chicago Heights, Ill. W/P; 42.8; 338°/158° to Chicago Heights; 18,000; 45,000.

J819R is added to read:

Merrimack, N.H. W/P, Spad, N.Y. W/P; 155.4; 100.0, Merrimack, 42°56'36" N.; 73°26'57" W.; 297°/117° to COP, 289°/109° to Spad; 18,000; 45,000.

Spad, N.Y. W/P, Pekin, N.Y. W/P; 174.0; 95.0, Spad, 43°04'23" N., 76°51'18" W.; 281°/101° to COP, 276°/096° to Pekin; 18,000; 45,000.

Pekin, N.Y. W/P, Sunfield, Mich. W/P; 275.8; 120.0, Pekin, 42°56'00" N., 81°22'22" W.; 276°/096° to COP, 268°/088° to Sunfield; 18,000; 45,000.

Sunfield, Mich. W/P, Papi, Ill. W/P; 123.5; 50.0, Sunfield, 42°32'10" N., 85°59'34" W.; 263°/083° to COP, 258°/078° to Papi; 18,000; 45,000.

J820R is added to read:

O'Hare, Ill. W/P, Wolverine, Mich. W/P; 171.7; 88.1, O'Hare, 42°07'27" N., 85°56'30" W.; 082°/262° to COP, 090°/270° to Wolverine; 18,000; 45,000.

Wolverine, Mich. W/P, Schooner, Pa. W/P; 162.0; 75.0, Wolverine, 42°17'26" N., 82°-17'22" W.; 090°/270° to COP, 092°/272° to Schooner; 18,000; 45,000.

Schooner, Pa. W/P, Hamlet, N.Y. W/P; 55.1; 27.5, Schooner, 42°20'28" N., 79°43'09" W.; 094°/274° to COP, 099°/279° to Hamlet; 18,000; 45,000.

Hamlet, N.Y. W/P, Cherry Plain, N.Y. W/P; 257.9; 128.9, Hamlet, 42°32'58" N., 76°12'-38" W.; 092°/272° to COP, 100°/280° to Cherry Plain; 18,000; 45,000.

Cherry Plain, N.Y. W/P, Gardner, Mass. W/P; 55.7; 27.8, Cherry Plain, 42°36'56" N., 72°-40'53" W.; 111°/291° to COP, 113°/293° to Gardner; 18,000; 45,000.

J823R is added to read:

Holt, Mich. W/P, Pullman, Mich. W/P; 67.7; 271°/091° to Pullman; 18,000; 45,000.

Pullman, Mich. W/P, Papi, Ill. W/P; 67.8; 261°/081° to Papi; 18,000; 45,000.

J842R is added to read:

Greater Southwest, Tex., VORTAC, Texarkana, Ark. W/P; 155.2; 77.6, Greater Southwest, 33°10'29" N., 95°33'44" W.; 065°/245° to COP, 068°/248° to Texarkana; 18,000; 45,000.

Texarkana, Ark. W/P, Memphis, Tenn. W/P; 220.0; 110.0, Texarkana, 34°14'41" N., 92°-01'59" W.; 059°/239° to COP, 063°/243° to Memphis; 18,000; 45,000.

Memphis, Tenn. W/P, Watertown, Tenn. W/P; 153.6; 53.0, Memphis, 35°17'22" N., 88°58'-08" W.; 061°/241° to COP, 067°/247° to Watertown; 18,000; 45,000.

Watertown, Tenn. W/P, Woodbine, Ky. W/P; 106.6; 53.3, Watertown, 36°32'37" N., 85°-04'42" W.; 067°/247° to COP, 071°/251° to Woodbine; 18,000; 45,000.

Woodbine, Ky. W/P, Kimball, W. Va. W/P; 127.8; 63.9, Woodbine, 37°07'54" N., 82°-45'26" W.; 075°/255° to COP, 079°/259° to Kimball; 18,000; 45,000.

Kimball, W. Va. W/P, Gordonsville, Va. W/P; 161.9; 80.9, Kimball, 37°43'06" N., 79°49'04" W.; 079°/259° to COP, 084°/264° to Gordonsville; 18,000; 45,000.

Gordonsville, Va. W/P, Atlantic City, N.J. W/P; 188.8; 110.0, Gordonsville, 38°51'58" N., 76°05'12" W.; 068°/248° to COP, 070°/250° to Atlantic City; 18,000; 45,000.

J843R is added to read:

Robbinsville, N.J. VORTAC, 122.3; Westminster, Md. W/P; 97.3, Robbinsville, 39°38'-37" N., 76°28'31" W.; 261°/081° to COP, 254°/074° to Westminster; 18,000; 45,000.

Westminister, Md. W/P, Sanderson, W. Va. W/P; 216.7; 146.2, Westminister, 38°46'37" N., 79°58'18" W.; 259°/079° to COP, 254°/074° to Sanderson; 18,000; 45,000.

Sanderson, W. Va. W/P, Shutout, Ky. W/P; 201.1; 100.6, Sanderson, 37°50'24" N., 83°-23'38" W.; 254°/074° to COP, 251°/071° to Shutout; 18,000; 45,000.

Shutout, Ky. W/P, Sadler, Ky. W/P; 90.7; 25.0, Shutout, 37°05'43" N., 85°50'57" W.; 251°/071° to COP, 244°/064° to Sadler; 18,000; 45,000.

Sadler, Ky. W/P, Birdeye, Ark. W/P; 184.2; 79.2, Sadler, 36°10'18" N., 88°37'22" W.; 244°/064° to COP, 240°/060° to Birdeye; 18,000; 45,000.

Birdeye, Ark. W/P, Horatio, Ark W/P; 206.0; 103.0, Birdeye, 34°44'07" N., 92°29'15" W.; 240°/060° o COP, 237°/057° to Horatio; 18,000; 45,000

Horatio, Ark. W/P, Greater Southwest, Tex. VORTAC; 151.9; 75.9, Horatio, 33°24'26" N., 95°42'15" W.; 237°/057° to COP, 233°/053° to Greater Southwest; 18,000; 45,000.

J844R is added to read:

Canton, Ga. W/P, Shutout, Ky. W/P; 181.0; 90.5, Canton, 35°47'15" N., 84°53'15" W.; 344°/164° to COP, 347°/167° to Shutout; 18,000; 45,000.

Shutout, Ky. W/P, Borden, Ind. W/P; 88.2; 16.0, Shutout, 37°29'49" N., 85°29'03" W.; 341°/161° to COP, 335°/155° to Borden; 18,000; 45,000.

Borden, Ind. W/P, Foresman, Ind. W/P; 144.3; 60.3, Borden, 39°25'55" N., 86°26'50" W.; 335°/155° to COP, 339°/159° to Foresman; 18,000; 45,000.

Foresman, Ind. W/P, Chicago Heights, Ill. W/P; 42.8; 338°/158° to Chicago Heights; 18,000; 45,000.

J847R is added to read:

Morrison, Ill. W/P, Des Moines, Iowa, W/P; 176.2; 101.2, Morrison, 41°39'49" N., 92°00"-39" W.; 258°/078° to COP, 252°/072° to Des Moines; 18,000; 45,000.

Des Moines, Iowa W/P, Neola, Iowa W/P; 90.7; 265°/085° to Neola; 18,000; 45,000.

J856R is added to read:

Canton, Ga. W/P, Henderson, W. Va. W/P; 289.6; 137.0, Canton, 36°25'36" N., 83°19'-36" W.; 022°/202° to COP, 028°/208° to Henderson; 18,000; 45,000.

Henderson, W. Va. W/P, Warwood, W. Va. W/P; 103.2; 51.6, Henderson, 39°26'30" N., 81°21'40" W.; 040°/220° to COP, 039°/219° to Warwood; 18,000; 45,000.

J860R is added to read:

Ashport, Tenn. W/P, Leopold, Ind. W/P; 201.4; 55.0, Ashport, 36°25'06" N., 88°51'35" W.; 042°/222° to COP, 046°/226° to Leopold; 18,000; 45,000.

J862R is added to read:

Simon, Fla. W/P, Columbia, S.C. W/P; 190.1; 150.1, Simon, 33°11'27" N., 81°06'11" W.'; 003°/183° to COP, 005°/185° to Columbia; 18,000; 45,000.

Columbia, S.C. W/P, Elkins, W. Va. W/P; 306.5; 175.0, Columbia, 36°44'46" N., 80°31'-27" W.; 010°/190° to COP, 011°/191° to Elkins; 18,000; 45,000.

Elkins, W. Va. W/P, Newton, Pa. W/P; 78.8; 30.0, Elkins, 39°24'07" N., 79°57'16" W.; 015°/195° to COP, 017°/197° to Newton; 18,000; 45,000.

J863R is added to read:

Coyle, N.J. VORTAC, Rapidan, Va. W/P; 188.7; 110.0, Coyle, 38°50'59" N., 76°26'24" W.; 249°/069° to COP, 243°/063° to Rapidan; 18,000; 45,000.

Rapidan, Va. W/P, Galax, Va. W/P; 170.6; 85.3, Rapidan, 37°20'53" N., 79°20'08" W.; 243°/063° to COP, 239°/059° to Galax; 18,000; 45,000.

Galax, Va. W/P, Lanier, Ga. W/P; 194.1; 50.0, Galax, 35°58'34" N., 81°33'17" W.; 231°/051° to COP, 228°/048° to Lanier; 18,000; 45,000.

J864 is added to read:

Peotone, Ill. W/P, Tippecanoe, Ind. W/P; 82.4; 096°/276° to Tippecanoe; 18,000; 45,000.

Tippecanoe, Ind. W/P, Rosewood, Ohio VORTAC; 101.2; 50.6, Tippecanoe, 40°42'01" N., 85°00'35" W.; 117°/297° to COP, 121°/301° to Rosewood; 18,000; 45,000.

Rosewood, Ohio VORTAC, Cameron, Ohio W/P; 147.9; 50.0, Rosewood, 40°05'43" N., 82°59'07" W.; 104°/284° to COP, 109°/289° to Cameron; 18,000; 45,000.

Cameron, Ohio W/P, Front Royal, Va. W/P; 132.0; 82.0, Cameron, 39°19'31" N., 79°13'-46" W.; 109°/289° to COP, 113°/293° to Front Royal; 18,000; 45,000.

Front Royal, Va. W/P, Herndon, Va. W/P; 84.8; 103°/283° to Herndon; 18,000; 45,000.

J866R is added to read:

Wiggins, Colo. W/P, North Star, Nebr. W/P; 268.8; 170.0, Wiggins, 40°55'38" N., 100°-26'58" W.; 063°/243° to COP, 067°/247° to North Star; 18,000; 45,000.

North Star, Nebr. W/P, Shipley, Iowa W/P; 208.8; 83.0, North Star, 41°36'35" N., 96°-32'02" W.; 067°/247° to COP, 073°/253° to Shipley; 18,000; 45,000.

Shipley, Iowa W/P, Scales Mound, Ill. W/P; 152.4; 50.0, Shipley, 42°08'12" N., 92°40'31" W.; 073°/253° to COP, 077°/257° to Scales Mound; 18,000; 45,000.

Scales Mound, Ill. W/P, Lakewood, Ill. W/P; 93.4; 46.7, Scales Mound, 42°18'03" N., 89°21'22" W.; 090°/270° to COP, 095°/275° to Lakewood; 18,000; 45,000.

J867R is added to read:

Morrison, Ill. W/P, Des Moines, Iowa W/P; 176.2; 101.2, Morrison, 41°39'49" N., 92°-00'39" W.; 258°/078° to COP, 252°/072° to Des Moines; 18,000; 45,000.

Des Moines, Iowa W/P, Lincoln, Nebr. W/P; 143.5; 98.5, Des Moines, 41°05'25" N., 95°-46'32" W.; 252°/072° to COP, 248°/068° to Lincoln; 18,000; 45,000.

Lincoln, Nebr. W/P, Trumbull, Nebr. W/P; 66.0; 33.0, Lincoln, 40°48'53" N., 97°27'09" W.; 249°/069° to COP, 248°/068° to Trumbull; 18,000; 45,000.

Trumbull, Nebr. W/P, Strasburg, Colo. W/P; 242.8; 87.0, Trumbull, 40°22'46" N., 100°-00'55" W.; 248°/068° to COP, 244°/064° to Strasburg; 18,000; 45,000.

J878R is added to read:

Canton, Ga. W/P, Henderson, W. Va. W/P; 289.6; 137.0, Canton, 36°25'36" N., 83°19'-36" W.; 022°/202° to COP, 028°/208° to Henderson; 18,000; 45,000.

Henderson, W. Va. W/P, Rittman, Ohio W/P; 135.2; 67.6, Henderson, 39°52'34" N., 81°53'01" W.; 009°/189° to COP, 010°/190° to Rittman; 18,000; 45,000.

J879R is added to read:

Appleton, Ohio W/P, Princess, W. Va. W/P; 105.0; 188°/008° to Princess; 18,000; 45,000.

Princess, W. Va. W/P, Crabtree, N.C. W/P; 149.6; 106.0, Princess, 36°38'42" N., 82°54'-30" W.; 188°/008° to COP, 187°/007° to Crabtree; 18,000; 45,000.

Crabtree, N.C. W/P, Lanier, Ga. W/P; 101.3; 203°/023° to Lanier; 18,000; 45,000.

J880R is added to read:

Kings, Ga. W/P, Augusta, Ga. W/P; 168.5; 108.5, Kings, 32°32'58" N., 81°59'14" W.; 355°/175° to COP, 356°/176° to Augusta; 18,000; 45,000.

Augusta, Ga. W/P, Beech Mountain, N.C. W/P; 152.6; 106.8, Augusta, 35°19'38" N., 82°05'57" W.; 004°/184° to COP, 005°/185° to Beech Mountain; 18,000; 45,000.

Beech Mountain, N.C. W/P, Henderson, W. Va. W/P; 159.6; 45.0, Beech Mountain, 36°50'-33" N., 82°04'03" W.; 005°/185° to COP, 004°/184° to Henderson; 18,000; 45,000.

Henderson, W. Va. W/P, Rittman, Ohio W/P; 135.6; 67.8, Henderson, 39°52'47" N., 81°52'-59" W.; 009°/189° to COP, 010°/190° to Rittman; 18,000; 45,000.

J804R is added to read:

Darby, Fla. W/P, Amsterdam, Ga. W/P; 170.6; 130.6, Darby, 30°07'58" N., 84°01'16" W.; 332°/152° to COP, 331°/151° to Amsterdam; 18,000; 45,000.

Amsterdam, Ga. W/P, Texas, Ga. W/P; 145.1; 40.0, Amsterdam, 31°21'47" N., 84°36'23" W.; 342°/162° to COP, 339°/159° to Texas; 18,000; 45,000.

J885R is added to read:

St. Louis, Mo. W/P, Memphis, Tenn. W/P; 236.1; 108.0, St. Louis, 37°04'09" N., 90°14'-08" W.; 171°/351° to COP, 169°/349° to Memphis; 18,000; 45,000.

J890R is added to read:

Mansfield, Ohio W/P, Rosewood, Ohio VORTAC; 75.0; 243°/063° to Rosewood; 18,000; 45,000.

Rosewood, Ohio VORTAC, Mayhue, Ind. W/P; 79.7; 55.4, Rosewood, 40°03'07" N., 85°12'-28" W.; 257°/077° to COP, 253°/073° to Mayhue; 18,000; 45,000.

Mayhue, Ind. W/P, Prairie, Ill. W/P; 201.1; 85.0, Mayhue, 39°24'03" N., 88°07'14" W.; 253°/073° to COP, 248°/068° to Prairie; 18,000; 45,000.

J891R is added to read:

Roberts, Ill. W/P, Anna, Ill. W/P; 192.6; 96.3, Roberts, 39°01'36" N., 88°41'12" W.; 190°/010° to COP, 188°/008° to Anna; 18,000; 45,000.

Anna, Ill. W/P, Memphis, Tenn. W/P; 155.9; 77.9, Anna, 36°12'29" N., 89°34'51" W.; 188°/008° to COP, 188°/008° to Memphis; 18,000; 45,000.

J894R is added to read:

Shand, Fla. W/P, Orlando, Fla. VORTAC; 94.0; 47.0, Shand, 29°19'23" N., 81°25'43" W.; 174°/354° to COP 174°/354° to Orlando; 18,000; 45,000.

Orlando, Fla. VORTAC, Bay, Fla. W/P; 107.2; 53.6, Orlando, 27–41–09N 81–02–22W.; 163/343° to COP, 164°/344° to Bay; 18,000; 45,000.

J895R is added to read:

Social Circle, Ga. W/P, Semora, N.C. W/P; 269.5; 160.0, Social Circle, 35°21'49" N., 81°-09'59" W.; 050°/230° to COP, 055°/235° to Semora; 18,000; 45,000.

Semora, N.C. W/P, Atlantic City, N.J. W/P; 288.3; 105.0, Semora, 37°36'52" N., 77°43'-07" W.; 005°/235° to COP, 061°/241° to Atlantic City; 18,000; 45,000.

J896R is added to read:

Peotone, Ill. W/P, Tippecanoe, Ind. W/P; 82.4; 096°/276° to Tippecanoe; 18,000; 45,000.

Tippecanoe, Ind. W/P, Rosewood, Ohio VORTAC; 101.3; 50.7, Tippecanoe, 40°41'-58" N., 85°00'29" W.; 117°/297° to COP, 121°/301° to Rosewood; 18,000; 45,000.

Rosewood, Ohio VORTAC, Conifer, Ohio W/P; 148.2; 74.1, Rosewood, 40°18'55" N., 82°-25'46" W.; 089°/269° to COP, 094°/274° to Conifer; 18,000; 45,000.

Conifer, Ohio W/P, Harrisburg, Pa. W/P; 174.3; 87.1, Conifer, 40°17'47" N., 78°55'-05" W.; 094°/274° to COP, 100°/280° to Harrisburg; 18,000; 45,000.

Harrisburg, Pa. W/P, Bucktown, Pa. W/P; 60.5; 107°/287° to Bucktown; 18,000; 45,000.

J897 is added to read:

Maiden, Pa. W/P, Furnace, Pa. W/P; 104.2; 284°/104° to Furnace; 18,000; 45,000.

Furnace, Pa. W/P, Shiloh, Ohio W/P; 204.3; 102.3, Furnace, 40°48'27" N., 80°16'16" W.; 234°/104° to COP, 276°/096° to Shiloh; 18,000; 45,000.

Shiloh, Ohio W/P, Plant, Ind. W/P; 219.0; 103.0, Shiloh, 41°17'53" N., 84°43'55" W.; 284°/104° to COP, 278°/098° to Plant; 18,000; 45,000.

Section 95.5500 *High altitude RNAV routes.*

From/to; total distance; changeover point distance from geographic location; track angle; MEA; and MAA

J928R is added to read:

Dixon, Wyo. W/P, Grays Lake, Idaho W/P; 225.7; 165.3, Dixon, 42°45'08" N., 110°22'42" W.; 288°/108° to COP, 284°/104° to Grays Lake; 18,000; 45,000.

Grays Lake, Idaho W/P, Know, Idaho W/P; 219.2; 100.0, Grays Lake, 44°09'44" N., 113°-29'46" W.; 284°/104° to COP, 280°/100° to Knox; 23,000; 45,000.

Knox, Idaho W/P, Lowden, Wash. W/P; 128.5; 64.2, Knox, 45°39'51" N., 117°14'32" W.; 280°/100° to COP, 277°/097° to Lowden; 18,000; 45,000.

Lowden, Wash. W/P, Cumberland, Wash. W/P; 151.0; 75.5, Lowden, 46°43'01" N., 120°-14'02" W.; 277°/097° to COP, 275°/095° to Cumberland; 18,000; 45,000.

J942R is added to read:

Greater Southwest, Tex. W/P, Bridgeport, Tex. W/P; 44.3; 22.1, Greater Southwest, 33°01'43" N., 97°24'06" W.; 296°/116° to COP, 296°/116° to Bridgeport; 18,000; 45,000.

Bridgeport, Tex. W/P, Diversion, Tex. W/P; 66.5; 33.2, Bridgeport, 33°30'18" N., 98°20'41" W.; 290°/110° to COP, 289°/109° to Diversion; 18,000; 45,000.

Diversion, Tex. W/P, Guthrie, Tex. W/P; 70.4; 25.0, Diversion, 33°46'29" N., 99°25'40" W.; 261°/081° to COP, 260°/080° to Guthrie; 18,000; 45,000.

Guthrie, Tex. W/P, Lubbock, Tex. W/P; 79.1; 258°/078° to Lubbock; 18,000; 45,000.

J951R is added to read:

Casanova, Va. W/P, Henderson, W. Va. W/P; 183.6; 97.6, Casanova, 38°42'59" N., 79°56'24" W.; 279°/099° to COP, 274°/094° to Henderson; 18,000; 45,000.

Henderson, W. Va. W/P, Minerva, Ky. W/P; 90.6; 45.3, Henderson, 38°44'03" N., 82°59'29" W.; 272°/092° to COP, 269°/089° to Minerva; 18,000; 45,000.

Minerva, Ky. W/P, Borden, Ind. W/P; 97.9; 67.9, Minerva, 38°39'00" N., 85°23'57" W.; 269°/089° to COP, 262°/082° to Borden; 18,000; 45,000.

Borden, Ind. W/P, Centralia, Ill. W/P; 147.5; 112.5, Borden, 38°28'29" N., 88°25'08" W.; 262°/082° to COP, 260°/080° to Centralia; 18,000; 45,000.

Centralia, Ill. W/P, Mounds, Ill. W/P; 42.0; 279°/099° to Mounds; 18,000; 45,000.

J952R is added to read:

Coyle, N.J. VORTAC, Gordonsville, Va. W/P; 205.1; 102.5, Coyle, 38°56'01" N., 76°18'39" W.; 247°/067° to COP, 244°/064° to Gordonsville; 18,000; 45,000.

Gordonsville, Va. W/P, Copper Valley, Va. W/P; 135.0; 67.5, Gordonsville, 37°26'58" N., 79°22'51" W.; 247°/067° to COP, 242°/062° to Copper Valley; 18,000; 45,000.

Copper Valley, Va. W/P, Mount Mitchell, N.C. W/P; 113.1; 56.5, Copper Valley, 36°22'51" N., 81°35'20" W.; 242°/062/ to COP, 240°/060° to Mount Mitchell; 18,000; 45,000.

Mount Mitchell, N.C. W/P, Summerville, Ga. W/P; 156.1; 78.0, Mount Mitchell, 35°10'34" N., 83°55'02" W.; 240°/060° to COP, 236°/056° to Summerville; 18,000; 45,000.

Summerville, Ga. W/P, Iron Mountain, Ala. W/P; 120.2; 60.1, Summerville, 33°53'41" N., 86°14'08" W.; 236°/056° to COP, 233°/053° to Iron Mountain; 18,000; 45,000.

Iron Mountain, Ala. W/P, Meridian, Miss. W/P; 98.0; 49.0, Iron Mountain, 32°51'14" N., 88°01'02" W.; 233°/053° to COP, 229°/049° to Meridian; 18,000; 45,000.

Meridian, Miss. W/P, Burkesville, La. W/P; 255.7; 150.0, Meridian, 31°25'32" N., 91°31'15" W.; 243°/063° to COP, 239°/059° to Burkesville; 18,000; 45,000.

Burkeville, La. W/P, Humble, Tex. W/P; 110.8; 55.4, Burkeville, 30°20'37" N., 94°22'41" W.; 239/059° to COP, 238°/058° to Humble; 18,000; 45,000.

J953R is added to read:

New Orleans, La. VORTAC, Monroeville, Ala. W/P; 169.0; 120.0, New Orleans, 31°03'03" N., 88°10'43" W.; 053°/233° to COP, 058°/238° to Monroeville; 18,000; 45,000.

Monroeville, Ala. W/P, Montgomery, Ala. VORTAC; 69.8; 046°/226° to Montgomery; 18,000; 45,000.

Montgomery, Ala. VORTAC, Texas, Ga. W/P; 74.7; 046°/226° to Texas; 18,000; 45,000.

Texas, Ga. W/P, Kenwood, Ga. W/P; 47.6; 23.8, Texas, 33°17'49" N., 84°50'36" W.; 047°/227° to COP, 050°/230° to Kenwood; 18,000; 45,000.

Kenwood, Ga. W/P, Gramling, S.C. W/P; 145.8; 75.0, Kenwood, 34°20'18" N., 83°18'35" W.; 050°/230° to COP, 055°/235° to Gramling; 18,000; 45,000.

Gramling, S.C. W/P, Sand River, Va. W/P; 162.1; 70.0, Gramling, 35°47'14" N., 81°03'34" W.; 055°/235° to COP, 058°/238° to Sand River; 18,000; 45,000.

Sand River, Va. W/P, Atlantic City, N.J. W/P; 287.0; 100.0, Sand River, 37°41'34" N., 77°51'20" W.; 058°/238° to COP, 063°/243° to Atlantic City; 18,000; 45,000.

J954R is added to read:

Martinsburg, W. Va. W/P, Balsam, Ohio W/P; 162.6; 120.6, Martinsburg, 40°12'44" N., 80°13'35" W.; 302°/122° to COP, 298°/118° to Balsam; 18,000; 45,000.

Balsam, Ohio W/P, Burt, Ohio W/P; 105.3; 317°/137° to Burt; 18,000; 45,000.

J956R is added to read:

Memphis, Tenn. W/P, Cantrall, Ill. W/P; 300.4; 165.0, Memphis, 37°41'34" N., 89°46'47" W.; 357°/177° to COP, 000°/180° to Cantrall; 18,000; 45,000.

Cantrall, Ill. W/P, Kappa, Ill. W/P; 62.8; 31.4, Cantrall, 40°23'41" N., 89°15'51" W.; 028°/208° to COP, 028°/208° to Kappa; 18,000; 45,000.

Kappa, Ill. W/P, Joliet, Ill. VORTAC; 50.0; 25.0, Kappa, 41°11'36" N., 88°36'42" W.; 028°/208° to COP, 030°/210° to Joliet; 18,000; 45,000.

Joliet, Ill. VORTAC, Warren, Ill. W/P; 16.0; 006°/186° to Warren; 18,000; 45,000.

J957R is added to read:

Simon, Fla. W/P, Badger, S.C. W/P; 122.8; 61.4, Simon, 31°39'03" N., 80°52'28" W.; 020°/200° to COP, 023°/203° to Badger; 18,000; 45,000.

Badger, S.C. W/P, Florence, S.C. VORTAC; 105.0; 52.5, Badger, 33°25'22" N., 80°03'27" W.; 024°/204° to COP, 026°/206° to Florence; 18,000; 45,000.

Florence, S.C. VORTAC, Richmond, Va. W/P; 226.6; 83.3, Florence, 35°26'25" N., 78°49'13" W.; 033°/213° to COP, 037°/217° to Richmond; 18,000; 45,000.

Richmond, Va. W/P, Marburg, Va. W/P; 61.0; 015°/195° to Marburg; 18,000; 45,000.

J958R is added to read:

Brooke, Va. W/P, Gordonsville, Va. W/P; 42.5; 249°/069° to Gordonsville; 18,000; 45,000.

Gordonsville, Va. W/P, Society, S.C. W/P; 217.3; 12.0, Gordonsville, 36°08'40" N., 79°03'07" W.; 208°/028° to COP, 204°/024° to Society; 18,000; 45,000.

Society, S.C. W/P, Ritter, S.C. W/P; 118.6; 59.3, Society, 33°42'18" N., 80°11'31" W.; 205°/025° to COP, 204°/024° to Ritter; 18,000; 45,000.

Ritter, S.C. W/P, Chester, Ga. W/P; 122.4; 61.2, Ritter, 31°49'45" N., 81°03'26" W.; 203°/023° to COP, 201°/021° to Chester; 18,000; 45,000.

J959R is added to read:

Andy, Fla. W/P, Ponte Vedra, Fla. W/P; 248.5; 175.0, Andy, 29°00'41" N., 081°02'08" W.; 347°/167° to COP, 346°/166° to Ponte Vedra; 18,000; 45,000.

Ponte Vedra, Fla. W/P, Augusta, Ga. W/P; 203.7; 150.0, Ponte Vedra, 32°39'55" N., 081°55'27" W.; 349°/169° to COP, 351°/171° to Augusta; 18,000; 45,000.

Augusta, Ga. W/P, Rader, Tenn. W/P; 159.6; 79.8, Augusta, 34°49'51" N., 082°33'05" W.; 348°/168° to COP, 345°/165° to Rader; 18,000; 45,000.

Rader, Tenn. W/P, Foxport, Ky. W/P; 149.4; 90.0, Rader, 37°33'38" N., 083°29'21" W.; 345°/165° to COP, 342°/162° to Foxport; 18,000; 45,000.

Foxport, Ky. W/P, Dayton, Ohio W/P; 93.9; 60.9, Foxport, 39°29'19" N., 084°11'43" W.; 342°/162° to COP, 343°/163° to Dayton; 18,000; 45,000.

Dayton, Ohio W/P, Milan, Mich. W/P; 125.4; 013°/193° to Milan; 18,000; 45,000.

J989R is added to read:

Ulster, Pa. W/P, Hamlet, N.Y. W/P; 115.6; 290°/110° to Hamlet; 18,000; 45,000.

Hamlet, N.Y. W/P, Wixom, Mich. W/P; 208.6; 43.9, Hamlet, 42°24'45" N., 80°04'53" W.; 285°/105° to COP, 277°/097° to Wixom; 18,000; 45,000.

Wixom, Mich. W/P, Vermontville, Mich. W/P; 60.3; 30.3, Wixom, 42°36'50" N., 84°14'32" W.; 278°/098° to COP, 272°/092° to Vermontville; 18,000; 45,000.

Vermontville, Mich. W/P, Papi, Ill. W/P; 121.2; 260°/080° to Papi; 18,000; 45,000.

Section 95.6001 *VOR Federal airway 1* is amended to read in part:

From, To, and MEA

Royal INT, S.C.; *Baypoint INT, S.C.; 2,500. *3,000—MRA.

Section 95.6007 *VOR Federal airway 7* is amended to delete:

Biscayne Bay, Fla., VOR via E alter.; Miami, Fla., VOR via E alter.; *2,000. *1,400—MOCA.

Section 95.6007 *VOR Federal airway 7* is amended to read in part:

Miami, Fla., VOR; *Westland INT, Fla.; **2,000. *2,500—MRA. *3,300—MCA Westland INT, northwestbound.

Section 95.6008 *VOR Federal airway 8* is amended to delete:

Hurricane INT, Utah, via N alter.; *Cedar City, Utah, VOR via N alter.; 12,000. *11,300—MCA Cedar City VOR, southbound.

Cedar City, Utah, VOR via N alter.; *Summit INT, Utah, via N alter.; 10,000. *11,500—MRA.

Summit INT, Utah, via N alter.; Bryce Canyon, Utah, VOR via N alter.; 13,000.

Section 95.6008 *VOR Federal airway 8* is amended to read in part:

Hurricane INT, Utah; Bryce Canyon, Utah, VOR; 12,000.

Section 95.6011 *VOR Federal airway 11* is amended by adding:

From, To, and MEA

Brookley, Ala., VOR via W alter.; Mobile, Ala., VOR via W alter.; 1,800.

Mobile, Ala., VOR via W alter.; *Greene County, Miss., VOR via W alter.; **2,000. *9,800—MCA Green County VOR, NW-bound. **1,600—MOCA.

Section 95.6011 *VOR Federal airway 11* is amended to read in part:

Brookley, Ala., VOR; *Greene County, Miss., VOR; **2,000. *9,800—MCA Green County, VOR, NW-bound. **1,600—MOCA.

Burbank INT, Ala., via E alter.; Yarbo INT, Ala., via E alter.; *2,000. *1,600—MOCA.

Section 95.6012 *VOR Federal airway 12* is amended to read in part:

Oak Grove INT, Mo.; *Odesso INT, Mo.; **2,600. *4,000—MRA. **2,300—MOCA.

Section 95.6017 *VOR Federal airway 17* is amended to read in part:

Belton INT, Tex.; Pendleton INT, Tex.; *2,400. *2,200—MOCA.

Section 95.6021 *VOR Federal airway 21* is amended by adding:

*Cedar City, Utah, VOR via E. alter.; Milford Utah, VOR via E. alter.; **10,000. *11,400—MCA Cedar City, VOR, southbound. **9,600—MOCA.

Section 95.6021 *VOR Federal airway 21* is amended to delete:

Cedar City, Utah, VOR via E. alter.; *Summit INT, Utah, via E. alter.; 10,000. *11,500—MRA.
Summit INT, Utah, via E. alter.; Milford, Utah, VOR via E. alter.; 10,000.

Section 95.6021 *VOR Federal airway 21* is amended to read in part:

Hurricane INT, Utah, via E. alter.; *Cedar City, Utah, VOR via E. alter.; 12,000. *11,300—MCA Cedar City, VOR, southbound.

Section 95.6023 *VOR Federal airway 23* is amended to read in part:

Grapevine INT, Calif.; *River INT, Calif., northwestbound; 5,000, southeastbound; 9,500. *7,800—MCA River INT, southeastbound.
River INT, Calif.; Bakersfield, Calif., VOR, northwestbound; 3,000. Southeastbound; 6,000.

Section 95.6027 *VOR Federal airway 27* is amended to read in part:

*Fortuna, Calif., VOR via W alter.; *Crescent City, Calif., VOR via W alter; **6,000. *This airway segment not authorized when Crescent City, Calif. control zone not effective. **3,500—MOCA.

Section 95.6035 *VOR Federal airway 35* is amended to read in part:

Miami, Fla., VOR; Deep Lake INT, Fla.; *2,000. *1,300—MOCA.
Deep Lake INT, Fla.; Fort Myers, Fla., VOR; *2,000. *1,300—MOCA.
INT 262° M rad, BSY and 147° M rad, MIA via W alter.; *Flamingo INT, Fla., via W alter.; **2,000. *5,000—MCA Flamingo INT, NW-bound. **1,600—MOCA.
Flamingo INT, Fla., via W alter.; *Vega INT, Fla., via W alter.; **5,000. *3,100—MRA. *5,000—MCA Vega INT, SE-bound. **1,500—MOCA.
Vega INT, Fla., via W alter.; Deep Lake INT, Fla., via W alter.; *3,800. *1,500—MOCA.
St. Petersburg, Fla., VOR via W alter.; *Crayfish INT, Fla., via W alter.; 2,500. *4,000—MRA.

Section 95.6049 *VOR Federal airway 49* is amended to read in part:

Nashville, Tenn., VOR via E alter.; *Portland INT, Tenn., via E alter.; **2,700. *3,000—MRA. **2,000—MOCA.

Section 95.6051 *VOR Federal airway 51* is amended to read in part:

Flamingo INT, Fla.; Biscayne Bay, Fla., VOR; *2,000. *1,600—MOCA.

Section 95.6054 *VOR Federal airway 54* is amended to delete:

Fort Mill, S.C., VOR; Pinehurst, N.C., VOR; *2,200. *1,800—MOCA.

Section 95.6066 *VOR Federal airway 66* is amended by adding:

Athens, Ga., VOR via S alter.; Vesta INT, Ga., via S alter.; *3,000. *2,400—MOCA.
Vesta INT, Ga., via S alter.; Greenwood, S.C., VOR via S alter.; *4,000. *2,000—MOCA.
Greenwood, S.C., VOR via S alter.; Pinehurst, N.C., VOR via S alter.; *4,000. *2,000—MOCA.
Pinehurst, N.C., VOR via S alter.; Raleigh-Durham, N.C., VOR via S alter.; 2,000.

Section 95.6066 *VOR Federal airway 66* is amended to read in part:

Imperial, Calif., VOR; Yuma, Ariz., VOR; 3,600.

Section 95.6089 *VOR Federal airway 89* is amended to read in part:

Lake George INT, Colo.; *Silo INT, Colo.; 12,000. *11,000—MCA Silo Int, southbound.

Section 95.6097 *VOR Federal airway 97* is amended to read in part:

Lobster INT, Fla.; Newport INT, Fla.; 2,500.
Newport INT, Fla.; Tallahassee, Fla., VOR; *2,000. *61,000—MOCA.
St. Petersburg, Fla., VOR via W alter.; *Crayfish INT, Fla., via W alter.; 2,500. *4,000—MRA.

Section 95.6112 *VOR Federal airway 112* is amended to read in part:

Portland, Oreg., VOR; Groves INT, Wash., eastbound; 7,000. Westbound; 6,500.

Section 95.6121 *VOR Federal airway 121* is amended to read in part:

Medford, Oreg., VOR; Milo INT, Oreg.; 7,000.

Section 95.6157 *VOR Federal airway 157* is amended to read in part:

Vega INT, Fla.; Swamp INT, Fla.; *3,100. *1,500—MOCA.

Section 95.6182 *VOR Federal airway 182* is amended to read in part:

*Portland, Oreg., VOR; Groves INT, Wash., E-bound; 7,000. W-bound; 6,500. *4,700—MCA Portland VOR, E-bound.

Section 95.6242 *VOR Federal airway 242* is deleted:

Section 95.6293 *VOR Federal airway 293* is amended by adding:

Bryce Canyon, Utah, VOR; *Cedar City, Utah, VOR; 13,000, *12,000—MCA Cedar City VOR, E-bound.
Cedar City, Utah, VOR; Beryl INT, Utah; *9,000. *8,400—MOCA.

Section 95.6293 *VOR Federal airway 293* is amended to delete:

Marmon Mesa, Nev., VOR; Beryl INT, Utah; 9,800.

Section 95.6312 *VOR Federal airway 312* is amended by adding:

Woodstown, N.J., VOR; Coyle, N.J., VOR; 2,000. MAA–8,000.

Section 95.6317 *VOR Federal airway 317* is amended to read in part:

Johnstone Point, Alaska, VOR via S alter.; Knight INT, Alaska, via S alter.; *5,000. *4,900—MOCA.
Knight INT, Alaska, via S alter.; Hope INT, Alaska, via S alter.; *9,000. *8,500—MOCA.
Hope INT, Alaska, via S alter.; *Anchorage, Alaska, VOR via S alter.; **7,000. *5,000—MCA Anchorage VOR, eastbound. **5,500—MOCA.

Section 95.6357 *VOR Federal airway 357* is amended to read in part:

Walla Walla, Wash., VOR; Moses Lake, Wash., VOR; 4,000.
Moses Lake, Wash., VOR; Quincy INT, Wash.; 4,000.
Quincy INT, Wash.; Wenatchee, Wash., VOR; 5,500.

Section 95.6424 *VOR Federal airway 424* is amended to read in part:

Blue Springs, Mo., VOR; *Malta INT, Mo.; **2,700. *3,500—MRA. **2,300—MOCA.

Section 95.6440 *VOR Federal airway 440* is amended to read in part:

Sandspit, B.C., VOR; Muzon INT, Alaska; *$#8,000. *4,600—MOCA.
$For that airspace over U.S. territory.
#MEA is established with a gap in navigation signal coverage.
Crescent DME Fix, Alaska; Yakutat, Alaska VOR; *3,000. *2,000—MOCA.
Hope INT, Alaska; *Anchorage, Alaska VOR; **7,000. *5,000—MCA Anchorage VOR, E-bound, **5,500—MOCA.

Section 95.6454 *VOR Federal airway 454* is amended to delete:

Greenwood, S.C., VOR; Fort Mill, S.C., VOR; *2,400. *2,000—MOCA.

Section 95.6502 *VOR Federal airway 502* is deleted:

Section 95.6520 *VOR Federal airway 520* is amended to read in part:

*Portland, Oreg., VOR; Groves INT, Wash., eastbound; 7,000, westbound; 6,500. *4,700—MCA Portland VOR, E-bound.

Section 95.6548 *VOR Federal airway 458* is amended to read in part:

Imperial, Calif., VOR; Yuma, Ariz., VOR; 3,600.

2. By amending Subpart D as follows:

Section 95.8003 *VOR Federal airway changeover points:*

From, To—Changeover point: Distance; from

V–66 is amended to delete:
Imperial, Calif., VOR; Yuma, Ariz., VOR; 22; Imperial.

V–440 is amended to delete:
Sandspit, British Columbia, VOR; Biorka Island, Alaska, VOR; 132; Biorka Island.
Middleton Island, Alaska, VOR; Anchorage, Alaska, VOR; 53; Anchorage.

V–458 is amended to delete:
Imperial, Calif., VOR; Yuma, Ariz., VOR; 24; Yuma.

(Sec. 307, 1110, Federal Aviation Act of 1958, 49 U.S.C. 1348, 1510)

Issued in Washington, D.C., on September 7, 1972.

C. R. MELUGIN, Jr.,
Acting Director,
Flight Standards Service.

[FR Doc.72–15723 Filed 9–15–72;8:45 am]

Chapter II—Civil Aeronautics Board

[Reg. ER–756; Amdt. 3]

CHANGE OF TITLE OF HEARING EXAMINER TO ADMINISTRATIVE LAW JUDGE

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of September 1972.

Notice of change of title from hearing examiner to administrative law judge for the purpose of Part 930 of Title 5 of the Code of Federal Regulations (Subpart B—Appointment, Pay, and Removal of Hearing Examiners) has been received from the U.S. Civil Service Commission.[1] Many parts of the Board's regulations refer to the term "examiner," or "hear-

[1] 37 F.R. 16787, Aug. 19, 1972.

ing examiner";[2] these references should now read "administrative law judge." Related title changes are the existing titles of "Chief Hearing Examiner" or "Chief Examiner" which should now be "Chief Administrative Law Judge." The present title of "Associate Chief Examiner" or "Associate Chief Hearing Examiner" will henceforth be "Associate Chief Administrative Law Judge."

Appropriate changes in Parts 200 and 384 (statement of organization, delegation of authority, and availability of records and information)[3] will be made at this time. Changes in the other parts of the Board's regulations will be made from time to time as the particular part is otherwise amended or reissued.

Since the amendment provided for herein is a rule of agency organization, the Board finds that notice and public procedure are unnecessary and that the amendment may be made effective immediately.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Chapter II (14 CFR Ch. II) effective September 12, 1972, as follows:

All references in the Board's regulations to the terms "hearing examiner" and "examiner" are deemed deleted and replaced by the term "administrative law judge," except as the context otherwise requires. All references therein to the terms "chief hearing examiner" and "chief examiner" are deemed deleted and replaced by the term "chief administrative law judge."

(Secs. 204(a) and 1001 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 788; 49 U.S.C. 1324, 1481. Civil Service Commission notice, 37 F.R. 16787, Aug. 19, 1972)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72-15846 Filed 9-15-72;8:51 am]

[Reg. OR-65; Amdt. 384-2]

PART 384—STATEMENT OF ORGANIZATION, DELEGATION OF AUTHORITY, AND AVAILABILITY OF RECORDS AND INFORMATION

Change of Title

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of September 1972.

For the reasons set forth in ER-756, issued contemporaneously herewith, the Board is amending Part 384 of the organization regulations to provide for the change of name of the Bureau of Hearing Examiners to the Bureau of Administrative Law Judges.

Since the amendment provided for herein is a rule of agency organization, the Board finds that notice and public procedure are unnecessary and that the amendment may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 384 of its Organization Regulations (14 CFR Part 384) by revising § 384.7(h), effective September 12, 1972, to read as follows:

§ 384.7 Organization and delegation of authority.

* * * * *

(h) The Bureau of Administrative Law Judges, which provides administrative law judges for the conduct of all formal proceedings under Titles IV and X of the Federal Aviation Act, including those for issuance of certificates of public convenience and necessity concerning both domestic and foreign operations, and issuance of foreign air carrier permits; mail, property, and passenger rate cases; mergers, acquisitions of control, and interlocking relationships; and economic enforcement cases.

* * * * *

(Secs. 204(a) and 1001 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 788; 49 U.S.C. 1324, 1481; Civil Service Commission Notice, 37 F.R. 16787, August 19, 1972)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72-15847 Filed 9-15-72;8:51 am]

Title 17—COMMODITY AND SECURITIES EXCHANGES

Chapter II—Securities and Exchange Commission

[Release 34-9766]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Report of Securities Investor Protection Corporation Assessments

The Commission has today announced the adoption of an amendment to Rule 17a-5 (17 CFR 240.17a-5) under the Securities Exchange Act of 1934 (the Act) by which a new paragraph (b)(4) will be added to the rule, that will require that each report filed by a broker-dealer pursuant to Rule 17a-5 under the Act be accompanied by a supplemental report on the status of the membership of the broker-dealer in the Securities Investor Protection Corp. (SIPC).

By virtue of sections 4 (c) and (d) of the Securities Investor Protection Act of 1970 (SIPC Act), members of national securities exchanges and all registered broker-dealers who are members of SIPC are required to pay to SIPC the assessments provided for by those sections to carry out its investor protection responsibilities under the SIPC Act. Since the amounts of these assessments may be material to the financial responsibility of broker-dealers who are SIPC members, and since any widespread failures to pay SIPC Act assessments could have an adverse impact on SIPC, its members, and, in certain circumstances, the Department of Treasury,[1] any delinquency in the payment of such assessments or inaccuracy in their computation could have serious consequences from the standpoint of public investor protection and the public interest. Accordingly, it is important that the status of a broker-dealer's assessments be the subject of reporting under Rule 17a-5.

SIPC has expressed to the Commission its concern that assessment reports being provided to it by its members may not be correct. And SIPC has brought to the Commission's attention that a significant number of discrepancies appear to exist between information supplied to it and information supplied to the Commission with respect to the figures on which assessments are based. Accordingly, the Commission has found it necessary promptly to adopt a rule that will provide reasonable assurance that in the future assessment reports will be examined by independent accountants.

The Commission has also determined for these reasons that it would be contrary to the public interest to follow the notice and public procedure provisions of the Administrative Procedure Act, 5 U.S.C. 553 (b) and (c), in advance of the effective date of the rule, since doing so would serve further to delay necessary action that should be taken immediately. Comments are invited, however, with respect to the rule being adopted and they will be carefully considered with a view to possible revision of the rule or, perhaps, substitution of an alternative procedure to serve the recognized objectives.

The amendment hereby adopted is designated as Rule 17a-5(b)(4). It requires every member of a national securities exchange and every other broker-dealer subject to the reporting requirements of Rule 17a-5 to file a supplemental report consisting of a schedule detailing SIPC assessment payments and overpayments applied or carried forward to future use, or, in the alternative, a statement that the broker-dealer is a person not required to be a SIPC member by virtue of provisions of section 3(a)(2) of the SIPC Act. In addition, the supplemental report must be accompanied by a report by the independent public accountant who certifies the annual report of the broker-dealer that the broker-dealer's SIPC assessment payments were determined fairly in accordance with applicable instructions and forms or that a claim for exclusion from membership was consistent with income reported. If the results of the examination did not provide the basis for such statement, the accountant shall state the extent of the review which

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[2] Examples can be found in Parts 241 and 298 of the Board's economic regulations, Parts 300, 302, 305, and 310 of the procedural regulations, Parts 370 and 379 of the special regulations, Parts 384, 385, and 389 of the organization regulations and Part 399 which sets forth policy statements.

[3] OR-65, issued contemporaneously herewith.

[1] Under sections 4 (g) and (h) of the SIPC Act provision is made for a "back up" fund financed by the Treasury up to $1 billion.

he performed. Under either circumstance, the rule contains a number of minimum procedures which must be applied; and it calls for a statement by the accountant as to any corrective action taken or proposed to be taken by the broker-dealer with regard to any exception noted by the accountant.

No specific form is prescribed at this time for the supplemental report, or the accountant's report. However, the supplemental report should be in letter form addressed to the Commission with the accountant's report as an attachment and should be filed concurrently with the report filed pursuant to Rule 17a–5 in triplicate original, manually signed, dated and bound separately. The Commission will transmit one copy of the supplemental report and the accountant's report to SIPC.

STATUTORY BASIS

Acting pursuant to the provisions of the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17(a) and 23(a) thereof, and deeming it necessary and appropriate in the public interest and for the protection of investors and also deeming such action necessary for the execution of the functions vested in the Commission by the Act, the Securities and Exchange Commission hereby adopts Rule 17a–5(b)(4) to become effective on October 15, 1972, with respect to all reports required to be filed pursuant to Rule 17a–5 in which are to be included statements of financial condition dated October 16, 1972, or thereafter.

Commission action. The Commission has amended § 240.17a–5 of Chapter II of Title 17 of the Code of Federal Regulations by adding a new subparagraph (4) to paragraph (b), and as so amended it will read as follows:

§ 240.17a–5 Reports to be made by certain exchange members, brokers and dealers.

* * * * *

(b) *Nature and form of reports.* * * *

(4) The member, broker, or dealer shall file with the report a supplemental report and a certification of the independent public accountant on the status of the membership of the member, broker, or dealer in the Securities Investor Protection Corporation (SIPC). The report shall cover the SIPC annual general assessment reconciliation or exclusion from membership forms, not previously reported on under this subparagraph, which were required to be filed prior to the date of the report required by paragraph (a) of this section. The supplemental report, which shall be submitted in triplicate original, be bound separately, be dated and be signed manually, shall include the following:

(i) A schedule of assessment payments shall also show any overpayments applied and overpayments carried forward including: Payment dates, amounts (state separately amounts of initial and general assessment payments), and name of SIPC collection agent to whom mailed, or

(ii) If exclusion from membership was claimed for such year(s), a statement that the respondent qualified for exclusion from membership under section 3(a)(2) of the Securities Investor Protection Act of 1970 and the date and name of the SIPC collection agent with whom a Certification of Exclusion from Membership (Form SIPC–3) was filed, and

(iii) An accountant's certificate which shall state that in his opinion either the assessments were determined fairly in accordance with applicable instructions and forms, or that a claim for exclusion from membership was consistent with income reported; however, if his examination of the financial statements did not provide the basis for issuing such a certification, the accountant shall state the extent of his review. If exceptions are noted, he shall state any corrective action taken or proposed. The accountant's review on which his certificate is based shall include as a mininum the following procedures:

(*a*) Comparison of listed assessment payments with respective cash disbursements record entries,

(*b*) Comparison of amounts reported for the calendar year(s) on Form X–17A–10 (§ 249.618 of this chapter) (or the equivalent form of a national securities exchange or registered securities association) with amounts reported in the Annual General Assessment Reconciliation (Form SIPC–7),

(*c*) Comparison of adjustments reported in Form SIPC–7 with supporting schedules and working papers,

(*d*) Proof of arithmetical accuracy of the calculations reflected in Form SIPC–7 and in the schedules and working papers supporting adjustments,

(*e*) Comparison of the amount of any overpayment applied with the Form SIPC–7 on which it was computed, or

(*f*) If exclusion from membership is claimed, the accountant shall review Form X–17A–10 (or the equivalent form) to ascertain that the Certification of Exclusion from Membership (Form SIPC–3) was consistent with the income reported.

* * * * *

Any interested person may submit comments with respect to the foregoing amendment and all such comments will be duly considered by the Commission and any amendment which may be deemed appropriate in the light of such comments will be adopted by the Commission thereafter. All such comments must be submitted to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, not later than October 15, 1972, and all such comments should refer to File No. S7–453 and will be available for public inspection at the offices of the Commission at 500 North Capitol Street, Washington, D.C.

By the Commission.

[SEAL] RONALD F. HUNT,
Secretary.

SEPTEMBER 15, 1972.

[FR Doc.72–15788 Filed 9–15–72;8:46 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 135a—NEW ANIMAL DRUGS FOR OPHTHALMIC AND TOPICAL USE

Squalane, Pyrethrins, and Piperonyl Butoxide

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (32–984V) filed by EVSCO Pharmaceutical Corp., 3345 Royal Avenue, Oceanside, N.Y. 11572, proposing the safe and effective use of squalane, pyrethrins and piperonyl butoxide for the treatment of ear mites in dogs and cats. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 135a is amended by adding the following new section:

§ 135a.41 Squalane, pyrethrins and piperonyl butoxide.

(a) *Specifications.* The drug contains 25 percent squalane (hexamethyltetracosane), 0.05 percent pyrethrins and 0.50 percent technical piperonyl butoxide.

(b) *Sponsor.* See code No. 053 in § 135.501(c) of this chapter.

(c) *Conditions of use.* (1) The drug is used for the treatment of ear mites in dogs and cats.

(2) It is administered as follows: Cats and dogs 5–15 pounds body weight, 4 to 5 drops in each ear daily. Dogs 16–30 pounds body weight, 5 to 10 drops in each ear daily. Dogs 30 pounds body weight and over 10 to 15 drops in each ear daily. The recommended treatment is for 7 to 10 days with repeated treatment in 2 weeks if necessary.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (9–16–72).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: September 11, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.72–15815 Filed 9–15–72;8:48 am]

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Iron Hydrogenated Dextran Injection

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (11–879V) filed by E. R. Squibb & Sons, Georges Road, New Brunswick, N.J. 08902, proposing the safe and effective use of iron dextran injection in multiple dose vials for the prevention and treatment of anemia in baby pigs. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i)) and under authority delegated to the Commissioner (21 CFR 2.120), § 135.66 is amended and revised to provide for an additional product as follows:

§ 135b.66 Iron hydrogenated dextran injection.

(a) (1) *Specifications.* Iron hydrogenated dextran injection contains in each milliliter 100 milligrams of elemental iron stabilized with a low molecular weight hydrogenated dextran with 0.5 percent phenol as a preservative.

(2) *Sponsor.* See code No. 014 in § 135.501(c) of this chapter.

(3) *Conditions of use.* It is used in baby pigs as follows:

(i) For the prevention of anemia due to iron deficiency, administer an initial intramuscular injection of 100 milligrams of elemental iron to each animal at 2 to 5 days of age. Dosage may be repeated at 2 weeks of age.

(ii) For the treatment of anemia due to iron deficiency, administer an intramuscular injection of 100 milligrams of elemental iron to each animal when indicated between 5 and 28 days of age.

(b) (1) *Specifications.* Iron hydrogenated dextran injection contains in each milliliter 100 milligrams of elemental iron stabilized with a low molecular weight hydrogenated dextran with 0.5 percent phenol as a preservative.

(2) *Sponsor.* See code No. 035 in § 135.501(c) of this chapter.

(3) *Conditions of use.* It is used in baby pigs as follows:

(i) For the prevention of anemia due to iron deficiency, administer by intramuscular or subcutaneous injection of 100 milligrams of elemental iron to each animal at 2 to 4 days of age.

(ii) For the treatment of anemia due to iron deficiency, administer by intramuscular or subcutaneous injection of 100 milligrams of elemental iron in baby pigs up to 4 weeks of age.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (9–16–72).

(Sec. 512(i), 82 Stat. 347; 21 U.S.C. 360b(i))

Dated: September 11, 1972.

C. D. VAN HOUWELING,
Director,
Bureau of Veterinary Medicine.

[FR Doc.72–15814 Filed 9–15–72;8:48 am]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of Transportation

[CGD 72–183R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Danvers River, Mass.

This amendment adds regulations for the railroad bridge across the Danvers River between Salem and Beverly, Mass., to permit the draw to remain closed to the passage of vessels from October 1, 1972, through October 31, 1972. This closure is required to permit repairs to the turntable of the swing span.

This rule is issued without notice of proposed rule making. The Coast Guard has found that good cause exists for taking this action on the basis that it would be contrary to the public interest to delay this work.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.65a immediately after § 117.65 to read as follows:

§ 117.65a Danvers River, Boston and Maine railroad bridge between Salem and Beverly.

The draws shall open promptly on signal except that from October 1, 1972, through October 31, 1972, the draw need not open for the passage of vessels.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(c)(4))

Effective date. This revision shall be in effect from October 1, 1972, through October 31, 1972.

Dated: September 12, 1972.

J. D. MCCANN,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.72–15806 Filed 9–15–72;8:47 am]

[CGD 72–184R]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Isthmus Slough, Oreg.

This amendment adds regulations for the Isthmus Slough highway bridge, across Isthmus Slough, mile 1.0, to require that the draw open on signal if at least 2-hours notice has been given from September 1, 1972, through November 1, 1972. The draw is presently required to open at all times. This amendment is required to permit sandblasting and painting of the bridge.

This rule is issued without notice of proposed rule making. The Coast Guard has found that good cause exists for taking this action on the basis that it would be contrary to the public interest to delay this work.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended by adding a new § 117.722 immediately after § 117.720 to read as follows:

§ 117.722 Isthmus Slough, Oreg.

(a) The draws shall open promptly on signal except that from September 1, 1972, through November 1, 1972, the draw need not open for the passage of vessels unless at least 2-hours notice has been given.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05–1(c)(4))

Effective date. This revision shall be in effect from September 1, 1972, through November 1, 1972.

Dated: September 12, 1972.

J. D. MCCANN,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.72–15807 Filed 9–15–72;8:47 am]

Chapter II—Corps of Engineers, Department of the Army

[ER 1165–2–302]

PART 209—ADMINISTRATIVE PROCEDURE

Definition of Navigable Waters of the United States

Correction

In F.R. Doc. 72–15309 appearing at page 18289 in the issue for Saturday, September 9, 1972, in § 209.260(j)(1), line 8, the word "original" should read "ordinary".

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5251]

ALASKA

Amendment of Public Land Orders No. 5180 and No. 5179 as Amended

By virtue of the authority vested in the Secretary of the Interior by sections 17(d)(1) and 17(d)(2)(A) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 708, 709 (hereinafter referred to as the "Act"), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 5180 of March 9, 1972, as amended by Public Land Order No. 5193 of March 17, 1972, withdrawing lands for classification and for protection of the public interest in the lands, is hereby amended to add the following described lands to paragraph 1, of said order:

KATEEL RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 3 N., Rs. 36 through 38 W.
T. 4 N., Rs. 36 through 38 W.
T. 5 N., Rs. 36 through 38 W.
T. 6 N., Rs. 35 through 37 W.
T. 9 N., R. 14 W. (fractional).
T. 10 N., Rs. 13 and 14 W. (fractional).
T. 1 S., R. 41 W. (fractional).
T 5 S., Rs. 34 through 38 W.
T. 5 S., Rs. 39 and 40 W. (fractional).

T. 6 S., Rs. 15 and 16 W., that portion north of the Elim Indian Reservation.
T. 6 S., Rs. 34 through 38 W.
T. 6 S., Rs. 39 and 40 W. (fractional).
T. 7 S., Rs. 20 and 21 W., 26 through 29 W., and 31 through 37 W.
T. 7 S., Rs. 38 and 39 W. (fractional).
T. 8 S., Rs. 20 and 21 W., 26 through 29 W., and 31 through 36 W.
T. 9 S., R. 31 W.
T. 10 S., R. 31 W.
T. 11 S., Rs. 27 through 31 W. (fractional).
T. 12 S., R. 31 W. (fractional).
T. 21 S., Rs. 10 and 11 W.
T. 21 S., R. 12 W. (fractional).
T. 22 S., R. 11 W.
T. 22 S., Rs. 12 and 13 W. (fractional).
T. 23 S., R. 12 W.
T. 23 S., Rs. 13 through 15 W. (fractional).
T. 24 S., Rs. 13 through 15 W.
T. 26 S., Rs. 19 and 20 W.
T. 27 S., Rs. 19 and 20 W.
T. 28 S., Rs. 19 and 20 W.
T. 21 N., R. 11 E.
T. 22 N., Rs. 11 and 12 E.
T. 23 N., Rs. 7 through 11 E., and 12 E. (S½).
T. 24 N., Rs. 8 through 10 E., and 11 E. (W½).
T. 25 N., R. 9 E. (E½) and R. 10 E.
T. 6 S., Rs. 2 and 3 E.
T. 6 S., Rs. 12 through 18 E., and 29 E.
T. 7 S., Rs. 12 through 14 E., and 29 E.
T. 8 S., Rs. 12 through 14 E., 28 and 29 E.
T. 9 S., Rs. 13 and 14 E.
T. 10 S., Rs. 13 and 14 E.
T. 12 S., Rs. 8 through 10 E.
T. 13 S., Rs. 7 through 10 and 22 through 29 E.
T. 13 S., R. 30 E. (fractional).
T. 14 S., Rs. 22 through 29 E.
T. 14 S., R. 30 E. (fractional).
T. 15 S., Rs. 22 through 29 E.
T. 15 S., R. 30 E. (fractional).
T. 20 S., Rs. 28 through 30 E.
T. 21 S., Rs. 27 through 30 E.
T. 22 S., R. 26 E.
T. 23 S., R. 26 E.
T. 24 S., R. 26 E.
T. 25 S., Rs. 25 through 27 E.
T. 26 S., Rs. 25 through 27 E.
T. 27 S., Rs. 25 through 27 E.
T. 28 S., Rs. 17 through 19, and 27 E.
T. 29 S., R. 27 E. (fractional).

COPPER RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 11 N., Rs. 16 through 23 E.
T. 12 N., Rs. 22 and 23 E.
T. 13 N., R. 22 E.
T. 13 N., R. 23 E. (fractional).
T. 14 N., Rs. 21 and 22 E.
T. 14 N., R. 23 E. (fractional).
T. 25 N., R. 14 E.
T. 26 N., Rs. 11 through 13 E.
T. 27 N., Rs. 11 through 13 E.
T. 28 N., Rs. 5 through 22 E. (fractional).
T. 8 N., Rs. 4 through 7 W.
T. 9 N., Rs. 3 through 8 W.
T. 10 N., Rs. 3 through 8 W.
T. 11 N., Rs. 3 through 8 W.
T. 14 N., R. 8 W. (fractional).
T. 7 S., Rs. 17 and 18 E.
T. 8 S., Rs. 16 through 18 E.
T. 22 S., R. 37 E. (fractional) east of Tongass National Forest and south of Mt. Jette.
T. 22 S., R. 38 E. (fractional).
T. 23 S., R. 37 E. east of Tongass National Forest.
T. 23 S., Rs. 38 and 39 E. (fractional).
T. 24 S., R. 37 E. east of Tongass National Forest.
T. 24 S., Rs. 38 and 39 E. (fractional).
T. 25 S., Rs. 38 E., east of Tongass National Forest.
T. 25 S., R. 39 E.
T. 25 S., Rs. 40 and 41 E. (fractional).
T. 26 S., R. 38 E., east of Tongass National Forest.
T. 26 S., Rs. 39 through 42 E.
T. 27 S., R. 38 E., east of Tongass National Forest.
T. 27 S., Rs. 39 through 41 E.
T. 27 S., Rs. 42 and 43 E. (fractional).
T. 28 S., Rs. 37 through 41 E.
T. 28 S., R. 42 E.
T. 28 S., Rs. 43 and 44 E. (fractional).
T. 29 S., Rs. 42 and 43 E.
T. 29 S., Rs. 38 through 41 E., north of Tongass National Forest.
T. 29 S., Rs. 44 and 45 E. (fractional).
T. 30 S., Rs. 39 through 41 E., north of Tongass National Forest.
T. 30 S., Rs. 42 and 43 E. (fractional).
T. 30 S., R. 44 E.
T. 30 S., Rs. 45 and 46 (fractional).
T. 31 S., R. 42 E., east of Tongass National Forest.
T. 31 S., Rs. 43 and 44 E.
T. 31 S., Rs. 45 and 46 E. (fractional).
T. 31 S., R. 47 E. (fractional).
T. 32 S., R. 42 E., east of Tongass National Forest.
T. 32 S., Rs. 43 through 46 E.
T. 32 S., R. 47 E. (fractional).
T. 33 S., R. 42 E., east of Tongass National Forest.
T. 33 S., Rs. 43 through 46 E.
T. 33 S., R. 47 E. (fractional).
T. 34 S., Rs. 44 through 47 E.
T. 34 S., R. 48 E. (fractional).
T. 35 S., Rs. 45 through 47 E., north of Glacier Bay.

FAIRBANKS MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 N., Rs. 18 through 25 E.
T. 2 N., Rs. 18 through 25 E.
T. 3 N., Rs. 19 through 25 E.
T. 4 N., Rs. 20 through 25 E.
T. 8 N., R. 13 E.
T. 1 N., Rs. 18 through 26 W.
T. 1 N., R. 27 W. (fractional).
T. 2 N., R. 18 W.
T. 3 N., R. 18 W.
T. 4 N., R. 18 W.
T. 25 N., R. 25 W. (fractional).
T. 26 N., Rs. 15 and 16 W.
T. 26 N., R. 25 W. (fractional).
T. 27 N., Rs. 15 and 16 W.
T. 28 N., Rs. 14 through 16 W.
T. 29 N., Rs. 13 through 15 W.
T. 30 N., Rs. 14 through 16 W.
T. 31 N., R. 14 through 16 W.
T. 32 N., Rs. 14 through 17 W.
T. 1 S., Rs. 18 through 26 W.
T. 1 S., R. 27 W. (fractional).
T. 2 S., Rs. 14 through 17 W.
T. 3 S., Rs. 14 through 17 W.
T. 4 S., Rs. 14 through 17 W.
T. 5 S., Rs. 15 through 17, and 27 W.
T. 6 S., Rs. 15 through 17, and 27 W.
T. 7 S., Rs. 13, 14, 16, 17, and 27 W.
T. 8 S., Rs. 11 through 14 W., 17 and 27 W.
T. 9 S., Rs. 10 through 15 W.
T. 10 S., Rs. 9 through 14 W.
T. 11 S., R. 17 W. (W½).
T. 11 S., Rs. 18 through 20 W.
T. 12 S., Rs. 18 through 21 W.
T. 13 S., Rs. 20 through 22, and 27 W.
T. 13 S., R. 28 W. (fractional).
T. 14 S., Rs. 22 and 23 W.
T. 14 S., R. 27 W.
T. 14 S., R. 28 W. (fractional).
T. 15 S., Rs. 23 through 27 W.
T. 15 S., R. 28 W. (fractional).
T. 16 S., Rs. 25 through 27 W.
T. 17 S., Rs. 26 and 27 W.
T. 18 S., Rs. 26 and 27 W.
T. 19 S., R. 10 W.
T. 19 S., R. 11 W.
secs. 11 through 14, 21 through 28, and 32 through 36
T. 19 S., Rs. 26 through 28 W.
T. 20 S., R. 11 W.
T. 20 S., R. 12 W.
secs. 11 through 16, 21 through 29, and 31 through 36
T. 20 S., Rs. 26 through 28 W.
T. 21 S., R. 12 W.
T. 21 S., R. 13 W. (E½).
T. 21 S., Rs. 26 through 28 W.
T. 22 S., R. 13 W. (E½).
T. 1 S., Rs. 15 through 17 E., that portion south of the Military Reservation.
T. 1 S., Rs. 18 through 29 E.
T. 2 S., Rs. 18 through 25 E.
T. 3 S., Rs. 18 through 23 E.
T. 4 S., Rs. 18 through 23 E.
T. 5 S., R. 23 E.

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 N., Rs. 26 through 29 W.
T. 1 N., Rs. 67 through 70 W.
T. 2 N., Rs. 25 through 28 W.
T. 2 N., Rs. 67 through 70 W.
T. 3 N., Rs. 28 through 30 W.
T. 3 N., Rs. 67 through 70 W.
T. 4 N., Rs. 30 and 31 W.
T. 4 N., Rs. 67 and 68 W.
T. 5 N., Rs. 66 through 68 W.
T. 6 N., Rs. 66 through 68 W.
T. 7 N., R. 66 W.
T. 18 N., Rs. 53 and 54 W.
T. 21 N., Rs. 32 and 37 W.
T. 22 N., Rs. 32 and 37 W.
T. 23 N., Rs. 32, and 37 through 39 W.
T. 24 N., Rs. 32, and 37 through 39 W.
T. 25 N., Rs. 36 through 38 W.
T. 26 N., Rs. 36 through 38 W.
T. 27 N., Rs. 36 through 38 W.
T. 28 N., R. 34 W. (N½).
T. 28 N., Rs. 35 through 37 W.
T. 31 N., Rs. 36 through 38 W.
T. 34 N., Rs. 30 and 31 W. (fractional).
T. 1 S., Rs. 26 through 29 W.
T. 1 S., Rs. 68 through 71 W.
T. 2 S., Rs. 68 through 71 W.
T. 3 S., Rs. 68 through 71 W.
T. 7 S., R. 49 W.
T. 10 S., Rs. 28 and 29 W. (fractional).
T. 10 S., R. 30 W.
T. 11 S., R. 29 W. (fractional).
T. 11 S., Rs. 30 through 32 W.
T. 12 S., Rs. 31 and 32 W.
T. 39 S., Rs. 47 and 48 W. (fractional).
T. 41 S., Rs. 50 and 51 W. (fractional).
T. 42 S., Rs. 51 and 53 W. (fractional).
T. 44 S., Rs. 63 and 64 W.
T. 45 S., Rs. 54, and 64 through 66 W.
T. 46 S., Rs. 64 through 67 W.
T. 47 S., R. 68 W.
T. 48 S., Rs. 68 and 69 W.
T. 49 S., R. 69 W.
T. 50 S., R. 70 W.
T. 50 S., Rs. 69, 71, and 72 W. (fractional).

UMIAT MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 S., Rs. 46 and 47 W. (fractional).
T. 2 S., R. 46 W.
T. 2 S., Rs. 47 and 48 W. (fractional).

2. The specified portions of the following designated townships are withdrawn by Public Land Order No. 5179 of March 9, 1972, as amended, and will remain withdrawn. The lands in this paragraph are, therefore, excepted from the addition to Public Land Order No. 5180 by paragraph 1 of this order:

All lands within the protracted survey section which are wholly or in part within one mile of the mean high water mark of the river's banks and all islands and islets within the following named rivers and their named tributaries as they traverse the following described lands:

Charley River

FAIRBANKS MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 N., R. 21 E.
T. 2 N., Rs. 21 and 22 E.
T. 3 N., Rs. 21, 22, and 23 E.
T. 4 N., Rs. 23, 24, and 25 E.
T. 5 N., R. 24 E.
T. 6 N., R. 24 E.
T. 1 S., R. 21 E.
T. 2 S., R. 21 E.
T. 3 S., Rs. 19, 20, 21, and 23 E.
T. 4 S., Rs. 19, 20, 21, 22, and 23 E.
T. 5 S., R. 23 E.

Copper Creek (tributary)

T. 1 N., R. 21 E.
T. 1 S., Rs. 22, 23, 24, and 25 E.
T. 2 S., Rs. 23 and 24 E.

Godge Creek (tributary)

T. 1 N., R. 22 E.
T. 1 S., Rs. 22 and 23 E.

Hosford Creek (tributary)

T. 1 N., Rs. 21 and 22 E.

Crescent Creek (tributary)

T. 1 N., R. 19 E.
T. 2 N., Rs. 19, 20, and 21 E.

Bonanza Creek (tributary)

T. 4 N., R. 25 E.

Gulkana River (including West Fork)

COPPER RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

Main Stem

T. 10 N., R. 3 W.
T. 11 N., R. 3 W.

West Fork

T. 8 N., Rs. 6 and 7 W.
T. 9 N., Rs. 3, 4, 5, 6, and 7 W.
T. 10 N., Rs. 3, 4, 5, 6, and 7 W.

Chitina River

COPPER RIVER MERIDIAN

PROTRACTED DESCRIPTION

T. 8 S., Rs. 16, 17, and 18 E.

Ambler River

KATEEL RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 23 N., R. 9 E.
T. 24 N., R. 9 E.
T. 25 N., R. 9 E. (E½)
T. 25 N., R. 10 E.

3. Subject to valid existing rights, all of the lands described in paragraph 1 of this order, less those excepted in paragraph 2, are added to Public Land Order No. 5180, as amended by Public Land Order No. 5193, and immediately become subject to all of the terms and conditions of that order, including the withdrawal of the lands from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws (except for locations for metalliferous minerals), 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, sections 181–287 (1970). Any use or disposition permitted by this order but forbidden by earlier withdrawals or classifications remain forbidden. Any use or disposition forbidden by this order but permitted by an earlier withdrawal or classification is forbidden. With the exceptions noted in paragraph 2, any of the lands described in this order are deleted from those listed in paragraph 1 of Public Land Order No. 5179, as amended by Public Land Order No. 5192.

The purpose of this order is to supplement Public Land Order No. 5180, as amended by Public Land Order No. 5193, by reserving additional lands for study to determine the proper classification of the lands and to ascertain the public values in the lands that need protection, as provided for by section 17(d)(1) of the Act.

4. While the lands described in this order remain withdrawn, the lands shall be subject to administration by the Secretary of the Interior under applicable laws and regulations and his authority to make contracts, and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal. New applications for leases under the Mineral Leasing Act of February 25, 1920, supra, will be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

5. It is hereby determined that the promulgation of this public land order is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. section 4332(2)(C), is required.

ROGERS C. B. MORTON,
Secretary of the Interior.

SEPTEMBER 12, 1972.

[FR Doc.72-15782 Filed 9-15-72;8:42 am]

[Public Land Order 5252]

ALASKA

Amendment of Public Land Orders No. 5173, No. 5176, and No. 5178 as Amended

By virtue of the authority vested in the Secretary of the Interior by section 11(a)(3) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 696 (hereinafter referred to as the "Act"), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 5173 of March 9, 1972, as amended by Public Land Orders No. 5191 of March 17, 1972, and No. 5213 of May 30, 1972, withdrawing lands for selection under section 12 of the Act by the Regional Corporation for the approximate area covered by the operations of the Tanana Chiefs Conference, is hereby amended to make the following described lands available for selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, after December 18, 1975:

FAIRBANKS MERIDIAN

PROTRACTED DESCRIPTIONS

T. 4 N., Rs. 32 and 33 E.
T. 5 N., Rs. 31 and 32 E.
T. 6 N., Rs. 29 through 32 E.
T. 7 N., Rs. 29 through 32 E.
T. 8 N., Rs. 21 through 32 E.
T. 9 N., Rs. 20 through 32 E.
T. 10 N., Rs. 21 through 32 E.
T. 11 N., Rs. 21 through 32 E.
T. 12 N., Rs. 21 through 32 E.
T. 13 N., Rs. 24 through 32 E.
T. 14 N., Rs. 24 through 32 E.
T. 15 N., Rs. 27 through 32 E.
T. 16 N., Rs. 27 through 32 E.
T. 17 N., Rs. 27 through 31 E.
T. 18 N., Rs. 27 through 31 E.
T. 19 N., Rs. 27 through 31 E.
T. 20 N., Rs. 27 through 31 E.
T. 21 N., Rs. 27 through 31 E.
T. 22 N., Rs. 27 through 31 E.
T. 23 N., Rs. 27 through 31 E.
T. 24 N., Rs. 27 through 31 E.
T. 25 N., Rs. 28, 29, and 30 E.
T. 26 N., Rs. 28, 29, and 30 E.
T. 27 N., Rs. 29 and 30 E.
T. 28 N., Rs. 29 and 30 E.

The areas described aggregate approximately 3,432,960 acres.

2. Public Land Order No. 5176 of March 9, 1972, as amended by Public Land Order No. 5191 of March 17, 1972, withdrawing lands for selection under section 12 of the Act by the Regional Corporation for the approximate area covered by the operations of the Chugach Native Association, is hereby amended to make the following described lands available for selection by the State of Alaska under the Alaska Statehood Act, supra, after December 18, 1975:

COPPER RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 7 S., Rs. 6 through 11 W.
T. 8 S., Rs. 4, 8 through 11 W. (north of Chugach National Forest).
T. 9 S., R. 2 W.
T. 10 S., Rs. 2, 3, and 4 W.
T. 10 S., R. 5 W. (east of Chugach National Forest).
T. 11 S., Rs. 2 and 3 W.
T. 11 S., Rs. 4 and 5 W. (east of Chugach National Forest).
T. 12 S., R. 1 W.
T. 12 S., Rs. 2 and 3 W. (east of Chugach National Forest).
T. 13 S., R. 1 W. (east of Chugach National Forest).
T. 13 S., R. 2 W. (east of Chugach National Forest).
T. 13 S., R. 1 E. (east of Chugach National Forest).
T. 14 S., R. 1 E. (east of Chugach National Forest).

The areas described aggregate approximately 622,080 acres.

3. Public Land Order No. 5178 of March 9, 1972, as amended by Public Land Order No. 5214 of May 30, 1972, withdrawing lands for selection under section 12 of the Act by the Regional Corporation for the approximate area covered by the operations of the Copper River Association, is hereby amended to make the following described lands available for selection by the State of Alaska under the Alaska Statehood Act, supra, after December 18, 1975:

COPPER RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 N., Rs. 3 through 11 W.
T. 2 N., Rs. 3, 4, 10, and 11 W.
T. 1 S., Rs. 3 through 11 W.
T. 2 S., Rs. 1 through 11 W.
T. 3 S., Rs. 1 through 11 W.
T. 4 S., Rs. 1 through 11 W.
T. 5 S., Rs. 1 through 11 W.

T. 6 S., Rs. 2 through 9 W.
T. 7 S., Rs. 2 through 5 W.

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

Ts. 15 through 22 N., Rs. 11 and 12 E.

The areas described aggregate approximately 2,119,380 acres.

This order does not otherwise serve to change the provisions and limitations of Public Land Orders Nos. 5173, 5176, and 5178, as amended.

4. It is hereby determined that the promulgation of this public land order is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. section 4332(2)(C), is required.

ROGERS C. B. MORTON,
Secretary of the Interior.

SEPTEMBER 12, 1972.

[FR Doc.72-15783 Filed 9-15-72;8:42 am]

[Public Land Order 5253]

ALASKA

Amendment of Public Land Order No. 5171, and Public Land Order No. 5179, as Amended by Public Land Order No. 5192

By virtue of the authority vested in the Secretary of the Interior by sections 11(a)(3), 17(d)(1), and 17(d)(2)(A) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 696, 708, 709 (hereinafter referred to as the "Act"), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 5171 of March 9, 1972, withdrawing lands for selection by the Village of Kotzebue, and the Regional Corporation for the approximate area covered by the operations of the Northwest Alaska Native Association, is hereby amended to add the following described lands to said order:

KATEEL RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 13 N., R. 12 W. (NW¼).
T. 13 N., R. 13 W. (fractional).
T. 14 N., Rs. 9 through 14 W. (fractional).
T. 15 N., Rs. 14 and 15 W. (fractional).
T. 16 N., Rs. 14 and 15 W. (fractional).
T. 17 N., R. 14 W. (fractional).
T. 18 N., R. 14 W. (fractional).

The areas described aggregate approximately 145,240 acres.

2. Subject to valid existing rights, all of the lands described in paragraph 1 of this order are added to Public Land Order No. 5171, and immediately become subject to all of the terms and conditions of that order, including the withdrawal of the lands from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181–287 (1970). The lands described in paragraph 1 of this order are deleted from those listed in Public Land Order No. 5179 of March 9, 1972, as amended by Public Land Order No. 5192 of March 17, 1972.

3. Public Land Order No. 5179 of March 9, 1972, as amended by Public Land Order No. 5192 of March 17, 1972, withdrawing lands in aid of legislation concerning addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, and for classification, is hereby amended to add the following described lands to paragraph 1 of said order:

KATEEL RIVER MERIDIAN

PROTRACTED DESCRIPTION

T. 11 N., R. 15 W. (fractional).
T. 12 N., Rs. 14 and 15 W. (fractional).
T. 13 N., R. 15 W. (fractional).
T. 14 N., R 16 W. (fractional).
T. 15 N., R. 16 W. (fractional).
T. 16 N., R. 16 W. (fractional).
T. 20 N., Rs. 16, 19, and 20 W.

The areas described aggregate approximately 142,000 acres.

4. Subject to valid existing rights, all of the lands described in paragraph 3 of this order are added to Public Land Order No. 5179, as amended by Public Land Order No. 5192, and immediately become subject to all of the terms and conditions of that order, including the withdrawal of the lands from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and location and entry under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, sections 181–287 (1970), and from selection by regional corporations under section 12 of the Act. These lands are deleted from those listed in Public Land Order No. 5171 of March 9, 1972. Any of the lands described in paragraph 3 of this order, which are under the administrative jurisdiction of the Secretary of the Interior shall not be subject to any prior withdrawals or classifications of these lands which are inconsistent with the terms and conditions of Public Land Order No. 5179, and any such prior withdrawals or classifications are, to the extent of the inconsistency, hereby modified.

5. The purpose of this order is to supplement Public Land Order No. 5171 by reserving additional lands for selection by the Kotzebue Village Corp., and the Regional Corporation for the approximate area covered by the operations of the Northwest Alaska Native Association, as provided for by section 12 of the Act, and to supplement Public Land Order No. 5179, as amended, by reserving additional lands for possible additions to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, as provided for by section 17(d)(2)(A) of the Act.

6. Prior to the disposition of any of the lands described in this order under the applicable provisions of the Act, the lands shall be subject to administration by the Secretary of the Interior under the applicable laws and regulations and his authority to make contracts, and to grant leases, permits, rights-of-way, or easements shall not be impaired by these withdrawals. New application for leases under the Mineral Leasing Act of February 25, 1920, supra, will be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

7. It is hereby determined that the promulgation of this public land order is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 43 U.S.C. section 4332(2)(C), is required.

ROGERS C. B. MORTON,
Secretary of the Interior.

SEPTEMBER 12, 1972.

[FR Doc.72-15784 Filed 9-15-72;8:42 am]

[Public Land Order 5254]

ALASKA

Amendment of Public Land Orders Nos. 5186, 5179, and 5180; Partial Termination of Classifications of Lands for Multiple-Use Management

By virtue of the authority vested in the Secretary of the Interior by sections 17(d)(1) and 17(d)(2)(A) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 708, 709 (hereinafter referred to as the "Act"), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 5186 of March 9, 1972, withdrawing lands for classification and for protection of the public interest in the lands, and in aid of selections by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, is hereby amended to add the following described lands to paragraph 1 of said order:

KATEEL RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 18 N., Rs. 23 through 26 E.
T. 18 N., R. 27 E. (fractional).
T. 19 N., Rs. 23 through 26 E.; and 27 E. (fractional).
T. 20 N., R. 23 E. (E½).
T. 20 N., Rs. 24 through 26 E.; and 27 E. (fractional).
T. 21 N., Rs. 24 through 26 E.
T. 22 N., R. 25 E. (E½).
T. 22 N., R. 26 E.
T. 12 S., R. 21 E.
T. 25 S., Rs. 7 through 9 E.
T. 26 S., Rs. 7 through 9 E.
T. 27 S., R. 7 E.
T. 28 S., R. 7 E.
T. 29 S., R. 7 E. (fractional).

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 N., R. 58 W.
T. 2 N., R. 58 W.
T. 25 N., Rs. 9 through 19 W.
T. 26 N., Rs. 9 through 13 W.
T. 27 N., Rs. 9 through 13 W.
T. 28 N., R. 9 W.
T. 28 N., R. 10 W.
Secs. 1 through 4, 9 through 16, 21 through 28, and 33 through 36.

T. 28 N., Rs. 12 and 13 W.
T. 29 N., Rs. 7 and 8 W.
T. 29 N., R. 9 W.
Secs. 1 through 4 and 8 through 36.
T. 29 N., R. 10 W.
Secs. 25, 35, and 36.
T. 30 N., Rs. 17 and 18 W.
T. 31 N., R. 15 W.
Secs. 4 through 9 and 18.
T. 31 N., Rs. 16 and 17 W.
T. 31 N., Rs. 44 and 45 W.
T. 32 N., R. 15 W. (W½).
T. 32 N., R. 16 W.
T. 32 N., Rs. 44 and 45 W.
T. 33 N., R. 15 W. (fractional W½).
T. 33 N., R. 16 W. (fractional).
T. 33 N., Rs. 43 and 44 W.
T. 34 N., Rs. 43 and 44 W. (fractional).

COPPER RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 19 S., Rs. 14 through 16 and 18 E.
T. 20 S., Rs. 18 and 19 E.
T. 21 S., R. 20 E.

FAIRBANKS MERIDIAN

PROTRACTED DESCRIPTIONS

T. 29 N., R. 24 W. (SW¼ and E½).
T. 30 N., R. 24 W. (E½).
T. 31 N., Rs. 19 through 24 W.
T. 27 N., R. 1 E.
T. 27 N., R. 2 E. west of the Venetie Indian Reservation.

The areas described aggregate approximately 1,917,000 acres.

2. Subject to valid existing rights, all of the lands described in paragraph 1 of this order are added to Public Land Order No. 5186, and immediately become subject to all of the terms and conditions of that order, which withdrew lands from all forms of appropriation under the public land laws, including location and entry under the mining laws (except for metalliferous minerals), 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, sections 181–287 (1970), but not from selection by the State of Alaska under the Alaska Statehood Act, supra. Any of the lands described in paragraph 1 of this order are hereby deleted from any of those listed in paragraph 1 of Public Land Order No. 5179 of March 9, 1972, as amended by Public Land Order No. 5192 of March 17, 1972.

3. The purpose of this order is to supplement Public Land Order No. 5186 by making additional lands available for selection by the State of Alaska under the Alaska Statehood Act, supra. Any of the lands described in this order that are not selected by the State of Alaska will be subject to classification or reclassification by the Secretary of the Interior.

4. The classifications of lands for multiple-use management purposes pursuant to the Classification and Multiple Use Act of September 19, 1964, 43 U.S.C. section 1412, by notices published in 33 F.R. 19957 of December 28, 1968 (AA–2779, F–955), and in 35 F.R. 18003 of November 24, 1970 (F–12450), are hereby terminated so far as they affect any of the lands described in paragraph 1 of this order, and any of the lands described in paragraph 1 of Public Land Order No. 5186.

5. Public Land Order No. 5180 of March 9, 1972, as amended by Public Land Order No. 5193 of March 17, 1972, is here amended by deleting the following described lands therefrom, and adding them to Public Land Order No. 5186 subject, however, to all of the terms and conditions of Public Land Order No. 5150 of December 28, 1971, as amended by Public Land Orders No. 5151 of December 29, 1971, and No. 5182 of March 9, 1972, for the purpose of making the lands available for selection by the State of Alaska under the Alaska Statehood Act, supra, when Public Land Order No. 5150, as amended, is modified or terminated to the extent necessary to permit such selections:

All those portions of the following described townships, which are withdrawn by Public Land Order No. 5150, as amended:

UMIAT MERIDIAN

PROTRACTED DESCRIPTIONS

T. 15 S., R. 36 E.
T. 16 S., Rs. 36 and 37 E.
T. 17 S., Rs. 35, 36, and 37 E.

FAIRBANKS MERIDIAN

PROTRACTED DESCRIPTIONS

T. 37 N., R. 17 E.
T. 36 N., R. 18 E.
T. 37 N., R. 18 E.
T. 36 N., R. 19 E.
T. 37 N., R. 19 E.
T. 36 N., R. 20 E.
T. 36 N., Rs. 21, 22, 23, and 24 E.
T. 35 N., R. 25 E.
T. 36 N., R. 26 E.
T. 35 N., R. 27 E.
T. 36 N., R. 27 E.
T. 35 N., R. 28 E.
T. 36 N., R. 28 E.
T. 35 N., R. 29 E.
T. 36 N., R. 29 E.
T. 35 N., R. 30 E.
T. 36 N., R. 30 E.

6. While the lands described in this order remain withdrawn, the lands will be subject to the administration of the Secretary of the Interior under the applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements shall not be impaired by this withdrawal. New applications for leases under the Mineral Leasing Act of February 25, 1920, supra, will be rejected until this order is modified or the lands are appropriately classified to permit mineral leasing.

7. It is hereby determined that the promulgation of this public land order is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), is required.

ROGERS C. B. MORTON,
Secretary of the Interior.

SEPTEMBER 12, 1972.

[FR Doc.72–15785 Filed 9–15–72;8:42 am]

[Public Land Order 5255]

ALASKA

Amendment of Public Land Orders No. 5174, No. 5179, No. 5180, and No. 5186

By virtue of the authority vested in the Secretary of the Interior by sections 11(a)(3), 17(d)(1), and 17(d)(2)(A) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 696, 708, and 709 (hereinafter referred to as the "Act"), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 5174 of March 9, 1972, withdrawing lands for selection under section 12 of the Act by the village corporations and the Regional Corporation for the approximate area covered by the operations of the Cook Inlet Association, is hereby amended to add the following described lands to said order:

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 5 N., R. 18 W. (E½).
T. 8 N., R. 29 W.
T. 9 N., Rs. 28 and 29 W.
T. 10 N., Rs. 28 and 29 W.
T. 11 N., R. 28 W.
T. 29 N., Rs. 1 and 2 W.
T. 30 N., R. 1 W.
T. 31 N., R. 1 W.
T. 32 N., R. 1 W.
T 33 N., R. 1 W. (fractional).
T 29 N., Rs. 1 through 4 E.
T. 29 N., R. 11 E.
T. 30 N., Rs. 1 through 11 E.
T. 31 N., Rs. 1 through 10 E.
T. 32 N., Rs. 1 through 7 E.
T. 33 N., R. 1 E. (fractional).
T. 33 N., R. 2 E. (W½).
T. 3 S., Rs. 20 through 22 W. (fractional).
T. 3 S., R. 23 W.
T. 3 S., R. 24 W. (E½).
T. 4 S., Rs. 22 and 23 W. (fractional).
T. 4 S., R. 24 W.
T. 5 S., R. 22 W. (fractional)
T 5 S., R. 23 W.
T. 5 S., Rs. 24 and 25 W. (fractional).
T. 5 S., Rs. 24 and 25 W. (fractional).
T. 7 S., Rs. 25 and 26 W. (fractional).
T. 7 S., R. 27 W. (E½)
T. 8 S., R. 26 W. (fractional).
T. 8 S., R. 27 W.
T. 8 S., R. 28 W. (E½).
T. 9 S., Rs. 27 and 28 W. (fractional).
T. 9 S., R. 29 W. (E½).

The areas described aggregate approximately 1,416,000 acres.

2. Subject to valid existing rights, all of the lands described in paragraph 1 of this order are added to Public Land Order No. 5174, and immediately become subject to all of the terms and conditions of that order, including the withdrawal of the lands from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181–287 (1970). Any of the lands described in paragraph 1 of this order are deleted from those listed in Public Land Order No. 5179 of March 9, 1972, as amended

by Public Land Order No. 5192 of March 17, 1972, Public Land Order No. 5180 of March 9, 1972, as amended by Public Land Order No. 5193 of March 17, 1972, and Public Land Order No. 5186 of March 9, 1972.

3. The purpose of this order is to supplement Public Land Order No. 5174, by reserving additional lands for selection by those village corporations that will be determined by the Secretary of the Interior to be eligible to make such selections, and by the Regional Corporation for the approximate area covered by the Cook Inlet Association, as provided for by section 12 of the Act.

4. Public Land Order No. 5174 as here amended, is further amended to make the following described lands available for selection by the State of Alaska under the Alaska Statehood Act, supra, after December 18, 1975:

a. Tyonek:

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 10 N., R. 16 W. (W½).
T. 10 N., Rs. 17 through 20 W.
T. 11 N., Rs. 17 through 20 W.
T. 12 N., Rs. 16 through 20 W.
T. 13 N., Rs. 16 through 20 W.
T. 14 N., Rs. 16 through 20 W.
T. 15 N., Rs. 15 through 20 W.
T. 16 N., Rs. 15 through 20 W.
T. 17 N., Rs. 15 through 20 W.
T. 18 N., Rs. 15 through 20 W.
T. 19 N., Rs. 15 through 18 W.
T. 20 N., Rs. 15 through 17 W.

b. Eklutna:

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 12 N., Rs. 4 and 5 E.
T. 13 N., Rs. 4 through 6 E.
T. 14 N., Rs. 4 through 7 E.
T. 15 N., Rs. 4 through 8 E.
T. 16 N., Rs. 4 through 10 E.
T. 17 N., Rs. 4 through 10 E.
T. 18 N., Rs. 4 through 10 E.
T. 19 N., Rs. 6 and 7 E.
T. 20 N., R. 3 E.
T. 21 N., Rs. 1 through 5 E.
T. 22 N., Rs. 1 through 4 E.
T. 23 N., R. 1 E.
T. 21 N., Rs. 1 and 2 W.
T. 22 N., Rs. 1 and 2 W.

The areas described aggregate approximately 2,290,300 acres.

5. Prior to the conveyance of any of the lands described in paragraph 1 of this order to any village corporation, or said Regional Corporation, the lands shall be subject to the administration of the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts and to grant leases, permits, rights-of-way, or easements, shall not be impaired by the withdrawal. New applications for leases under the Mineral Leasing Act of February 25, 1920, supra, will be rejected until this order is modified or the lands are appropriately classified for mineral leasing.

6. It is hereby determined that the promulgation of this public land order is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 Stat. section 4332(2)(C), is required.

ROGERS C. B. MORTON,
Secretary of the Interior.

SEPTEMBER 12, 1972.

[FR Doc.72-15786 Filed 9-15-72;8:42 am]

[Public Land Order 5256]

ALASKA

Amendment of Public Land Orders No. 5169, No. 5179, and No. 5180 as Amended

By virtue of the authority vested in the Secretary of the Interior by sections 11(a)(3), 17(d)(1), and 17(d)(2)(A) of the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, 696, 708, 709 (hereinafter referred to as the "Act"), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), it is ordered as follows:

1. Public Land Order No. 5169 of March 9, 1972, as amended, withdrawing lands for selection under section 12 of the Act by the village corporations and the Regional Corporation for the approximate area covered by the operations of the Arctic Slope Native Association, is hereby amended to add the following described lands to paragraph 2 of said order:

UMIAT MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 S., R. 2 W., south of Naval Petroleum Reserve No. 4.
T. 1 S., Rs. 46 and 47 W. (fractional).
T. 2 S., Rs. 2, 3, and 4 W., south of Naval Petroleum Reserve No. 4.
T. 2 S., R. 46 W.
T. 2 S., Rs. 47 and 48 W. (fractional).
T. 3 S., Rs. 2, 3, and 4 W.
T. 3 S., R. 5 W., south of Naval Petroleum Reserve No. 4.
T. 4 S., Rs. 2, 3, 4, and 5 W.
T. 5 S., Rs. 4 and 5 W.
T. 6 S., R. 4 W.
T. 7 S., R. 4 W.
T. 10 S., Rs. 3 and 4 W.
T. 11 S., Rs. 3 and 4 W.
T. 12 S., Rs. 4, 5, 6, 7, and 8 E.
T. 12 S., Rs. 47 and 48 W.
T. 13 S., Rs. 5, 6, and 7 E.
T. 16 S., Rs. 2, 3, and 4 W.
T. 1 N., Rs. 16 through 20 E.

KATEEL RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 31 N., Rs. 26 and 27 W.
T. 31 N., R. 30 W.
secs. 1 through 6, 8 through 15, 22 through 26, and 36.
T. 31 N., R. 31 W.
secs. 1 through 4, 9 and 10.
T. 32 N., Rs. 30 and 31 W.
T. 32 N., R. 32 W.
secs. 1 through 5, 9 through 14, 23 and 24.
T. 33 N., Rs. 19 through 24 W.
T. 34 N., Rs. 19, 20, and 21 W.

The area of the lands described aggregate approximately 1,215,560 acres.

2. Subject to valid existing rights, all of the lands described in paragraph 1 of this order are added to paragraph 2 of Public Land Order No. 5169, as amended, and immediately become subject to all of the terms and conditions of that order, including the withdrawal of the lands from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181–287 (1970). Any of the lands described in paragraph 1 of this order that are included in Public Land Orders No. 5179 and 5180 of March 9, 1972, as amended, are hereby deleted therefrom.

3. The purpose of this order is to supplement Public Land Order No. 5169, as amended, by reserving additional lands for selection by the Arctic Slope Regional Corporation, as provided for by section 12(c) of the Act.

4. Prior to the conveyance of any of the lands described in paragraph 1 of this order to the said Regional Corporation, the lands shall be subject to the administration of the Secretary of the Interior under applicable laws and regulations, and his authority to make contracts, and to grant leases, permits, rights-of-way, or easements, shall not be impaired by the withdrawal. New applications for leases under the Mineral Leasing Act of February 25, 1920, supra, will be rejected until this order is modified or the lands are appropriately classified for mineral leasing.

5. It is hereby determined that the promulgation of this public land order is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 Stat. section 4332(2)(C), is required.

ROGERS C. B. MORTON,
Secretary of the Interior.

SEPTEMBER 12, 1972.

[FR Doc.72-15787 Filed 9-15-72;8:42 am]

Title 50—WILDLIFE AND FISHERIES

Chapter II—National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

PART 242—HERRING FISHERIES

On August 19, 1972, a notice of proposed rule making, to establish a new Part 242, was published in the FEDERAL REGISTER (37 F.R. 16806). The new part sets forth regulations to implement conservation measures on hearing in the Northwest Atlantic. Comments have been received from members of the fishing industry, expressing their interest in having an alternative incidental catch limitation of 5,000 pounds under section 242.6, which would allow the taking of small amounts of herring for the bait fishery. Since this provision is less restrictive, and is consistent with other incidental catch limitations for fisheries in this area, it is unnecessary and contrary to the public interest to proceed

with notice and public procedure on the addition of the alternative 5,000 pound limitation. Therefore, the proposed regulations are hereby adopted, subject to the following change:

1. Section 242.6 is changed by inserting after the word "vessel" in the eighth line, the words, "or 5,000 pounds, whichever is greater."

The international regulatory recommendations of the International Commission for the Northwest Atlantic Fisheries will become effective on September 17, 1972. Therefore, it is necessary and in the public interest that this regulation becomes effective at the same time.

Effective date. This regulation is effective September 17, 1972.

PHILIP ROEDEL,
Director,
National Marine Fisheries Service.

Sec.
242.1 Definitions.
242.2 Catch quotas.
242.3 Size limits.
242.4 Open season.
242.5 Closed season and areas.
242.6 Incidental catch.
242.7 Restrictions on fishing vessels.
242.8 Licenses, reports, and record keeping.

AUTHORITY: The provisions of this Part 242 issued under subsection (a) of section 7 of the Northwest Atlantic Fisheries Act of 1950 (64 Stat. 1069; 16 U.S.C. 986) as modified by Reorganization Plan No. 4, effective October 3, 1970 (35 F.R. 15627).

§ 242.1 Definitions.

(a) *Terms.* Unless otherwise defined herein, the terms used in this part shall have the meanings ascribed to them in Part 240 of this subchapter.

(b) *Regulated species.* Regulations in this part shall apply to herring (*Clupea harengus* (L.)) found in Subareas 4 and 5 of the convention area.

(c) *Open season.* The time during which herring may lawfully be captured and taken on board a fishing vessel without limitation.

(d) *Closed season.* The time during which herring in specified areas may not be taken in quantities exceeding the amounts allowed as an incident to fishing for other species.

(e) *Authorized official.* Any representative of the National Marine Fisheries Service (NMFS), U.S. Coast Guard, or U.S. Customs Service, authorized to enforce this part.

(f) *Regional Director.* The Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, MA 01930. Telephone number, Area Code (617) 218-0640.

§ 242.2 Catch quotas.

(a) A limitation is placed upon the quantity of herring permitted to be taken in Division 5Z of Subarea 5 and in the adjacent waters to the west and south, from Division 5Y of Subarea 5 and from that portion of Division 4W south of 44°52′ N. latitude and in Division 4X of Subarea 4.

(b) The aggregate catch of herring during 1972, by persons or fishing vessels under the jurisdiction of the United States in each area, is as follows:

(1) The annual catch in Division 5Z of Subarea 5 and in the adjacent waters to the west and south shall not exceed 4,000 metric tons.

(2) The annual catch in Division 5Y or Subarea 5 shall not exceed 21,000 metric tons.

(3) The combined annual catch by member countries in that portion of Division 4W south of 44°52′ N. latitude and in Division 4X of Subarea 4, for which specific allocations have not been assigned, shall not exceed 1,000 metric tons.

§ 242.3 Size limits.

A size limit is placed on the length of herring permitted to be taken by persons or fishing vessels, under the jurisdiction of the United States, in those portions of Division 4W south of 44°52′ N. latitude and Division 4X south of 43°50′ N. latitude of Subarea 4 and in Subarea 5.

(a) The taking or possession of herring less than 9 inches (22.7 cm.), measured from the tip of the snout to the end of the tail, is prohibited except as provided in paragraph (b) of this section.

(b) A person may take herring in any year, less than 9 inches (22.7 cm.), measured as specified in paragraph (a) of this section: *Provided,* That the total amount taken does not exceed 10 percent by weight of all herring caught in the areas above, specified by that fishing vessel during such year.

§ 242.4 Open season.

The open season for herring shall begin at 0001 hours of the first day of January each year and terminate in each subarea at a time and date to be determined and announced as provided in § 242.5.

§ 242.5 Closed season and areas.

(a) The Service Director shall maintain records of the catches of herring by fishing vessels subject to quota allocations in Subareas 4 and 5, and Statistical Area 6 during the open season. The Service Director shall announce the closure dates for herring fishing in Divisions 5Y and 5Z of Subarea 5, when the accumulated catch and estimated catch of herring, the quantity estimated to be taken before closure could be introduced, and the likely incidental catch for the remainder of the year, equal 100 percent of the allowable catch permitted under § 242.2(b) (1) and (2). Such announcement of the season closure dates shall be made by publication of a notice in the FEDERAL REGISTER.

(b) The Executive Secretary shall maintain records of the catches by fishing vessels, of all contracting governments participating in fishing for herring, subject to quota regulations in Subareas 4 and 5, during open seasons for which specific allocations have not been assigned. The Executive Secretary shall notify the United States when the accumulated catch and estimated catch of herring in Divisions 4W and 4X of Subarea 4, the quantity estimated to be taken before closure could be introduced, and the likely incidental catch for the remainder of the year, equal 100 percent of the allowable catch permitted under § 242.2(b). The Service Director shall announce the closure dates for the Divisions 4W and 4X of Subarea 4 herring fishing season within 10 days of the receipt of such notification from the Executive Secretary. Such announcement of the season closure dates shall be made by publication of a notice in the FEDERAL REGISTER.

§ 242.6 Incidental catch.

Except as otherwise provided in this part, nothing contained in § 242.7 shall apply to any person or vessel that, in the course of fishing in Subareas 4 or 5 for species not regulated under this part, takes and possesses a quantity of herring not to exceed 10 percent by weight of all fish on board the vessel or 5,000 pounds whichever is greater taken in the subarea where fishing was conducted. The exception provided in this section shall apply separately in Subareas 4 and 5. However, such vessel, its gear and equipment, shall be subject to inspection, at reasonable times, for the purposes of this part by authorized officials.

§ 242.7 Restrictions on fishing vessels.

(a) Except as provided in § 242.6, and as provided below, after the date announced in manner provided in § 242.5 for the closing of the herring fishing season, it shall be unlawful for any master or other person in charge of a fishing vessel to possess herring taken in the closed subareas or to land herring taken in those subareas in any port or place until the next succeeding open season for herring.

(b) In the event of an annual closure in Division 5Y or 5Z in Subarea 5 as provided in § 242.5, any fishing vessel, which had departed port to engage in herring fishing in Subarea 5 prior to the date of closure, may continue to take and retain herring in that subarea after the closure, for a period of time not to exceed 2 days, at which time fishing for herring in the closed subarea shall be prohibited. Within 24 hours after the expiration of the 2-day period, each fishing vessel must return to a port or place in the United States, and the master or person in charge of the fishing vessel must then immediately notify an authorized official of the vessel's arrival in port.

(c) In the event of an annual closure in Division 4W or 4X in Subarea 4 as provided in § 242.5, any fishing vessel, which had departed port to engage in herring fishing in Subarea 4 prior to the date of closure, may continue to take and retain herring in that subarea after the closure, for a period of time not to exceed 4 days, at which time fishing for herring in the closed subarea shall be prohibited. Within 24 hours after the expiration of the 4-day period, each fishing vessel must return to a port or place in the United States, and the master or person in charge of the fishing vessel must then immediately notify an authorized official of the vessel's arrival in port.

§ 242.8 Licenses, reports, and record keeping.

(a) The license and the log book required under this section shall be issued without fee by authorized officials of the Government of the United States.

(b) Unless permitted to do so by § 242.6, no person shall engage in fishing for herring within Subareas 4 and 5 of the Convention area, nor shall any person possess, transport or deliver, by means of any fishing vessel, herring taken within such area except under a license issued, and in force, in conformity with the provisions of this part.

(1) The owner or operator of a fishing vessel may obtain, without charge, a license by furnishing, on a form to be supplied by NMFS, information specifying the names and addresses of the owner and the operator of the vessel; the name, official number, and home port of the vessel; and the period for which the license is desired. The form shall be submitted, in duplicate, to the Regional Director, who shall grant the license for the duration specified by the applicant, in the form, but in no event to extend beyond the end of the calendar year during which the license is issued. New licenses shall similarly be issued to replace expired, lost, or mutilated licenses. An application for replacement of an expiring license shall be made, in like manner as the original application, not later than 10 days prior to the expiration date of the expiring license.

(2) The license issued by the National Marine Fisheries Service shall be carried at all times on board the vessel for which it is issued, and such license, the vessel, its gear and equipment, shall be subject to inspection, at reasonable times, for the purposes of this part by authorized officials.

(c) Licenses issued under this part may be revoked by the Regional Director for violations of this part.

(d) The owner or operator of a fishing vessel, for which a license under this part is in force, shall furnish, on a form supplied by NMFS, immediately upon landing a catch of herring made by means of such vessel, a report (See 18 U.S.C. 1001 (1970)), certified to be correct by the owner or operator, listing the total weight of all herring landed. Failure to submit a certified report pertaining to the catches of herring as required by this paragraph shall be cause for the Regional Director to revoke the license issued under this section.

(e) All persons, firms or corporations, that shall buy from fishing vessels, or from a carrier licensed as a common carrier engaged in either interstate or intrastate commerce, herring taken within the Convention area by a fishing vessel of the United States, shall keep and shall furnish to an authorized official of the National Marine Fisheries Service, within 72 hours of sale, records of each purchase.

(1) The statistical record furnished by the National Marine Fisheries Service must be completed and correct in all respects.

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

(f) The owner or operator of any fishing vessel holding a license under the regulations of this part shall keep, on forms furnished by NMFS, a daily log of fishing operations showing position, amount, date, type of gear, unit of effort, discards and disposition of herring catch. Such logs shall be available for reasonable inspection by authorized officials of the Government of the United States. At the conclusion of each fishing voyage, the duplicate of the log sheet shall be delivered to an authorized official of NMSF, Coast Guard, or Customs.

(g) For the purposes of inspection, NMFS officials shall have reasonable access to any area on board a fishing vessel, transport, or shore facility where fish are landed, handled, stored, or processed, and to areas where fishing gear or parts of fishing gear are used, assembled, or stored.

[FR Doc.72-15874 Filed 9-15-72;8:53 am]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM-57, Amdts. 171-14, 172-14, 173-61, 174-14, 175-7, 177-21]

PART 171—GENERAL INFORMATION AND REGULATIONS

PART 172—COMMODITY LIST OF HAZARDOUS MATERIALS CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL ARTICLES SUBJECT TO PARTS 170–189 OF THIS CHAPTER

PART 173—SHIPPERS

PART 174—CARRIERS BY RAIL FREIGHT

PART 175—CARRIERS BY RAIL EXPRESS

PART 177—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

Classification of Corrosive Hazards; Postponement of Mandatory Effective Date

On March 23, 1972, and on April 26, 1972, the Hazardous Materials Regulations Board published Docket No. HM-57; Amendments Nos. 171-14, 172-14, 173-61, 174-14, 175-7, 177-21 (37 F.R. 5946 and 8383) prescribing new regulations for the classification, packaging, marking, labeling, and transportation of corrosive materials. Compliance with these amendments has been authorized as of April 21, 1972. However, the mandatory effective date was specified as December 31, 1972.

The Hazardous Materials Regulations Board has received several petitions concerning difficulties with completing testing of materials now being shipped, in time to meet the mandatory effective date. Also several petitioners have requested the Board to consider authorizing additional packaging, particularly for materials shipped in bulk quantities. The Board considers that the petitions have merit. They contain justification to postpone the effective date in this docket and to further study the required packaging. In view of these petitions, the Board hereby gives notice that the mandatory effective date for Amendments Nos. 171-14, 172-14, 173-61, 174-14, 175-7, 177-21 is changed from December 31, 1972, to June 30, 1973. However, voluntary compliance continues to be authorized.

In addition, the Board intends to publish at a later date additional regulations pertaining to authorized packaging of corrosive materials, particularly liquids.

Several petitions for reconsideration were received listing many chemicals heretofore not covered by the Hazardous Materials Regulations. However, the petitioners failed to indicate by which test each material met the corrosive materials definition. The Board is requesting that supplemental information be furnished by the petitioners to permit the Board to evaluate separately those corrosive substances that are corrosive only by the steel or aluminum test criteria, or both. The Board requests that this information be submitted before November 30, 1972.

Issued in Washington, D.C., on September 12, 1972.

ALAN I. ROBERTS,
Secretary.

[FR Doc.72-15818 Filed 9-15-72;8:50 am]

Chapter X—Interstate Commerce Commission

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 274 (Sub-No. 1)]

PART 1211—ABANDONMENT OF RAILROAD LINES

Special Relief for Certain Railroads

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 22d day of August 1972.

Upon consideration of (1) the order in the above-entitled proceeding dated January 14, 1972 (prior order), (2) numerous petitions and letter-requests for reconsideration, repeal and/or hearing, and replies thereto, as enumerated below, including a reply filed jointly by the Commonwealth of Pennsylvania and the Pennsylvania Public Utility Commission, requesting that the Commission disqualify itself from further participation herein; and

It appearing, that the response of the Commission dated March 15, 1972, to the Report of Trustees on Reorganization Planning in the Penn Central Reorganization Proceeding, "In Re Penn Central Transportation Company, Debtor," Bankruptcy No. 70-347 (E.D. Pa.), does not constitute a prejudgment of the proceeding herein and that, accordingly, the request for disqualification should be denied; and

It further appearing, that following service of the prior order, the matter was appealed to the U.S. District Court for the Middle District of Pennsylvania; that during the pendency of that suit, this Commission issued on February 4, 1972, a notice stating in substance that petitions for hearing and reconsideration would be considered and that no abandonment application would be dealt with under the new rules until those petitions were decided; that thereupon, the said court on February 16, 1972, directed that operation of the prior order herein be restrained until further order of the court or until this Commission renders a decision on the said petitions, whichever sooner occurs; and that no further order herein has thus far been issued by said court;

It further appearing, that much of the opposition to the prior order is directed against railroad abandonments in general, and would likely be registered against any rule or procedure established to expedite the decisional process in abandonment proceedings, thus indicating that hearing and additional proceedings herein would produce only repetitious and cumulative presentations by these petitioners;

It further appearing that in deriving the average carload figure in Subpart B, this Commission took into consideration findings made upon the evidentiary records compiled in each of the 39 study cases, that those findings related to such factors as public need and use of the abandonment line, system traffic and revenue generated thereby, and the costs of handling that traffic on the abandonment trackage and on the rest of the carrier's system; thereby reflecting in the study, various factors ordinarily considered in deciding abandonment cases, except that the study does not include costs which the carrier would incur in rehabilitating the line for continued operation, an omission which tends to minimize the break-even carload figure; and that in reaching the conclusions supporting Subpart C, this Commission drew upon the files and records of nearly 1,000 abandonment proceedings in the 10-year period ending with the year 1970; and that petitioners, though making numerous and diverse representations on petition, have not suggested how any presentations they might make at a hearing would enhance or alter the basis for this Commission's judgments as expressed in the prior order;

It further appearing, that neither in the Administrative Procedure Act, nor elsewhere in the law, is there a requirement for hearing in a rulemaking proceeding where, as here, the administrative agency for good cause finds a hearing to be unnecessary and incorporates the finding and a brief statement of the reasons therefor in the rules issued (5 U.S.C. 553(b)); and that, nevertheless, this Commission has afforded the public full opportunity to comment on the subject rules and has accorded due consideration thereto;

It further appearing, that at several places the prior order contains the expression "where no public objection is sustained," or words of like import; that several petitioners express concern about the meaning of this language, particularly the word "sustained"; and that, upon reconsideration, it is concluded that the said language should be clarified to indicate that for public objection to be "sustained," it must be significant and material, or, in other words, of sufficient quality on its face to warrant a hearing.

It is ordered, That §§ 1121.24 and 1121.30–1121.35 (37 F.R. 1046) are amended to read as set forth below.

It is further ordered, That, for information purposes, there shall be appended below, a list of the 39 study cases upon which Subpart B of the rules is based, along with various data extracted therefrom, and the formula and computations used in deriving the 34-car figure.

It is further ordered, That, except to the extent granted above, the petitions be, and they are, hereby denied.

And it is further ordered, That notice of this order on further consideration shall be given to the public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D.C., and by publication of this order in the FEDERAL REGISTER.

Special procedures for proposed railroad abandonment where there is no significant and material public objection or where the requirements of public convenience and necessity are minimal or nonexistent.

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 14th day of January 1972.

These amendments to Part 1121 of the Commission's regulations governing the filing and handling of applications to abandon railroad lines, or the operation thereof, provide special relief, reducing costs, and expediting disposition of applications where there is no significant and material public objection, or where the requirements of public convenience and necessity are minimal or nonexistent.

A large majority of the abandonment cases decided by the Commission in the past 10 years have been unopposed by the general public or specific shippers. The record in such cases generally shows that there is little or no traffic moving over the lines of railroad (hereinafter referred to as "abandonment trackage"); that there are little or no prospects for additional tonnage; that the abandonment trackage is generally in poor physical condition, with operations thereover substantially slowed down for reasons of safety; and that the materials that can be salvaged after the abandonments frequently can be sold or used to public advantage in the operations of the applicant and in the public interest. Based on this experience in abandonment proceedings, it is apparent that the same long-form application and its attendant procedures are not warranted in all instances. It is the purpose of these amendments to provide for the use of more expedient and more economical short-form applications and procedures in situations where the applicant does not anticipate serious public opposition, or where the public's use of the abandonment trackage has been minimal. In such cases, the lack of significant and material public opposition, or the negligible or minimal public use of the facilities, would give rise to a finding that the public convenience and necessity permit the proposed abandonment.

§ 1121.24 Refiling.

An application filed pursuant to this Subpart B may not be refiled under these special rules sooner than 1 year from the last publication date as provided in § 1121.5.

Subpart C—Special Relief for Railroads Proposing Abandonments Where There Is No Significant and Material Public Objection

Sec.

1121.30 Scope of special rules.
1121.31 Applications (short-form).
1121.32 Notice, publication, posting, service.
1121.33 Defective or inadequate notice.
1121.34 No public objection, waivers, certification.
1121.35 Public objection, withdrawal, refiling.

AUTHORITY: The provisions of this Subpart C issued under Sec. 1 (18)–(20), 49 Stat. 543, as amended; 49 U.S.C. 1.

§ 1121.30 Scope of special rules.

These special rules govern the filing and handling of applications (short-form) under section 1, paragraphs (18) to (20), inclusive, of the Interstate Commerce Act (49 Stat. 543, as amended; 49 U.S.C. 1 (18)–(20)), for certificates of public convenience and necessity authorizing the abandonment of a line of railroad, or the operation thereof, where there is no significant and material public objection; and certain other procedural matters with respect thereto.

§ 1121.31 Applications (short-form).

(a) *Carriers to be assigned an abandonment docket number.* Each carrier by railroad desiring to propose abandonments pursuant to these special rules shall request the Commission to assign to it an abandonment docket number (No. AB- _____). Thereafter, carrier shall date and consecutively subnumber each short-form application at the bottom of each page in substantially the following manner:

No. AB- ____ (Sub-No. ____), ____ (date)

(b) *Form and style.* Applications shall be in the form of a notice, the front page of which may be on the letterhead of the applicant. Applications shall be typewritten or printed on paper approximately 8½ x 11 inches with 1½-inch margin at the left side for binding.

Reproduction may be by any process which provides clearly legible copies. The words "Notice of Proposed Abandonment" shall be in large boldface type near the top. If printed, nothing less than 12-point type shall be used in the remainder of the notice.

(d) *Certificate of service.* A certificate of mail service and proof of publication and posting of the notice shall be filed with the Commission at least 10 days before the date specified in the notice for the filing of protests.

§ 112.33 Defective or inadequate notice.

Where the notice required by § 1121.32 is inadequate or defective, the applicant will be so advised by the Commission with a statement specifying the inadequacies. The applicant may publish, post, and serve a notice with appropriate modification unless the Commission has already determined that significant and material public objection has been registered against the proposed abandonment, in which event the Commission will so notify the applicant, thereby precluding further use of this Subpart C for the application.

§ 1121.34 No public objection, waivers, certification.

(a) *Waiver of additional information.* Where no public objection is submitted, maintained in force, and unsatisfied, all or any part of the information requirements in § 1121.1 may be waived.

(b) *Waiver of additional fee.* Where there is no significant and material public objection, the balance of the filing fee for an application (long-form) under subpart A of this part shall be waived.

(c) *Certification.* Appropriate certificates and orders will be issued to applicants found eligible to abandon lines of railroad, or the operation thereof, pursuant to these special rules.

§ 1121.35 Public objection, withdrawal, refiling.

(a) *Partial withdrawal.* Where there is significant and material public objection as to only a part of the line being proposed for abandonment, the applicant, with the consent of the protestants, may request that, that part of the application be withdrawn, and that a certificate be issued permitting abandonment of the remainder of the line sought to be abandoned.

(b) *Applicant may file (long form) application.* A notice upon which there is significant and material public objection, in whole or in part, is without prejudice to applicant's right to file and prosecute an application for the same authority, or any portion thereof, pursuant to the provisions of Subparts A or B of this part. As soon as practicable after public objection is made, the Commission will request applicant to advise whether an application under Subparts A or B will be filed and prosecuted. If such an application is filed not more than 60 days after the last publication date as provided in § 1121.32(a), notice and service of the application (long form) will be required only as provided in § 1121.5(b). The fee paid under § 1121.31(g) will apply toward the fee for the application (long form).

(c) *Application may be dismissed.* Where public objection has been found significant and material, and no application under subparts A or B is filed, the application under these rules will be deemed to have been withdrawn and will be dismissed.

(d) *No refiling within 1 year.* A notice to which public objection has been found significant and material, may not be refiled under this Subpart C sooner than 1 year from the last publication date as provided in § 1121.32(a).

(Secs. 1(18)–(20) and 12, 49 Stat. 543, as amended, and 24 Stat. 383, as amended; 49 U.S.C. 1(18)–(20), 12)

It is further ordered, That this order shall become effective upon publication in the FEDERAL REGISTER (9–16–72).

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

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

Table 1

Break-even Carloads per Mile and Underlying Data for 39 Heard Rail Line Abandonment Cases Decided in 1969 and 1970

F.D. No.	Carloads	Miles of track to be abandoned	On-line cost	Off-line cost	Total revenue per car	On-line cost per mile	Actual carloads per mile	Break-even carloads per mile
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
24721	137	20.09	$ 55,897	$11,987	$200.59	$ 2,782	6.82	23.90
24730	534	59.74	254,069	36,187	150.64	4,253	8.94	44.26
24733	10	16.68	49,374	1,004	203.80	2,960	.60	28.63
24783	7	5.59	8,500	191	137.43	1,521	1.25	13.81
24790	27	14.00	25,496	2,061	160.15	1,821	1.93	21.71
24813	46	20.70	45,385	1,780	212.61	2,193	2.22	12.61
24846	15	20.20	56,667	585	82.12	2,805	.74	65.04
24887	164	30.70	65,088	623	158.87	2,120	5.34	13.67
24888	45	4.54	8,531	2,227	101.09	1,879	9.91	36.42
25035	84	29.80	27,642	4,223	141.31	928	2.82	10.19
25116	648	17.20	97,360	33,712	162.98	5,660	37.67	51.44
25123	116	1.97	4,634	1,734	45.09	2,352	58.88	78.05
25126	629	23.03	94,690	10,923	83.24	4,112	27.31	62.41
25135	1414	104.16	229,929	65,528	163.87	2,207	.14	18.78
25187	171	7.55	28,854	20,095	358.53	3,822	22.65	15.86
25188	14	1.20	5,209	996	146.93	4,341	11.67	57.27
25201	309	9.77	62,498	30,125	211.89	6,396	31.63	55.91
25306	1	6.92	6,739	101	221.00	974	.14	8.12
25386	1106	20.50	226,571	74,838	144.12	11,052	53.95	144.55
25390	53	31.94	33,523	3,053	134.70	1,050	1.66	13.80
25422	114	6.31	13,482	9,051	172.95	2,137	18.07	22.84
25423	14	17.46	8,868	1,245	190.21	508	.80	5.86
25534	250	13.80	54,445	28,121	235.88	3,945	18.12	31.07
25548	617	35.10	65,153	20,721	81.68	1,856	17.58	38.60
25588	66	11.77	42,378	5,705	180.67	3,601	5.61	38.21
25617	173	21.60	27,684	11,821	148.83	1,282	8.01	15.02
25644	294	20.90	18,623	18,398	146.53	977	14.07	11.77
25648	484	6.40	33,742	23,294	100.84	5,272	75.63	100.02
25690	1,055	32.20	63,429	43,853	90.41	1,970	32.76	40.33
25710	661	74.10	137,770	66,504	271.87	1,859	8.92	10.86
25737	498	14.39	64,135	39,443	170.02	4,457	34.61	49.07
25747	32	1.22	2,597	1,768	112.09	2,129	26.23	37.47
25758	126	57.35	18,003	25,725	431.75	314	2.28	1.38
25821	144	14.56	15,304	7,235	115.87	1,051	9.89	16.01
25826	5	11.89	22,099	470	197.60	1,859	.42	17.91
25911	325	13.98	33,353	15,746	117.88	2,386	23.25	34.36
25948	45	27.10	26,428	1,734	96.56	975	1.66	16.81
25969	334	24.63	85,848	21,655	144.04	3,480	13.56	44.01
26025	66	13.95	22,746	432	53.95	1,631	4.73	34.39

Notes:

Column 7 = col. 1 ÷ col. 2

Column 8 = col. 6 ÷ [col. 5 − (col. 4/col. 1)]

Table 2

Calculation Procedure

Definitions:	Example F. D. No. 26207 (C&NW)
TC = Total Cost	TC = $23,888
F = Avoidable branch costs	F = $18,030
aV = Off-branch costs[1/]	aV = $ 5,858[1/]
V = Number of cars (actual)	V = 90
a = Off-branch cost per car	$a = \frac{\$5,858}{90} = \$65.09$
TR = Total Revenue	TR = $14,074
v = Miscellaneous and rents (non-freight) revenue	v = 0
bV = Freight revenue	bV = $14,074
b = average freight revenues per car	$b = \frac{\$14,074}{90} = \$156.38$
M = Branch line miles	M = 11

Relationships:

1) $TC = F + aV$

2) $TR = v + bV$

Break-even requires revenues equal costs, i.e.;

3) $TC = TR$ or

3a) $F + aV = v + bV$

To express this break-even in carload terms, all other things remaining the same, it is necessary to "solve" 3a) in terms of $\hat{V}$. $\hat{V}$ is the number of car loads at which total costs, as expressed in 1) above, will equal total revenues as expressed in 2) above.

Thus, repeating 3a):

3a) $F + a\hat{V} = v + b\hat{V}$ $\quad 18030 + 65.09\hat{V} = 0 + 156.38\hat{V}$

3b) $F - v = b\hat{V} - a\hat{V}$ $\quad 18030 - 0 = 156.38\hat{V} - 65.09\hat{V}$

3c) $F - v = (b - a)\hat{V}$ $\quad 18030 = (156.38 - 65.09)\hat{V}$

3d) $\frac{F - v}{(b-a)} = \hat{V}$ $\quad \frac{18030}{91.29} = \hat{V} = 197.5$

Finally, to express this in terms of carloads per mile of branch line we need to divide by branch line mileage, M.

Thus:

4) $\frac{\frac{F-v}{(b-a)}}{M} = \frac{\hat{V}}{M}$ $\quad \frac{\hat{V}}{M} = \frac{197.5}{11} = 17.95$

The break-even carloads per mile in the example, therefore, will be 18.0.

Petitions for reconsideration, repeal and/or hearing were filed by the following parties:

1. Congress of Railway Unions.
2. Murray Industries, Inc., Village of Slayton Railroad Improvement Association, and County of Murray, Minn.
3. National Council of Farmer Cooperatives, National Association of Wheat Growers, National Farmers Union, National Grange, and National Federation of Grain Cooperatives.
4. North Dakota Public Service Commission.
5. Iowa Grain & Feed Association.
6. Nebraska State Railway Commission.
7. FS Services, Inc., and Illinois Agricultural Association.
8. North Iowa Asphalt Co., Stanton, Nebr.
9. Iowa Department of Agriculture.
10. State Corporation Commission of the State of Kansas.
11. American Farm Bureau Federation.
12. State of Minnesota.
13. Commonwealth of Pennsylvania and Pennsylvania Public Utility Commission.
14. National Grain and Feed Association.
15. Land O'Lakes, Inc.
16. PennAg Industries Association.
17. Department of Transportation of the State of New York.
18. Producers Grain Corporation.
19. U.S. Department of Agriculture.
20. Iowa State Commerce Commission.
21. Railway Labor Executives' Association.
22. National Association of Regulatory Utility Commissioners.
23. Farmers Union Central Exchange, Inc.
24. Farmland Industries, Inc.
25. Citizens of Roland, Iowa.
26. Nebraska Agricultural Council.

Replies have been filed by the following parties:

1. Association of American Railroads.
2. U.S. Department of Transportation.
3. Penn Central Transportation Company, Debtor.
4. Commonwealth of Pennsylvania and Pennsylvania Public Utility Commission (requesting disqualification of ICC).

Letter requests and telegrams (in support and in opposition) have also been received.

[FR Doc.72-15837 Filed 9-15-72;8:52 am]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 722]

UPLAND COTTON

Proposed Determinations Regarding 1973 Crop

The Secretary of Agriculture is preparing to make the following determinations with respect to the 1973 crop of upland cotton (referred to as "cotton"):

a. Amount of the national production goal.

b. Amount of the national base acreage allotment.

c. Apportionment of the national base acreage allotment to States and counties.

d. Loan level and 2-year average world market price.

e. Cropland set-aside percentage.

f. Unrestricted use sales policy.

g. Specifications for bagging and bale ties used in wrapping cotton pledged for Commodity Credit Corporation Loans.

The first three determinations listed above are to be made pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.):

(a) *National production goal.* Section 342a of the act requires the Secretary to proclaim a national production goal for the 1973 crop by November 15, 1972. Such production goal (in terms of standard bales of 480 pounds net weight) shall be the number of bales of cotton equal to the estimated domestic consumption and estimated exports for the 1973–74 marketing year, which begins August 1, 1973, plus an allowance of not less than 5 percent of such estimated consumption and estimated exports for market expansion. Section 342a further provides that the Secretary shall make such adjustments in the amount of the production goal as he determines necessary after taking into consideration the estimated stocks of cotton in the United States (including the qualities of such stocks) and stocks in foreign countries, which would be available for the 1973–74 marketing year, to assure the maintenance of adequate but not excessive carryover stocks in the United States (not less than 50 percent of the average offtake for the 3 preceding marketing years) to provide a continuous and stable supply of the different qualities of cotton needed in the United States and in foreign cotton-consuming countries and, in addition, to provide an adequate reserve for purposes of national security.

(b) *National base acreage allotment.* Section 350(a) requires the Secretary to establish and announce a national base acreage allotment for the 1973 crop of cotton by November 15, 1972. It states, "The national base acreage allotment for any crop of cotton shall be the number of acres which the Secretary determines on the basis of the expected national yield will produce an amount of cotton equal to the estimated domestic consumption of cotton (standard bales of 480 pounds net weight) for the marketing year beginning in the year in which the crop is to be produced, plus not to exceed 25 per centum thereof if the Secretary, taking into consideration other actions he may take under the Agricultural Act of 1970, determines that such additional amount is necessary to provide for a production which will equal the national cotton production goal, except that such national base acreage allotment shall be 11,500,000 acres for the 1971 crop and in the case of the 1972 and 1973 crops shall be in such amount as the Secretary determines necessary to maintain adequate supplies."

(c) *Apportionment of the national base acreage allotment to States and counties.* Sections 350 (b) and (c) provide that the national base acreage allotment for 1973 shall be apportioned to States and counties on the basis of the acreage planted (including acreage regarded as having been planted) to cotton within the farm acreage allotment during 1967, 1968, 1969, and 1970, and the farm base acreage allotment during 1971, adjusted for abnormal weather conditions or other natural disasters during such period. Section 350(c) further provides that the State committee may reserve not to exceed 2 percent of its State allotment to adjust county allotments for trends in acreage, for counties adversely affected by abnormal conditions affecting plantings, or for small or new farms, or to correct inequities in farm allotments and to prevent hardships.

The following determinations will be made pursuant to the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1421 et seq.):

(d) *Loan level and 2-year average world market price.* Section 103(e)(1) of the act requires the Secretary to determine and announce the loan level for the 1973 crop by November 1, 1972. Such loan level must reflect—for Middling 1-inch cotton, micronaire 3.5 through 4.9 at average location in the United States—90 percent of the average world price for such cotton for the 2-year period August 1, 1970, through July 31, 1972, except that, following 1 or more years of excessively high prices, adjustments may be made in the loan level in order to keep U.S. cotton competitive and to retain an adequate share of the world market. Section 103(e)(1) further requires the Secretary to determine the 2-year average world price annually pursuant to a published regulation specifying the procedures and factors to be used in making the determination. Such regulation was published in the FEDERAL REGISTER on December 12, 1970 (35 F.R. 18913).

(e) *Cropland set-aside percentage.* Section 103(e)(4)(A) requires the Secretary to provide for a set-aside of cropland if he determines that the total supply of agricultural commodities will, in the absence of such a set-aside, likely be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency. If a set-aside of cropland is in effect, then as a condition of eligibility for loans and payments on cotton, producers must set aside and devote to approved conservation uses an acreage of cropland equal to such percentage of the farm base acreage allotment as the Secretary determines (not to exceed 28 percent), in addition to the soil-conserving base established for the farm.

(f) *Unrestricted use sales policy.* Section 407 provides that the sales price cannot be less than 110 percent of the loan rate for Middling 1-inch cotton (micronaire 3.5 through 4.9), adjusted for such current market differentials reflecting grade, quality, location, and other value factors determined appropriate, plus reasonable carrying charges, except that a quantity of cotton equal to any "shortfall" (amount by which 1973 production is less than estimated requirements for domestic use and for export for the 1973–74 marketing year) must be made available at current market prices.

(g) *Specifications for bagging and bale ties.* The specifications for jute bagging and bale ties used in wrapping cotton tendered to Commodity Credit Corporation under its cotton loan program regulations published in 36 F.R. 13981, as amended, will be reviewed for the 1973 crop. The latest revision of these specifications was published in the FEDERAL REGISTER on February 19, 1972 (37 F.R. 3742).

Prior to making any of the foregoing determinations, consideration will be given to any data, views, and recommendations, which are submitted in writing to the Director, Cotton Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be sure of consideration, all submissions must be received not later than 30 days after publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday in Room 4091, South Building, 14th and Independence Avenue SW., Washington, D.C.

Signed at Washington, D.C., on September 13, 1972.

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

[FR Doc.72-15809 Filed 9-15-72;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 19]

COTTAGE CHEESE DRY CURD AND IDENTITY STANDARD

Proposed Direct Acidification by Vat Method With Appropriate Product Labeling

Notice is given that a petition has been filed by the Milk Industry Foundation, 910 17th Street NW., Washington, DC 20006, proposing that the standard of identity for cottage cheese dry curd (21 CFR 19.525), be amended to permit direct acidification by the vat method and to amend the labeling provisions of §§ 19.525 and 19.530 pertaining to this proposed alternate manufacturing process, to remain consistent with the present standards for cottage cheese dry curd and cottage cheese when made by direct acidification in a continuous process.

Grounds set forth in support of the proposal are as follows: The present standard for cottage cheese dry curd permits a mechanized, continuous process of manufacturing cottage cheese dry curd by direct acidification, utilizing named optional ingredients to obtain the desired level of acidity necessary to coagulate the skim milk. The manufacture of cottage cheese dry curd in an ordinary cheese vat by direct acidification requires the slow, even development of acidity much like that produced by bacteria in the conventional process of making cottage cheese dry curd. This proposed amendment, provides for a method of accomplishing this slow acid development by utilizing food grade acidulants already allowed in the cottage cheese dry curd standard, and the use of Glucono-delta-lactone as a key ingredient.

Glucono-delta-lactone has a unique property, in that after it is evenly dispersed in a vat of skim milk, it slowly changes into an acidulant. Glucono-delta-lactone and the acidulant it forms are both generally recognized, at present, as safe for use in food. Chemical analysis of cottage cheese dry curd made with the aid of Glucono-delta-lactone revealed no greater quantity of Gluconolactones than found in cottage cheese dry curd made of conventional processes. A consumer research study demonstrated that cottage cheese dry curd made by the direct acidification-vat method was virtually identical and indistinguishable from that made by the continuous method. The proposal provides greater uniformity of product and allows manufacturers more flexibility in selecting an alternate manufacturing procedure.

Accordingly, it is proposed that § 19.525 be amended by adding a new subdivision (iii) to paragraph (b)(1) and revising paragraph (d); and that § 19.530(d) be revised to read as follows:

§ 19.525 Cottage cheese dry curd; identity; label statement of optional ingredients.

* * * * *

(b) * * *
(1) * * *

(iii) Food grade acids as provided in subdivision (ii) of this subparagraph, D-Glucono-delta-lactone with or without rennet, and/or other safe and suitable milk clotting enzyme that produces equivalent curd formation, are added in such amounts as to reach a final pH value in the range of 4.5–4.8, and it is held until it becomes coagulated. The coagulated mass may be cut; it may be warmed; it may be stirred; it is then drained. The curd is then washed with water, and further drained. It may be pressed, chilled, worked, and seasoned with salt.

* * * * *

(d) When either of the optional processes described in paragraph (b)(1) (ii) or (iii) of this section is used to make cottage cheese dry curd, the label shall bear the statement "Directly set" or "Curd set by direct acidification." Wherever the name of the food appears on the label so conspicuously as to be seen under customary conditions of purchase, the statement specified in this paragraph, showing the optional process used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter.

§ 19.530 Cottage cheese; identity; label statement of optional ingredients.

* * * * *

(d) When the optional process described in § 19.525(b)(1) (ii) or (iii) is used to make the cottage cheese dry curd used in cottage cheese, the label shall bear the statement "Directly set" or "Curd set by direct acidification." Wherever the name of the food appears on the label so conspicuously as to be seen under customary conditions of purchase, the statement specified in this paragraph, showing the optional process used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter.

* * * * *

By cross-reference, these proposed amendments, if adopted, will have the effect of providing for the optional use of D-Glucono-delta-lactone in lowfat cottage cheese (§ 19.531).

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055–1056, as amended by 70 Stat. 919 and 72 Stat. 948; 21 U.S.C. 341, 371) and in accordance with authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), interested persons are invited to submit their views in writing (preferable in quintuplicate) regarding this proposal within 60 days after publication in the FEDERAL REGISTER. Such views and comments should be addressed to the Hearing Clerk, Department of Health, Education, and Welfare, Room 6–88, 5600 Fishers Lane, Rockville, MD 20852, and may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated: August 21, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-15817 Filed 9-15-72;8:48 am]

Office of the Secretary

[41 CFR Part 3-3]

PROCUREMENT BY NEGOTIATION

Selection of Offerors for Negotiation and Award

Notice is hereby given in accordance with the administrative provisions in 5 U.S.C. 553 that pursuant to the Federal Property and Administrative Services Act of 1949, as amended, the Office of the Secretary is considering an amendment to 41 CFR, Chapter 3, by amending Part 3-3, Procurement by Negotiation, to add a new Subpart 3-3.51, Selection of Offerors for Negotiation and Award.

Any person who wishes to submit written data, views, or objections, pertaining to the proposed amendment, may do so by filing them in duplicate with the Director of Procurement and Material Management, OASAM, Room 3340, HEW North Building, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, DC 20201, within 30 days following publication of this notice in the FEDERAL REGISTER. All comments submitted pursuant to this notice will be available for public inspection during regular business hours in the Office of Procurement and Material Management.

This amendment provides guidance to all DHEW personnel regarding (i) evaluation of the technical and other aspects of proposals, and (ii) the requirement for "written or oral discussions" with concerns whose proposals are "within a competitive range" under competitive negotiated procurements.

Dated: September 12, 1972.

N. B. HOUSTON,
Deputy Assistant Secretary for Administration.

As proposed, the new Subpart 3–3.51 would read as follows:

Subpart 3–3.51—Selection of Offerors for Negotiation and Award

Sec.
3-3.5100 Scope of subpart.
3-3.5101 Applicability.
3-3.5102 Requests for proposals.
3-3.5103 Evaluation of technical proposals.
3-3.5104 Technical evaluation report.
3-3.5105 Evaluation of business proposals.
3-3.5106 Competitive range.
3-3.5107 Conduct of discussions.
3-3.5108 Closing of negotiations.
3-3.5109 Selection of contractor.
3-3.5110 Notice and debriefing.

§ 3–3.5100 Scope of subpart.

This section provides guidance to all DHEW personnel regarding (a) evaluation of the technical and other aspects of proposals and (b) the requirement for "written or oral discussion" with concerns whose proposals are "within a competitive range," under competitive negotiated procurements.

§ 3–3.5101 Applicability.

This section is applicable to all competitive negotiated procurements conducted by DHEW under the authority of the Federal Procurement Regulations (FPR). Those portions of this section concerning written or oral discussions need not be applied: (a) to procurements in implementation of authorized set-aside programs; (b) to procurements where the existence of adequate competition or accurate prior cost experience with the product clearly demonstrates that acceptance of an initial proposal without discussions would result in fair and reasonable prices, provided the request for proposals notifies all offerors of the possibility that award may be made without discussion and provided award is in fact made without any written or oral discussions.

§ 3–3.5102 Requests for proposals.

(a) Careful drafting of the request for proposals (RFP) is vital to the proper working of the competitive process. Particular efforts must be made to develop an accurate statement of work in order to preclude ambiguities and to avoid misunderstandings which might otherwise surface at later stages of the procurement.

(b) The RFP shall require that a proposal generally will be in two parts: a "Technical Proposal" and a "Business Proposal." Each of the parts shall be separate and complete in itself so that evaluation of one may be accomplished independently of and concurrently with evaluation of the other. Generally, the RFP will provide that the "Technical Proposal" not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., shall be included in the "Technical Proposal" so that offeror's understanding of the scope of work may be evaluated.

(c) The instructions to the offerors concerning the "Business Proposal" should require submission of cost information in sufficient detail to allow a complete cost analysis. Categories and amounts of labor, materials, travel, computer time, as well as information with regard to contractor past performance, including contracts or subcontracts for like services or supplies, financial capacity, certifications, and representations, and other pertinent administrative and business information should also be requested.

(d) Evaluation criteria must be developed by technical personnel, at the time of initiation of the procurement request, for inclusion by the contracting officer in the RFP. These criteria and their relative importance or weight require the exercise of judgment on a case-by-case basis, since the criteria must be tailored to the requirements of each particular procurement. These criteria must be submitted to the contracting officer in sufficient time to allow for this review before the issuance of the request for proposal. Since these criteria will serve as the standard against which all proposals will be evaluated, it is imperative that they be chosen carefully to emphasize those factors considered to be critical to the selection of a contractor.

(e) The RFP must inform offerors of all evaluation criteria and of the relative importance or weight attached to each criterion, although there need not be stated a numerical weighting formula. Evaluation criteria shall be described fully enough in each RFP to inform prospective offerors of the significant matters which should be addressed in the proposals. The technical and business proposal instructions of the RFP must inform the offeror of all information deemed essential to proper evaluation of the proposal, so that all competitors are aware of all requirements and so that the difference(s) in proposals will reflect the offeror's differing responses to unambiguous RFP requirements and criteria.

(f) No other factors other than those set forth in the request for proposals as the evaluation criteria shall be used in the evaluation of technical proposals.

(g) The RFP evaluation criteria shall not be modified except by a formal amendment to the RFP.

§ 3–3.5103 Evaluation of technical proposals.

(a) The technical proposals received by the contracting officer will be forwarded to the technical evaluators for evaluation; the business portion of the proposal will be retained by the contracting officer for evaluation.

(b) The technical evaluators will evaluate each proposal in strict conformity with the evaluation criteria of the RFP and will assign each proposal a score. A technical ranking will then be compiled. The technical evaluators shall then identity each proposal as either acceptable or unacceptable. Predetermined cutoff scores shall not be employed.

(c) The technical evaluators shall then determine whether any proposal which has been rated as unacceptable might be considered acceptable upon the furnishing of clarifying data by the offeror, and the contracting officer will be so informed. The contracting officer will arrange for the submission of clarifying data in writing or by consultation, and furnish it to the technical evaluators for their consideration.

(d) It is essential to the competitive procurement process that all information contained in offerors' proposals be maintained in strict confidence. In no event during the evaluation period shall any offeror be told the number of proposals received, prices, cost ranges, or the Government cost estimate. No discussions with any offeror relative to any aspect of the procurement shall be held outside the presence of the contracting officer.

(e) For the sole purpose of eliminating any uncertainty or ambiguity in an initial proposal, the contracting officer may make inquiry of an offeror. Such inquiry of and clarification furnished by such offeror shall not be considered to constitute "discussions" within the meaning of § 1–3.805–1(g) of this title and shall not necessitate any inquiry of other offerors. However, if the clarification revises his proposal or it would in any way prejudice the interests of other offerors, discussions must be held with all responsible offerors within the competitive range.

§ 3–3.5104 Technical evaluation report.

A technical evaluation report shall be prepared and signed by the technical evaluators, furnished the contracting officer, and maintained as a permanent record in the contract file. The report shall reflect the ranking of the proposals and shall identify each proposal as acceptable or unacceptable in accordance with § 3–3.5103 (b) and (c). The report shall also include a narrative evaluation specifying the strengths and weaknesses of each proposal, and any reservations or qualifications that might bear upon the selection of sources of negotiation and award. Concrete technical reasons supporting a determination of unacceptability with regard to any proposal shall be included.

§ 3–3.5105 Evaluation of business proposals.

(a) Each business proposal requires some form of price or cost analysis. The contracting officer must exercise judgment in determining the extent of analysis in each case. In high-dollar value procurements, the analysis should be thorough and the record carefully documented to disclose the extent to which the various elements of costs, fixed fee, or profit contained in the contractor's proposals were analyzed. The negotiation memorandum should also reflect the consideration given to the recommendations, if any, of the price analyst and the basis for nonacceptance or departure from the recommendations during the course of negotiations.

(b) The contracting officer must appraise the management capability of the offeror to perform the required work in a timely manner. In making this appraisal, he must consider such factors

as the company's management organization, past performance, reputation for reliability, and availability of the required facilities, and cost controls.

§ 3–3.5106 Competitive range.

Unless an award is made without any discussions in accordance with § 3–3.5101, discussions shall be conducted with each offeror in the "competitive range." The competitive range is composed of those offerors with which there is a possibility of conducting meaningful discussions which could result in the improvement of their offers, price and other factors considered. Determining which proposals fall within a competitive range will depend upon the particular circumstances of each negotiation. Cost or price alone is sometimes controlling, but technical capability and other relevant criteria may be paramount. The decision as to which firms are and which firms are not within a competitive range is a matter of administrative discretion. There could conceivably be a business proposal in which the cost or price is so high that it seems to be completely out of the competitive range. However, before making such a determination the contracting officer should consult with the technical personnel to determine possible reasons for the apparently excessive price. In determining the competitive range, the contracting officer should consider the following:

(a) A proposal must be considered to be within the competitive range unless it is either so inferior technically or so high in cost as to preclude any possibility of meaningful negotiation with the offeror, or unless the offeror does not have a reasonable chance of being selected for the final award.

(b) The competitive range should be decided on the basis of the array of scores or relative ranking of the offerors, not on a predetermined absolute score or cutoff level of acceptability. Borderline proposals must not be excluded from consideration automatically if they are reasonably susceptible of being made acceptable by clarification or discussions.

(c) No offeror who is in the competitive range shall be eliminated from the competitive range solely because of an offer to deliver services or supplies of a higher quality than required. If there is no substantial basis for distinguishing between the technical excellence of proposal(s) meeting the Government's requirements, price, or best buy analysis, should then become the controlling factor.

§ 3–3.5107 Conduct of discussions.

(a) The contracting officer, in cooperation with technical personnel, must conduct written or oral discussions (negotiations) of the work to be performed, the cost of the work, and other relevant topics with all those offerors within the competitive range. The contracting officer shall point out to each offeror the ambiguities, uncertainties, and deficiencies, if any, in its proposal. He shall then give each offeror a reasonable opportunity to support, clarify, correct, improve or revise its proposal. Discussions with one offeror shall neither identify areas in which another has apparently achieved a higher evaluation or provided more detail (nor transmit information) which could give one offeror a competitive advantage over another. Cost estimates made by the Government will not be disclosed.

(b) Careful judgment will be exercised in determining the extent of discussions. In some cases more than one round of discussions with all the offerors within the competitive range may be required. The time available, the expense and administrative limitations, and the size and significance of the procurement should all be considered in deciding on the type, duration, and depth of the discussions.

§ 3–3.5108 Closing of negotiations.

In order to properly terminate negotiations, the contracting officer shall advise each offeror within the competitive range that (a) negotiations are being conducted, (b) offerors are being asked for "best and final offer," not merely to confirm or reconfirm prior offers, and (c) any revision or modification of proposals must be submitted by the cutoff date supplied.

§ 3–3.5109 Selection of contractor.

(a) After the close of discussions and the receipt of any addenda to proposals, the contracting officer shall select for award the offeror(s) whose proposal(s) offers the greatest advantage to the Government, price and other factors considered.

(b) Whenever the contract is to have a fixed price, price may not be disregarded in selecting a contractor. This is particularly true where more than one acceptable offer from technically qualified sources remains for consideration after conduct of negotiations. If a lower-priced, lower-scored offer meets the Government's needs, acceptance of a higher-priced, higher-scored offer shall be supported by a specific determination by the contracting officer that the technical superiority of the higher-priced offer warrants the additional cost involved in the award of a contract to that offeror.

§ 3–3.5110 Notice and debriefing.

Promptly after award of the contract, notice of unsuccessful offerors will be given in accordance with HEWPR 3–3.103.

[FR Doc.72–15845 Filed 9–15–72;8:51 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 221]

[Economic Reg. Docket No. 24750; EDR–230]

TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Notice of Liability Limitations

SEPTEMBER 12, 1972.

Notice is hereby given that the Civil Aeronautics Board has under consideration modification of the provisions of Part 221 of the Economic Regulations (14 CFR Part 221) which require notice of the limitations on liability to passengers for death or personal injury, and for loss, delay or damage to passenger baggage provided by the Warsaw Convention.

The background and principal features of the proposed amendment are described in the expanatory statement, and the proposed amendment is set forth below. The amendment is proposed under the authority of sections 204(a), 403, and 416 of the Federal Aviation Act of 1958, as amended (72 Stat. 743, 758, and 771 as amended; 49 U.S.C. 1324, 1373, and 1386.)

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material received on or before October 13, 1972, will be considered by the Board before taking final action upon the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712 Universal Building, 1825 Connecticut Avenue NW., Washington, DC upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

EXPLANATORY STATEMENT

Part 221 of the Board's regulations (14 CFR Part 221) contains provisions[1] which require air carriers and foreign air carriers which avail themselves of limitations on liability to passengers for death or personal injury, and for loss of, damage to, or delay in the delivery of passenger baggage under the Warsaw Convention[2] to give notice of such limitations in the form of a ticket and sign notice.[3] The monetary limitations on lia-

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[1] Sections 221.175 *Special notice of limited liability for death or injury under the Warsaw Convention* and 221.176 *Notice of limited liability for baggage; alternative consolidated notice of liability limitations.*

[2] The United States and numerous other countries adhere to the Convention for the Unification of Certain Rules Relating to International Transportation by Air (the Warsaw Convention). These rules, applicable to "international transportation" as defined therein govern a very large portion of air transportation of persons and property to and from the United States. Article 22 of the Convention sets forth the maximum limits on liability which the carriers may impose in the transportation of passengers and goods and unchecked baggage. The liability limits in the Convention are expressed in terms of a French franc consisting of 65½ milligrams of gold at a standard of fineness of 0.900; the limits are (1) for each passenger, 125,000 francs, (2) for checked baggage and goods, 250 francs per kilogram and (3) for unchecked baggage, 5,000 francs per passenger.

[3] The standard form of baggage notice prescribed in § 221.176 also requires air carriers and foreign air carriers to give notice of the $500 limitation on baggage liability now generally applicable to interstate, overseas and other U.S. transportation not governed by the Warsaw Convention.

bility specified in the prescribed notices with respect to international travel are a restatement of the minimum liability requirements of the Warsaw Convention, expressed in U.S. dollars. The dollar amounts stated in these notice provisions are $8,290 for personal injury or death, $7.50 per pound for checked baggage and $3.30 per passenger for unchecked baggage.[4]

Pursuant to legislation enacted March 31, 1972,[5] the Secretary of the Treasury has established a new par value of the dollar by increasing the dollar value of gold from $35 to $38 per ounce. This new par value represents a 7.895-percent decline in the value of the dollar below the previous gold value of 15 5/21 grains, 0.900 fine of gold. In light of this action, the liability limitation covering international travel expressed in dollars in the aforementioned ticket and sign notices are no longer accurate, and, therefore, it is necessary to amend the liability notice provisions of Part 221 to accurately express the current dollar amounts.[6]

Accordingly, we are proposing to amend the liability notices prescribed in §§ 221.175(a) and 221.176 (a) and (b), so as to require air carriers and foreign air carriers which avail themselves of limitations on liability for death or personal injury, or for loss or damage to baggage as provided by the Warsaw Convention, to accurately state, in their ticket and sign notices of such limitations, the currently allowable dollar limitations. Set forth below are the round dollar amounts which the proposed rules require to be specified in the standard notice of Warsaw Convention limitations on liability to passengers and for baggage as amended herein:[7]

1. For death or personal injury	$9,000
2. For checked baggage, per pound	8.16
3. For unchecked baggage, per person	360

Since carriers have recently ordered new ticket stock to implement the Board's regulation requiring notice of baggage liability limitations,[8] the proposed rule would allow carriers until March 15, 1973, to revise their ticket notices to reflect the aforedescribed dollar limitations. Although this grace period will result in some inaccuracy in the notice afforded the public, this would not appear significant in light of the relatively small differences between the dollar amounts specified in the within rules and those presently contained in the carriers' ticket notice. Moreover, since the presently effective dollar limitations are somewhat higher than those specified in the existing regulation, the public will not be misled to its detriment.

In the interim, before the proposed rules became effective, we would expect carriers to modify their ticket notices to reflect the new Warsaw dollar limitations. As stated in Order 72-6-7, supra, the Board will not consider such modifications to be in violation of the present notice provisions of §§ 221.175 and 221.176.

It is proposed to amend Part 221 of the Economic Regulations (14 CFR Part 221) as follows:

1. Amend paragraph (a) of § 221.175, the paragraph as amended to read as follows:

§ 221.175 Special notice of limited liability for death or injury under the Warsaw Convention.

(a) In addition to the aforesaid requirements of this subpart, each air carrier and foreign air carrier which, to any extent, avails itself of the limitation on liability to passengers provided by the Warsaw Convention, shall, at the time of delivery of the ticket, furnish to each passenger whose transportation is governed by the Convention and whose place of departure or place of destination is in the United States, the following statement in writing:

ADVICE TO INTERNATIONAL PASSENGERS ON LIMITATION OF LIABILITY

Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of a treaty known as the Warsaw Convention may be applicable to their entire journey including the portion entirely within the countries of departure and destination. The Convention governs and in most cases limits the liability of carriers to passengers for death or personal injury to approximately $9,000.

Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier's liability under the Warsaw Convention. For further information please consult your airline or insurance company representative.

Provided, however, That when the carrier elects to agree to a higher limit of liability to passengers than that provided in Article 22(1) of the Warsaw Convention, such statement shall be modified to reflect the higher limit. The statement prescribed herein shall be printed in type at least as large as 10-point modern type and in ink contrasting with the stock on (1) each ticket; (2) a piece of paper either placed in the ticket envelope with the ticket or attached to the ticket; or (3) the ticket envelope; *And provided further,* That, until March 15, 1973, a carrier may substitute the sum of "$8,290" in place of the sum of "$9,000" in the text of the statement prescribed by this paragraph.

* * * * *

2. Amend paragraphs (a) and (b) of § 221.176, the paragraphs as amended to read as follows:

§ 221.176 Notice of limited liability for baggage; alternative consolidated notice of liability limitations.

(a) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations on liability for loss of, damage to, or delay in delivery of baggage shall cause to be displayed continuously in a conspicuous public place at each desk, station, and position in the United States which is in charge of a person employed exclusively by it or by it jointly with another person, or by any agent employed by such air carrier or foreign air carrier to sell tickets to passengers or accept baggage for checking, a sign which shall have printed thereon the following statement:

NOTICE OF LIMITED LIABILITY FOR BAGGAGE

Liability for loss, delay, or damage to baggage is limited as follows unless a higher value is declared and an extra charge is paid: (1) For most international travel (including domestic portions of international journeys) to approximately $8.16 per pound for checked baggage and $360 per passenger for unchecked baggage; (2) for travel wholly between U.S. points, to $500 per passenger on most carriers. Special rules may apply to valuables. Consult your carrier for details.

Provided, however, That an air carrier or foreign air carrier which provides a higher limitation of liability for death or personal injury than that set forth in the Warsaw Convention and has signed a counterpart of the agreement approved by the Board by Order E-23680, dated May 13, 1966 (31 F.R. 7302, May 19, 1966), may use the following notice in full compliance with the posting requirements of this paragraph and of § 221.175 (b):

ADVICE TO PASSENGERS ON LIMITATIONS OF LIABILITY

Airline liability for death or personal injury may be limited by the Warsaw Convention and tariff provisions in the case of travel to or from a foreign country.

Liability for loss, delay or damage to baggage is limited as follows unless a higher value is declared and an extra charge is paid: (1) For most international travel (including domestic portions of international journeys) to approximately $8.16 per pound for checked baggage and $360 per passenger for unchecked baggage; (2) for travel wholly between U.S. points, to $500 per passenger for most carriers. Special rules may apply to valuable articles.

[4] Air carriers and foreign air carriers which, by special contract, provide a higher limitation of liability for personal injury or death than that set forth in the Convention, and which have signed a counterpart of the Montreal agreement among carriers providing for a higher limitation are required to include a notice of said limitation with each of their passenger tickets covering international travel. The higher limitation specified in the agreement is expressed in U.S. dollars. Since most air carriers and foreign air carriers which provide transportation subject to the Board's jurisdiction are Montreal signatories, the above-mentioned notice of Warsaw limitations for death or personal injury is used by only a limited number of carriers.

[5] Public Law 92-268. The devaluation was finalized effective May 8, 1972.

[6] Since the Montreal agreement is expressed in terms of U.S. dollars (see footnote 3, supra) the change in the value of the dollar does not affect this agreement, and there is thus no need to amend the provisions of Part 221 which require Montreal signatories to include with their passenger tickets a notice of the dollar limitations of liability specified in said agreement.

[7] In Order 72-6-7, June 2, 1972, the Board directed air carriers and foreign air carriers to revise their tariffs to express the personal and baggage liability limitations for travel subject to the Warsaw Convention in the round dollar figures specified in said order. The above stated amounts reflect these round dollar figures.

[8] ER-708, Jan. 1, 1972.

See the notice with your ticket or consult your airline or travel agent for further information.

Provided, further, That carriers may include in the notice the parenthetical phrase "($18 per kilo)," after the phrase, "8.16 per pound," in referring to the baggage liability limitation for most international travel. Such statements shall be printed in boldface type at least one-fourth of an inch high and shall be so located as to be clearly visible and clearly readable to the traveling public.

(b) Each air carrier and foreign air carrier which, to any extent, avails itself of limitations of liability for loss of damage to, or delay in delivery of baggage shall include on each ticket issued in the United States or in a foreign country by it or its authorized agent, the following notice printed in at least 10-point type:

NOTICE OF BAGGAGE LIABILITY LIMITATIONS

Liability for loss, delay, or damage to baggage is limited as follows unless a higher value is declared in advance and additional charges are paid: (1) for most international travel (including domestic portions of international journeys) to approximately $8.16 per pound for checked baggage and $360 per passenger for unchecked baggage; (2) for travel wholly between U.S. points, to $500 per passenger on most carriers (a few have lower limits). Excess valuation may not be declared on certain types of valuable articles. Carriers assume no liability for fragile or perishable articles. Further information may be obtained from the carrier.

Provided, however, That carriers may include in their ticket notice the parenthetical phrase, "($18 per kilo)" after the phrase, "$8.16 per pound," in referring to the baggage liability limitation for most international travel. *And provided further,* That, until March 15, 1973, a carrier may (1) substitute the sums "$7.50" and "$330," respectively, in place of the sums "$8.16" and "$360," respectively, in the statement prescribed by this paragraph and (2) substitute the sums "$16.58" and "$7.50" respectively, in place of the sums "$18" and "$8.16" respectively, in the optional language permitted by the first proviso to this paragraph.

* * * * *

[FR Doc.72-15848 Filed 9-15-72;8:52 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 230, 231, 239, 240, 249]

[Release Nos. 33-5302, 34-9777]

HOT ISSUES

Meaningful Disclosure; Extension of Time for Comments

On July 26, 1972 the Commission invited public comments on proposals for initial steps to curtail certain aspects of excesses of "hot issues," to provide more meaningful disclosure relating to new issues and to integrate the disclosure provisions of the securities laws further. (Securities Act Releases 5274, 5275, 5276, 5277, 5278, and 5279; Securities Exchange Act Release 9673.) [37 F.R. 15985-15989, 16005-16023.] The time for submitting such comments expires September 15, 1972. However, the Commission has received requests for additional time within which to submit comments on these proposals. Accordingly, the time for submitting such comments has been extended to September 29, 1972.

By the Commission, September 14, 1972.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72-15986 Filed 9-15-72;8:53 am]

Notices

CIVIL AERONAUTICS BOARD

[Docket No. 21520 etc.; Order 72-9-39]

MOHAWK AIRLINES, INC., ET AL.

Order To Show Cause Regarding Suspension of Service

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of September 1972.

Application of Mohawk Airlines, Inc., for authority to suspend service at Poughkeepsie, Massena, and Ogdensburg, N.Y., and Rutland, Vt. Dockets Nos. 21520, 21335, and 21533; Agreements CAB 21361 and 21371.

Application of Northeast Airlines, Inc., for authority to suspend service at Augusta-Waterville and Lewiston-Auburn, Maine. Docket No. 21350.

Application of Allegheny Airlines, Inc., for authority to suspend service at Lancaster and Reading, Pa. Docket No. 24020; Agreement CAB 22801.

Agreement between Texas International Airlines, Inc., and Metroflight Airlines, Inc., doing business as Houston Metro Airlines. Agreement CAB 22961.

On January 14, 1972, the U.S. Court of Appeals for the District of Columbia Circuit entered its decision to remand three Board orders which authorized Mohawk Airlines and Northeast Airlines[1] to suspend services at several of their certificated points in New York and New England and, in the case of Mohawk, approved agreements for replacement service at these cities between the certificated carrier and a number of air taxi operators.[2]

The Board subsequently filed a petition for rehearing which was denied by the court on March 22, 1972. Accordingly, the three cases are again before us for consideration. Also, certificated carriers have continued to file applications for suspensions of service and/or for approval of agreements providing for the operation of substitution or supplemental services by commuter carriers at various small communities.[3] Between the issuance of the court's decision in January and the denial of the Board's petition for rehearing in April, the Board has withheld action on the various applications before it. As a result, there are now two such cases awaiting Board decision and an additional group of cases at various stages of processing by the Board's staff.[4] Additionally, on July 18, 1972, the Board entered its decision in the Part 298 Weight Limitation Investigation, Docket 21761, Order 72-7-61, a proceeding which encompassed issues relevant to the ones remanded by the court.

The Court of Appeals proceeded on the premises (1) "that an exemption granted pursuant to (section 416) remains valid only so long as the statutory prerequisites for its grant—findings that certification would be an 'undue burden' and 'not in the public interest'—continue to be valid", and (2) that "[i]f it is not proper for noncertificated carriers to perform the replacement services contemplated by the Board's orders—the suspensions granted to the certificated carriers are void on their own terms." Noting that the air taxi operations were conducted pursuant to the blanket exemption granted by Part 298 of the Board's economic regulations, the court stated the issue before it be "whether the noncertificated carriers can continue to operate under the preexisting exemptions, given the changes in their operations that are contemplated by the orders." These changes were that the certificated operations were permitted to be suspended and that the air taxi operations thereafter were continued or instituted over the suspended certificated routes. The court stated that it could not "determine whether the preexisting exemptions remain valid subsequent to the Board's orders" in the absence of "findings on the statutory issues of (1) whether certification would be an undue burden on the carriers, and (2) the public interest in certification in these circumstances, which is distinct from the public interest in having the services provided." The court went on to say that "insofar as a noncertificated carrier received its exemption under section (416) on the grounds that certification would be an undue burden * * * by reason of the 'limited extent' of its operation, that finding is called into question when the carrier undertakes service previously subject to the certification process. It is unlikely that service which is the subject of certification can be service of a 'limited extent' within the meaning of the statute." The court summed up its decision by stating that "when a noncertificated carrier substantially takes over the route of a certificated carrier, there is need for a hearing to determine whether the statutory conditions for exemption from certification * * * continue to exist."

The Board interprets the court's reference to a "hearing" as meaning such procedures as are appropriate to the nature of the issues and the character of the regulatory action involved, rather than as a holding that a determination of whether the air taxi exemptions continue to remain valid requires a full-scale evidentiary hearing of the kind required by the Administrative Procedure Act for cases of "adjudication required by the statute to be determined on the record after opportunity for an agency hearing" (5 U.S.C. 554).[5] The courts have heretofore held that a formal hearing requirement is not to be imported into the statutory provisions here directly involved—section 416 (the provision under which exemptions are issued); section 401(j) (the provision under which certificated operations may be temporarily suspended); or section

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[1] The Board has recently approved the merger of Mohawk into Allegheny Airlines (Order 72-4-31, March 28, 1972) and the merger of Northeast into Delta Air Lines (Order 72-5-73, April 24, 1972). For the sake of convenience, however, we will continue to refer to these carriers as Mohawk and Northeast.

[2] Thus, by Order 70-1-130, January 27, 1970, the Board granted Mohawk's application for authority to suspend service temporarily at Poughkeepsie, N.Y., and approved an agreement between Mohawk and Command Airways, Inc., pursuant to which the latter would provide replacement air service for Mohawk between Poughkeepsie and Binghamton, N.Y. By Order 70-2-23, February 6, 1970, the Board granted a similar application of Mohawk with respect to Massena and Ogdensburg, N.Y. and Rutland, Vt. and approved a similar agreement between Mohawk and Air North, for replacement service at the three communities. Finally, by Order 70-3-62, March 13, 1970, the Board granted Northeast's application for authority to suspend service at Augusta-Waterville and Lewiston-Auburn, Maine, subject to termination if no commuter carrier provided specified minimum levels of service to these communities.

[3] ALPA has filed a motion in the three remanded cases and in 28 other dockets involving suspension/substitution agreements which it deems comparable to the three, requesting that the matters be set down for evidentiary hearings. Allegheny, Eastern Air Lines, Frontier Airlines, and Northeast have opposed this motion, pointing out, inter alia, that ALPA has selectively omitted, for unexplained reasons, certain suspension/substitution agreements approved by the Board. We shall defer ruling on ALPA's motion at this time except that, for the reasons hereinafter stated, we shall deny its present request for evidentiary hearings in the three cases on remand from the Court of Appeals. We also will deny its present request for a hearing on agreement CAB 22961.

[4] The two cases awaiting Board decision involve (1) an application by Allegheny to suspend service at Lancaster and Reading, Pa., and for approval of an agreement between Allegheny and Reading Aviation, operating as Suburban Airlines; and (2) an agreement between Texas International Airlines, and a commuter carrier (Metroflight Airlines, doing business as Houston Metro Airlines) for the performance of ground services by Texas International for the commuter carrier in the Houston-Galveston market.

[5] In its petition for rehearing, the Board advised the court of its interpretation of the court's meaning and invited clarification on this point. However, in denying our petition, the court did not allude to this question.

412 (the provision under which agreements between air carriers are approved).[6] Moreover, even in proceedings which in terms are required to be determined after notice and hearing, evidentiary hearings need not be held if unnecessary to ascertain or resolve dispositive facts.[7]

The Board believes that the dispositive facts pertinent to a resolution of the issues on remand can be ascertained without evidentiary hearings, and that it accordingly is appropriate to initially proceed by way of a show cause order which sets forth the Board's tentative conclusions based upon information known to it and adverted to herein.[7a] We will require the persons requesting a hearing to specify the reasons why evidentiary hearings are necessary and the nature if the evidence which they would adduce, and we will reserve judgment on whether such hearings are necessary until after consideration of the responses to this order. Similarly, we will also subsequently determine in light of the responses and any request therefor whether oral argument should be heard.

We hereinafter state our general views concerning the matters at issue, and thereafter relate those views to the specific cases before us.

Whether the public interest requires the certification of air taxi operators who provide services over routes where certificated carriers have been permitted to suspend operations. The court did not take exception to the Board's conclusion "that the certificated carriers' operations 'are uneconomic and that commuter services will provide more flights at convenient times with resultant better service to the public'." Nonetheless, we think it appropriate to state the bases for our long-held view that it is in the public interest to have the transportation services provided by the air taxi operators in circumstances of the type before us, and particularly since these bases also are believed relevant to the issues of "undue burden" on the air taxi operators and the "public interest in certification" of them.

First, we affirm our findings in Orders 70–1–130, 70–2–23, and 70–3–62, that the suspension/replacement arrangements involved are in the public interest from an overall transportation standpoint. Our conclusion that these arrangements would in each case produce important service improvements for the public and substantial economic benefits for the suspended certificated carrier remains valid, in our judgment.[8] Moreover, our various other orders approving suspension/replacement arrangements have rested on similar findings.[9]

In general, substitute service arrangements, such as those before us, represent an approach which the Board has adopted to help meet the serious problems of air service to small communities which generate low levels of traffic and receive certificated service which is neither satisfactory to the community nor economical to the certificated carrier. The problems of air service to small communities—and the contribution of air taxis in responding to those problems—were examined at length (and on the basis of an evidentiary record) in our recent opinion in the Part 298 Weight Limitation Investigation, Order 72–7–61. These difficulties can be summarized as follows: Continuing low levels of traffic combined with steeply rising operating costs have rendered certificated service, which was never (or only marginally) profitable even for local service carriers receiving Federal subsidy support prohibitively expensive. In many instances, service can be maintained only with significant losses or, in the case of local service carriers, by the expenditure of inordinate levels of subsidy at a rate wholly disproportionate to the public benefits conferred. The results of such certificated service have been increasing Federal subsidy bills or growing losses to the carriers, and a steady decline in the quality and quantity of small community service, resulting from schedule cutbacks, suspensions, and the outright deletion of marginal points.

The suspension/substitution arrangements steer a middle course between wholesale deletion, on the one hand, and a combination of subsidy funding and losses by the certificated carriers at an unreasonable level, on the other hand. In a very real sense, they represent what is believed to be a sound, if perhaps temporary, compromise while the Board attempts to work out long-range solutions to the problems of small community air service. Properly viewed, the suspension/substitution arrangements program is experimental in nature and at this time we have not concluded that it is a final solution to small community air service needs. While the Board has been approving these arrangements, it has also been engaged in in-depth exploration of future policy in a number of respects. Most recently, the Board has requested legislation which would permit it to conduct a limited, 3-year experiment pursuant to which selected small communities would receive air service on a contract basis.[10] Further, in the New England Service Investigation, Docket 22973, the Board has undertaken a complete review of small community air service in a small but important geographic area. Included in that proceeding is a full consideration of the future role of commuter carriers in providing service in markets similar to those where we have approved suspension/substitution arrangements, including some of those points which are presently before us for consideration on remand from the Court of Appeals (Augusta-Waterville, Lewiston-Auburn and Rutland, Vt.). In addition, the Board has continued to delete points on the basis of public convenience and necessity findings grounded in a record developed after full evidentiary hearings.[11] For the most part, however, the Board has relied on suspension/substitution arrangements as a means of ameliorating for the small communities the effect of severe service cutbacks and/or outright deletions. We again conclude, as a result of the present analysis, apart from the legal problems, that it would be in the overall public interest in providing needed transportation services to continue to do so in appropriate cases.

We recognize that the court did not hold that suspension/substitution arrangements are improper as such, but rather that its concern was whether the public interest in certification required the air taxi operators to obtain certificates to provide the substitute services, and whether for them to do so would constitute an "undue burden." With reference to the public interest question in the usual such arrangement we initially turn to the Part 298 case, supra. The Board in that proceeding undertook an extensive examination of the operations being conducted by the air taxi operators, as a class. We determined on the basis of a full evidentiary record that despite the growth of scheduled air taxi services and their vital role in filling gaps in service to small communities,

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[6] Eastern Air Lines v. Civil Aeronautics Board, 185 F.2d 426 (C.A.D.C. 1950); Springfield Airport Authority v. CAB, 285 F. 2d 277 (C.A.D.C. 1960); Nebraska Department of Aeronautics v. CAB, 298 F. 2d 286 (C.A. 8, 1962); National Air Carrier Association v. CAB, 436 F. 2d 185 (C.A.D.C. 1970).

[7] Marine Space Enclosures, Inc. v. F.M.C., 429 F. 2d 577 (C.A.D.C. 1969); Citizens for Allegheny County v. F.P.C., 414 F. 2d 1125, 1129 (C.A.D.C. 1969); Walter Holm & Co. v. Hardin, 449 F. 2d 1009, 1011 (C.A.D.C. 1971).

[7a] Basically, this consists of the pleadings in the involved dockets, carrier reports on file with the Board, and the record in the Part 298 Weight Limitation Investigation. We have also made an informal check with FAA as to the safety records of the air taxis involved.

[8] We reach this conclusion notwithstanding the fact that as an interim matter we have approved an amendment to the Mohawk-Air North agreement substantially curtailing services to Massena and Ogdensburg (Order 72–8–127). The remaining services adequately provide for the demonstrated needs of the markets; the curtailment simply insures savings from eliminating unncessary flights to the benefit of Mohawk, and by financially benefiting Air North may keep it in the market providing the more limited services that are needed.

[9] A general summary of the Board's actions in these cases is set forth in the March 1972 study by the Bureau of Operating Rights entitled "Service to Small Communities," Part II.

[10] S. 3460, 92d Cong., 2d sess. (1972).

[11] Order 70–6–22, June 2, 1970, Ozark-deletion of Sedalia, Mo.; Order 71–6–129, June 24, 1971, Allegheny-deletion of Portsmouth, Ohio; Order 72–2–92, Feb. 28, 1972, Peidmont-deletion of Blacksburg-Radford-Pulaski, Va.; Order 72–4–96, Apr. 18, 1972, Piedmont-deletion of Elizabeth City, N.C.; Order 72–4–97, Apr. 18, 1972, Piedmont-deletion of Southern Pines-Pinehurst-Aberdeen, N.C.; Order 72–5–50, May 12, 1972, Eastern-deletion of Waycross, Ga.; and Order 72–6–33, June 7, 1972, Frontier-deletion of Duncan, Okla. In a number of these deletion cases the Board rejected the alternative of a suspension/substitution arrangement, concluding on the facts before it that such an arrangement would require subsidization by the certificated carrier at a level incommensurate with the benefits conferred. See, e.g., Order 71–6–129 ($80 per passenger).

third-level carriers have retained their traditional function of complementing rather than supplanting the network of certificated carriers which forms the backbone of the Nation's air transportation system. Also, we found that enforcement of the certification requirements of the Act, to the extent it would prohibit somewhat broadened air taxi operations with 30-seat/7,500-pound payload aircraft, would not be in the public interest and would be an undue burden on the class of air taxis.[12]

Our findings that the public interest did not require that the air taxi operations be certificated included ones that (Order 72-7-61, pp. 32, 33):

> Certification under the Act affords an inappropriate regulatory framework for the regulation of air taxi services, including commuter operations. Air taxis conduct nonsubsidized services of a kind that certificated carriers, by and large, have not been able to operate successfully even with federal subsidy—i.e., services in extremely short-haul, low-density markets where surface transportation modes are often an attractive travel alternative. Functioning at a relatively high financial risk in such an economic environment, air taxis must have the maximum possible operational flexibility—including the freedom to quickly enter markets which might help to bolster their operations and the freedom to exit from markets which prove to be a drain on their resources—if they are to continue to fulfill their important role in the national air transportation picture. Moreover, because of this need for flexibility, we do not view route protection and the concomitant obligations which attach to certification, as a desirable goal for the air taxi industry in general.[13]

We add that if the Board were required to certificate air taxis, it could no longer directly control the size of their aircraft,[14] and, therefore, could no longer assure the preservation of their existing high frequency levels[15] a primary and desirable feature of commuter services. We also stress our view that certification procedures demanding a formal hearing before an air carrier may institute service, and an inability to alter or discontinue service after certification without regulatory permission, would not provide a workable regulatory structure for scheduled air taxis, considering the critical need for operating flexibility in the environment in which they operate.

Moreover, in those circumstances in which the Board conditions the suspension of service by the certificated carrier upon the provision of replacement service by an air taxi operator (with or without financial support from the certificated carrier), certification of the air taxi operator could prove self defeating in other respects.[16] The duty of a certificate holder is to provide "adequate service," a standard to be applied in all the circumstances of a given market. Those arrangements which obligate the certificate holder to insure a given level of air taxi service or to itself resume service in a particular market frequently result, we believe, in a level of service above that which could be required of the certificate holder under the adequate service standard, or by the air taxi operator if it held a certificate. Furthermore, if we were to certificate a replacement air taxi, we could not, as a practical matter, expect the suspended certificated airline to step back into the market if the air taxi's services proved seriously deficient (though legally adequate). To do so would be to place two certificated carriers in a market unable to support even one. And if the first certificate holder's authority were deleted and the replacement carrier issued a certificate, the problems heretofore noted of Board control over equipment, schedules, and service levels would remain.

Next, certification in any event does not become appropriate in our view merely because an air taxi enters a market previously served by a certificated airline. This is so because the air taxi does not thereby take over the certificated carrier's route in any meaningful sense, or even operate the same kind of service. Thus, certificated operations at any particular city or market must be considered in the context of the entire route system of the airline performing the service, because that point or market is, in fact, served as part of a route network, rather than as an independent entity. Significantly, when the Board decides to place a particular city on the certificated system it does so not simply on an abstract finding that the point deserves certificated service. Instead, the Board is required to consider as a key decisional criterion whether the point can be served economically by the specific applicants involved, a determination which, in turn, depends on such factors as how well the new award would integrate with each applicant's route structure, and on an examination of concrete operating proposals (including the aircraft types to be used) and cost estimates based in substantial part on the applicants' system-wide unit costs. Often, airlines are certificated in markets which, standing alone, could clearly not support certificated operations, on the grounds that they can nevertheless be served economically in conjunction with other markets for which they provide beyond or intermediate traffic support. As we noted earlier, moreover, small communities of the kind here in issue are, for the most part, actually served as adjuncts of certificated carriers' longer-haul services, with schedules and aircraft designed primarily to meet the needs of these longer-haul operations.[17] Replacement air taxis, by contrast, operate small aircraft and a greater number of frequencies. They concentrate on the service needs of the local markets without the benefit of a wider route system into which such services could be integrated, as opposed to deriving support from other nonscheduled taxi operations. Unless the Board were willing to authorize subsidy support for the taxi operations, it would be difficult to justify, under the statutory standards, the issuance of a certificate for operations so limited that, standing alone, they offered little hope of economic success.

In sum, the fact that the Board has in the past found the inclusion of a small community on a certificated carrier's route system to be required by the public convenience and necessity is not, in itself, persuasive evidence that the certification process is appropriate for a replacement commuter providing essentially different services. In addition, a general requirement for certificating replacement air taxis would be particularly inapt at the present time when we have requested Congressional authorization, to embark on a 3-year experiment testing the feasibility of contract services as one possible solution to the air transportation problems of small communities. The certification of substitute air taxis at many such communities at this time could seriously restrict the Board's flexibility in responding to their air transportation needs with the experience gained in the contract service experiment.

The conclusion that air taxi replacement services ordinarily should not be certificated is, in our view, fully consistent with the provisions and objectives of the statute. The certificated operations do comprise the basic air transportation system, and the licensing by certificates of extensions of that system or of the entry of new major components undoubtedly is desirable and appropriate.

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[12] While the question of whether Part 298 should be rescinded was not in terms at issue in the proceeding, the Board took notice of, and rejected the contention that "* * * the statutory prerequisites—i.e., public interest and undue burden findings—which sustained the grant of the original exemption may no longer apply * * * to existing commuter operations—" (p. 18 of Order 72-7-61).

[13] The Board also found that yet an additional public interest factor against certification was that "it would relieve the Board of a sizeable administrative burden" (p. 32). We agree with the Court of Appeals that "administrative burden" cannot serve to avoid the requirements for an effective regulatory system. However, in selecting between alternate courses of permissible action, administrative burden is, we believe, a relevant consideration. We deem it to be relevant here, and also rely upon that finding.

[14] See section 401(e)(4) of the Act.

[15] Witness the tendency among certificated local service carriers over the last decade to acquire larger aircraft and place greater emphasis on longer-haul operations.

[16] The Board has recognized this fact in the past. See Southern Airways, Inc., Route Realignment Investigation, Order 69-9-132, September 24, 1969, where the Board refused to certificate Southeast Airlines, an air taxi, in lieu of National Airlines in the Miami-Key West market. Instead, it favored a substitute service agreement under which National would retain its certificate responsibilities at Key West while Southeast would perform the replacement service.

[17] Moreover, even in the unusual situations where a certificated carrier serves a small community as part of a relatively short-haul routing, its operations remain intertwined with its wider system operations; by making use, for example, of aircraft and other equipment also utilized elsewhere on its route network.

However, the exemption provision is also an integral part of the statute. Its purpose and application has been to encourage the development of carriers and operations of a type not deemed appropriate for certification, and we have reaffirmed in the Part 298 case the general desirability that air taxi operations, including commuter services, be conducted under the exemption authority. Also, the certificated plan of regulation permits carriers in appropriate circumstances to suspend operations or to discontinue them altogether, notwithstanding a prior determination that the services were required, and hence a determination once made that a given community should receive certificated service is not immutable. The presumption that certificated service should be continued to a community because that type of service has been found appropriate in the past is a rebuttable one in the context of a request by the carrier for authority to suspend operations. Many factors may justify a discontinuance of the certificated service, including transportation methods or services which were not available at the time of certification—improved highways, more readily accessible air services at adjacent communities, and new air services by air taxi operators including commuter services. The Board presumably would be justified in permitting a certificated air carrier to temporarily suspend service at an uneconomic point so long as it remained well served by surface media. In the Board's view, no different result should be compelled by the statute merely because the alternate method of transportation may include or largely consist of services by an air taxi operator, and this irrespective of whether the certificated carrier is permitted to suspend service only after agreeing to underwrite the air taxi operations.

Moreover, as previously indicated, the Board is unable to conclude that the certification of an air taxi operator for substitute services would result in any practical assurances of better or more reliable service in the ordinary case. As noted, the operations involved are seldom so extensive as to warrant their independent certification. The commuter carriers are closely monitored by the Federal Aviation Administration from a safety standpoint, and the Board's determination of whether to approve a specific substitution arrangement is made in the light of the past operating experience of the commuter service.

In sum, after careful evaluation, the Board is unable to conclude that the "public interest in certification" as such requires that air taxi operators be certificated over routes which have been a part of the certificated system, and that the preexisting exemption authority conferred by Part 298 ordinarily remains valid in such circumstances from a public interest standpoint. We turn now to the question of "undue burden."

Whether it would be an "Undue Burden" upon air taxi operators to require them to obtain certificates to provide services over routes where certificated carriers have been permitted to suspend operations. Section 416 of the Act empowers the Board to relieve individual carriers or classes of carriers from enforcement of the various provisions of Title IV of the Act, upon proper findings that such enforcement is or would be an "undue burden on such air carriers or class of air carriers by reason of the limited extent of, or usual circumstances affecting the operations." When "undue burden" exists, the Board by exemption may allow the performance of operations pending completion of proceedings to determine whether they should be authorized by a certificate; it may grant an exemption from the certificate requirements altogether in appropriate circumstances; or, after having certificated a carrier, it may relieve the carrier from complying with various individual statutory provisions which otherwise would be applicable. Moreover, the Board's view is and has been (although perhaps not precisely so articulated) that an exemption from the requirement that a certificate be obtained can be grounded upon findings that the overall operations are inappropriate for regulation under the certificated system, and that it would be incongruous to require the obtaining of a certificate and to then exempt the carrier from the regulatory provisions ordinarily applied to certificated operations.

In the Part 298 case, the Board determined that compliance with the "certification requirements would be an undue burden on air taxis as a class, by reason of the limited extent of, and unusual circumstances affecting their operations." (p. 33) The Board found that the operations were of limited extent in terms of their volume and the size of the aircraft employed, and it contrasted the extent of the air taxi operations with those of the certificated carriers. The Board noted that the entire commuter industry generated revenue passenger miles equal to only 0.4 percent of the total domestic certificated miles in 1971. It found that the average revenues of a commuter carrier were some $550,000 in contrast to $72 million for each of the certificated local service carriers; and that most of the commuters were operating either at a loss or at only a marginally profitable basis. It held that certification procedures would impose a substantial financial strain upon the air taxis, noting that the cost of the proceeding in which a former commuter operator was certificated over the identical route served as a commuter carrier had amounted to some $50,000. (Reopened TAG-Wright Case, Order 72–2–52)

The Board also found that there are unusual circumstances affecting air taxi operations, and indeed that the very public interest factors which militate against their being brought within the certificated system also demonstrated that such a requirement would constitute an undue burden upon them. The Board there found "this burden [of certification] would be further aggravated by the unusual circumstances affecting air taxi operations—nonsubsidized, high-risk services with small aircraft in short-haul, low-density markets where surface transportation is often an attractive alternative. As we have observed, the operating flexibility air taxis must have to conduct such operations would be seriously undermined if they were required to go through a formal hearing prior to instituting service and, equally important, to undertake a formal hearing before altering or discontinuing service. Such requirements would constitute an effective bar to the continuation of nonsubsidized air taxi services."

The Board adheres to those general findings after further consideration in light of the remand and the Court's statement that "[i]t is unlikely that service which is the subject of certification can be service of a 'limited extent' within the meaning of the statute." As heretofore explained, the services which ordinarily are involved in suspension/substitution arrangements have not been independently certificated nor have they been conducted with aircraft restricted as to size. We cannot conclude, therefore, that exemption is inappropriate solely because the operations being conducted by the commuter carrier are between points over which certificated services have been provided. Rather, we view the question of "undue burden" as being one for resolution in terms of the operations of the exempt carrier.

Despite these general findings, we recognize that the certification of former air taxis may well be desirable in individual circumstances. We so determined after consideration of the transportation needs involved in the Reopened TAG-Wright Case, Order 72–2–52, February 14, 1972, and in Aspen Airways, Order 71–1–98, January 20, 1971. In addition, the question of certificate awards to several commuters is at issue in the New England Service Investigation, Docket 22973, where—unlike the present cases—it can be approached in the context of efforts to fashion an appropriate route structure for a whole geographic region. We again observe, however, that the burden of certificate proceedings represents but one facet of the problem of "undue burden," and note that the Board has heretofore concluded after full evidentiary hearings that certification was inappropriate for an air taxi operator involved in a suspension/substitute arrangement (Southeast Airlines Case). We do not suggest a similar determination in the New England Investigation, but rather cite this example only for the purpose of delineating the various aspects of the exemption problem.

For these reasons and those later specified in our discussion of the particular factual situations before us, we tentatively find and conclude that certification of each of the respective replacement carriers would be neither legally necessary nor appropriate.

Whether labor protective provisions should be imposed for the benefit of employees of the certificated carriers authorized to suspend service. We have tentatively decided that the labor protective provisions should not be imposed as a

condition for approval of the subject suspension/substitute service arrangements. With only one exception over a 22-year period,[18] the Board has imposed labor protective conditions only in situations involving mergers, acquisitions and route transfers where the impact of the contemplated Board action on employees would be systemwide. On the other hand, the Board has almost uniformly declined to impose such conditions in suspension or deletion cases, where no such systemwide impact could be expected, and as a matter of policy has refused to impose such conditions to guard against the impact of minor fluctuations in employment.[19] The sole instance where labor provisions were imposed in a suspension case was the Seven States Area Investigation.[20] The circumstances of that case were, however, far different from those present here. The Seven States case involved the cessation of operations by Western and Braniff at 19 points and a basic transformation in the nature of their systems, with the major portion of their remaining short-haul, low-density routes eliminated. The Board's decision to impose labor conditions was bottomed upon an affirmative showing that the suspensions and deletions would be likely to cause substantial employee dislocation which should, in the public interest, be alleviated.

In the present situations involving Mohawk (now Allegheny), by contrast, the subject suspensions at a limited number of points would clearly not represent a basic transformation of the route structure of Mohawk (now Allegheny) nor in our tentative view, require a change in the Board's policy against the imposition of labor protective conditions in cases of this character. Nor is there any indication, on the existing record or in officially noticeable data, that there has been any significant impact on, or substantial dislocation of, Mohawk's employees. In fact, a comparison of Form 41 personnel forms filed by Mohawk for the periods before and after the suspensions here involved shows no such harmful impact. Thus, Mohawk actually reported more total employees after its suspensions at Poughkeepsie, Ogdensburg, Massena, and Rutland. Moreover, the recent acquisition of Mohawk by Allegheny will augment the employment opportunities available to former employees of Mohawk, whether active or on furlough.

The present situation with respect to Northeast (now Delta) at Augusta-Waterville and Lewiston-Auburn presents both factual and procedural differences.[21] Although only the named points are specifically before us, we are now aware that, generally speaking, because of its financial reverses and as part of a policy of retrenchment, Northeast sought in 1969 to eliminate substantially its local service operations by disposing of its F-27 fleet and suspending operations in many of its low traffic markets. The effect of this policy was to curtail employment. Whether this curtailment might have been found to be within the policy of the Seven States case had it been presented to us is of no moment since it was not and since there has been a significant change in the factual situation involving Northeast. It now seems inappropriate to order an evidentiary hearing with respect to such a possibility for three reasons. In the first place, as we indicate below, we have tentatively concluded that no certification (or evidentiary hearing thereon) is required for the replacement carrier Executive or for other air taxis in these markets. Second, Northeast has now been merged into Delta and the employment opportunities available to former employees of Northeast, whether active or on furlough, will be enhanced. Finally, as we elsewhere note, the New England Service Investigation which is now going forward, with evidentiary hearings soon in prospect, provides an adequate forum and mechanism for considering the need for labor protective conditions and imposing conditions on deletions to achieve that objective should it be desired.

The parties remain free, of course, in response to our show-cause order, to urge on the basis of proferred facts that the subject suspensions have had a system-wide impact on the suspended carrier's employees or to otherwise urge that labor protective conditions should be imposed or that evidentiary hearings are required and the reasons why that is so.

We turn now to a consideration of the individual fact situations.

Mohawk's (Allegheny's) suspension at Poughkeepsie. As previously noted, the Board is of the view that the suspension/replacement arrangement between Mohawk and Command at Poughkeepsie, N.Y., is in the public interest from an overall transportation standpoint. See Orders 70-1-130, 70-12-159. This arrangement provides for at least two daily round trips by Command, Monday through Friday, between Poughkeepsie and Binghamton, N.Y., using 15-seat Beech 99 aircraft. Mohawk (now Allegheny) will provide ground handling and reservation services for Command and will pay the commuter carrier a fee of 50 cents for each passenger boarded at Binghamton. By contrast, Mohawk's service in the market before its suspension consisted of one daily round trip with 44-seat FH-227 aircraft.[22]

Operating under this agreement, Command carried 5,711 passengers in the 115-mile Poughkeepsie-Binghamton market in 1971. Systemwide, the carrier provided scheduled service for 38,127 passengers in five short-haul markets.[23] Its total RPM's in that year amounted to only 0.5 percent of the average RPM's for each of the certificated local service carriers.

Next, while Command's actual operating results for Poughkeepsie-Binghamton services are not available, the carrier estimated in Docket 21520 that its operations would earn $16,000 in revenues and achieve a $378 net operating profit in the first full year of operations. Finally, as of February 29, 1972, Command listed total assets of $1,237,000 and a stockholder's equity of $471,000.

Command has been operating to Poughkeepsie for 6 years, having inaugurated service between that point and Kennedy Airport on July 1, 1966, and has been serving the Poughkeepsie-Binghamton market nearly all of that time. The carrier utilizes Beech 99 aircraft for the operations at issue, and it has ground facilities for its passengers. Command states that it uses two fully qualified instrument rated pilots on all flights, and that its pilots are subject to the same training procedures which certificated airline pilots undergo. The carrier maintains aircraft liability insurance with total combined limits of $10 million, twice the amount required by its agreement with Mohawk.

Under these factual circumstances, we tentatively conclude that our prior findings that the certification process ordinarily is inappropriate for replacement commuter carriers are applicable to Command's services in the Poughkeepsie-Binghamton market. Specifically, we tentatively find that imposition of a certification requirement would not be in the public interest. Command's replacement services presently are neither of sufficient magnitude nor do they hold such prospects of economic success as to warrant their separate certification, and all of the reasons heretofore stated as to why their certification would not

[18] The Board first imposed employee protective conditions in the United-Western, acquisition of air carrier property, 11 CAB 701 (1950).

[19] See Frontier Airlines, Inc., Order 72-1-100; Trans World Airlines, Inc., et al., capacity limitation agreement, Order 71-8-91.

[20] 28 CAB 680; 29 CAB 102, aff'd North Central Airlines v. CAB, 108 U.S. App. D.C. 185, 281 F. 2d 18 (1960).

[21] However, there is no evidence that Northeast's suspension at Augusta-Waterville and Lewiston-Auburn, viewed alone, has caused any substantial dislocation of employees.

[22] Actually, Mohawk operated a single round-robin Binghamton-Poughkeepsie-Binghamton flight, so that it was virtually impossible for a passenger leaving one of these points to catch a Mohawk return flight on the same day. By contrast, Command offers well timed early morning and late afternoon flights in both directions.

[23] The five markets are Poughkeepsie-New York/Burlington/Binghamton/Boston and New York-Pittsfield. The traffic statistics submitted by commuter carriers are confidential for a period of 1 year. Accordingly, pursuant to § 298.66 of the Board's Economic Regulations, the Board, on its own motion, finds that it is in the public interest to disclose this information as well as comparable information for Air North, Executive, Suburban, and Houston Metro, as set forth below.

otherwise be in the public interest are applicable here.

We tentatively find that certification would be an undue burden on Command by reason of the limited extent of, and unusual circumstances affecting, its operations. As described earlier, the carrier's operations are of limited extent in terms of both the replacement services involved and the overall scope of its operations. Further, the very nature of the small aircraft to which Command is restricted makes the operations limited in extent. The accommodations on these aircraft not only limit the competitive capabilities of Command but also limit the amount of traffic it can carry and the length of the markets it can serve, compared with a certificated carrier operating large aircraft.[24] Additionally, we believe that the cost of certificate procedures would impose a severe financial hardship on Command wholly disproportionate to its existing and proposed operations. Also, the unusual circumstances affecting the operations of the commuter carriers found to exist in the Part 298 case are present here.

As we emphasized earlier, certification would impose an undue burden on Command not only in terms of the financial cost of section 401 procedures, but also because it would deprive the carrier of the flexibility it must have to conduct its nonsubsidized services with small aircraft in a short-haul, low density market.

We also are satisfied that there are no safety considerations which would warrant a determination that the substitution arrangement is contrary to the public interest. Not only must Command conduct its operations in strict conformity with the Federal Aviation Regulations promulgated by the Secretary of Transportation, who is charged by law with insuring the highest degree of safety in air transportation, but it also has had a successful operating history.[25]

Mohawk's (Allegheny's) suspension at Massena, Ogdensburg, and Rutland. As stated earlier, we believe that the suspension/replacement arrangement between Mohawk (Allegheny) and Air North at Massena and Ogdensburg, N.Y., and Rutland, Vt., is in the public interest from an overall transportation standpoint. See Orders 70–2–23 and 72–8–127.

Under its arrangement with Mohawk, Air North, operating as a "Mohawk Commuter" carrier, has provided replacement service with 18-passenger de-Havilland Twin Otters in a total of seven markets. Its minimum daily frequencies have been as follows:

Market	*Round-trip Frequencies*
Massena-Burlington	2
Massena-Syracuse	4
Massena-Watertown	3
Ogdensburg-Burlington	1½
Ogdensburg-Syracuse	3
Ogdensburg-Watertown	2½
Rutland-Albany	2

Pursuant to the agreement, Mohawk agreed to underwrite the replacement service in a total sum not exceeding $525,000 during the first 3 years of the contract and to provide various support services, including ground handling and reservation services. Finally, the two carriers filed tariffs providing for joint fares, Air North filed initial fares, equal to Mohawk's preexisting fares in the markets involved, and subscribed to CAB Agreement 18900, which has the effect of increasing the liability limits of the Warsaw Convention to $75,000.

Mohawk, prior to its suspension, provided one daily frequency in each direction to Massena and Ogdensburg (OAG, January 1, 1970). It operated a single northbound flight over a New York-Utica - Syracuse - Watertown - Ogdensburg-Massena routing and a single southbound flight over an Ogdensburg-Massena-Watertown-New York routing. In addition, Mohawk served Rutland as part of a single daily New York-Albany-Glen Falls-Rutland round trip.[26] All of these operations were performed with 44-seat FH–227 aircraft.

In 1971, Air North's actual replacement services generated the following traffic totals:

Market	Mileage	Passengers
Massena-Burlington	89	145
Massena-Syracuse	141	4,871
Massena-Watertown	88	63
Ogdensburg-Burlington	151	79
Ogdensburg-Syracuse	113	3,428
Ogdensburg-Watertown	55	53
Rutland-Albany	69	1,932

Citing Air North's operating results in these markets and the carrier's serious financial difficulties, Allegheny has sought, and we have recently approved (By Order 72–8–127), an amendment to the minimum replacement service requirements upon which Allegheny's suspension is conditioned. Air North will no longer be required to serve the Massena/Ogdensburg - Burlington/Watertown markets, which have not generated sufficient traffic to support air service,[27] and will be permitted to reduce Massena-Syracuse frequencies from four to three daily round trips. The carrier's Ogdensburg-Syracuse and Rutland-Albany services will continue at existing levels. As we found in Order 72–8–127, Air North's services at Massena, Ogdensburg, and Rutland will continue to be superior to those previously offered by Mohawk.

Systemwide, Air North carried 26,658 passengers in 31 markets in 1971; its total RPM's in that year amounted to less than 0.4 percent of the average RPM's of the certificated local service industry. Also, as of March 31, 1972, the carrier listed total assets of $835,000 and a stockholders' equity of $154,000. As noted earlier, Allegheny has advised the Board that the commuter carrier is currently facing serious financial difficulties.

Air North has been providing scheduled service at all three communities at issue since 1968. The carrier states that it operates an FAA-approved maintenance base, avionics repair facility, and school of aeronautics. The aircraft Air North uses in its operations are suitable for the subject service and the carrier has indicated that its pilots are ATR rated with 4,000 to 15,000 flying hours, that its copilots all have commercial licenses with multi-engine and instrument ratings, and that it fully complies with FAA regulations.

In light of these factual circumstances, we tentatively conclude for the general reasons set forth earlier that the certification process would not be appropriate for Air North's replacement services. Thus, we tentatively find that imposition of a certification requirement would not be in the public interest because, as in the case of Command, Air North's replacement services are neither so extensive nor so likely to achieve economic success as to warrant their independent certification. Our tentative undue burden findings with respect to Command's replacement service at Poughkeepsie apply also to Air North's services at Massena, Ogdensburg and Rutland. Thus, Air North's operations are similarly limited because of the restricted size of its aircraft and the narrow scope of both the replacement services at issue and its overall operations.

In view of the limited scope of the carrier's services, as described above, the substantial expense of certificate procedures would represent a substantial financial hardship for Air North wholly

[24] We find that operations under the amended Part 298 with a 30-passenger/7,500-pound payload limit will continue to be of limited extent notwithstanding the fact that the commuter carriers will be able to provide a number of the amenities not available on the aircraft presently operated under the 12,500-pound limit.

[25] The customary informal check by our staff with the FAA indicates that the carrier's operations appear to be conducted in accordance with the applicable safety regulations.

[26] Mohawk's services to Massena, Ogdensburg, and Rutland were clearly not designed to meet the local service needs of these small communities. For example, it was virtually impossible for a Mohawk passenger departing from Massena or Ogdensburg for any other point to catch a Mohawk return flight on the same day. Instead, these small communities were served as adjuncts of Mohawk's longer-haul services, with schedules and aircraft designed primarily to meet the needs of these longer-haul operations. Mohawk's operations were, thus, typical of the certificated carriers' service patterns in short-haul low-density markets. See p. 9, supra.

[27] These operations were stated by Allegheny to be a principal source of Air North's difficulties. Moreover, Allegheny advises that a program is now under way to strengthen the carrier.

disproportionate to its existing and proposed operations.[28] Also, apart from the cost of section 401 procedures, certification would deprive Air North of the operating flexibility it must have to conduct its services with small aircraft in low density, short-haul markets at issue.

Lastly, nothing in Air North's safety record would lead us to find that its replacement services pose any safety hazard for the traveling public. On the contrary, the carrier has a history of safe operations and compliance with the FAA's rigorous safety standards.

Northeast's (Delta's) Suspension at Augusta/Waterville and Lewiston/Auburn, Maine. For the reasons set forth in Order 70-3-62, it is the Board's judgment that Northeast's suspension at Augusta/Waterville and Lewiston/Auburn, Maine, subject to the maintenance of a specified level of replacement service by Executive Airlines, is in the public interest from a general transportation standpoint.[29]

Specifically, the Board conditioned Northeast's suspension on the provision of minimum levels of commuter service as follows: six to eight daily round trips (depending on the season) in the Boston-Augusta/Waterville market and five daily round trips in the Boston-Lewiston/Auburn market. Executive has served these markets with deHavilland Twin Otter aircraft. Prior to its suspension, Northeast operated a single daily round trip with FH-227 equipment to Augusta and Lewiston over an Augusta-Lewiston-Boston routing.[30]

In 1971, Executive's commuter services attracted 23,721 passengers in the 148-mile Boston-Augusta/Waterville market and 9,610 passengers in the 122-mile Boston-Lewiston market.[31]

Systemwide, the carrier provided scheduled service for 318,923 passengers in 112 markets in 1971, making it the largest commuter. Nevertheless, its total RPM's in that year amounted to less than 5 percent of the average RPM's for the certificated local service industry. However, since 1971, Executive has found it necessary to substantially cut back its systemwide operations—although continuing to provide frequent and dependable services in the market at issue—in the face of serious financial difficulties.[32]

In fact, the carrier has been in receivership under Chapter XI of the Bankruptcy Act for about 8 months, and is now attempting a reorganization, in an effort to solve these problems.

Executive has been serving the New England area since 1959 and was already providing scheduled service in both markets at issue before Northeast filed its suspension application. The carrier states that it uses two fully qualified instrument-rated pilots on all flights and that it fully complies with FAA regulations.

On the basis of the foregoing, we tentatively conclude for the reasons set forth earlier that the certification process would be inappropriate for Executive's replacement services. Also, in light of Executive's financial difficulties, we are unable to predict, on the information now available to us, whether the carrier will be able to continue its existing Boston-Augusta/Lewiston services, which we have found to be in the public interest. We tentatively find that imposition of a certification requirement would not be in the public interest because the carrier's replacement services are neither so extensive nor so likely to achieve economic success as to warrant their independent certification. In this connection, we note that there is in issue in the New England Service Investigation the question of whether air taxi operators should receive certificates to provide various services in the New England area, and that our tentative conclusion here reached is not intended to suggest that the routes here involved might not be appropriately certificated as a part of a larger route network. Moreover, in light of the pendency of the New England Service Investigation in which hearings are due to begin in the immediate future, it would in any event be inappropriate to embark upon additional certification proceedings at this time with respect to these particular replacement services, and we find that the institution of such additional proceedings would constitute an undue burden upon Executive. Also, independently of the pendency of the New England Service Investigation, we find, as in the case of Command and Air North, that Executive's replacement services in any event are qualified for exemption by reason of the small size of its aircraft and the narrow range of the replacement services at issue, and that the cost of certificate procedures restricted to the replacement services at issue would impose serious financial hardship on Executive.

Finally, Executive has a history of safe operations and of compliance with the FAA's safety rules. Nothing in the carrier's record would lead us to believe that its replacement services present a safety hazard to air passengers.

Allegheny's suspension application at Lancaster and Reading. On November 29, 1971, Allegheny filed an application in Docket 23020 requesting authority to suspend service at Lancaster and Reading, Pa., for 10 years, pursuant to Part 205 of the Board's economic regulations, and for approval of an agreement between Allegheny and Suburban Airlines which establishes a replacement service by Suburban at Lancaster and Reading.

The agreement between Allegheny and Suburban requires Suburban to provide a minimum of four daily round trips in the Lancaster-Reading-Philadelphia markets and two daily round trips in the Lancaster/Reading-Newark markets. Allegheny agrees to restore service at its present level at Lancaster and Reading should the commuter air service cease.

Suburban will use the "Allegheny Commuter" trademark in the scheduled services to be provided, conduct an airline-type operation, and maintain insurance coverage satisfactory to Allegheny. Allegheny will not provide any financial guarantee for Suburban's replacement service; however, Allegheny will furnish Suburban certain support services, including reservation and ground handling services at the Philadelphia International and Newark Municipal Airports at specified charges. In addition, the agreement provides for the establishment of joint fares between Lancaster and Reading and points on Allegheny's system for which Allegheny has on file single-factor Lancaster and Reading fares.

The agreement provides further that Suburban will transport U.S. mail on its scheduled Allegheny commuter flights between Lancaster and Reading, on the one hand, and Philadelphia and Newark, on the other. Suburban's transportation

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[28] Air North had originally estimated that its proposed services would earn revenues of $874,238 and suffer an operating loss of $15,762 (without aid from Mohawk), in the first year of operations. However, Allegheny has recently indicated that the replacement services as heretofore operated have proved less successfully financially than expected.

[29] On Apr. 26, 1972, the State of Maine filed a petition for modification of Order 70-3-62 requesting that Northeast's suspension at Augusta/Waterville be conditioned upon service by a commuter carrier at both the Augusta and Waterville airports, with a minimum frequency required at each point. Maine requests that the existing required frequencies apply to the Augusta airport and that the Board require an additional four daily round trips to Boston from the Waterville airport. Maine states that it intends to seek certification for Waterville as a separate point in the New England Service Investigation, Docket 22973, and that its request is intended to provide Waterville with needed service in the interim. The State also requests that Northeast's suspension authority be conditioned upon the establishment by Northeast of an Allegheny Commuter-type service. We will deny Maine's petition. Augusta/Waterville is a hyphenated point on Northeast's certificate, and, accordingly, Northeast must provide service only to one airport at these two cities. In essence, Maine is asking us to dehyphenate these two points prior to the New England Investigation where this issue can best be resolved after a full evidentiary hearing. With respect to Maine's request for an Allegheny Commuter-type service, by Order 72-6-63, June 15, 1972, we denied a similar request by Maine and for the reasons stated in that order, we again deny Maine's request.

[30] Because Northeast operated only afternoon services, a Boston-Lewiston/Augusta passenger using certificated services in both directions would have been required to stay at one of those cities overnight before making his return trip.

[31] By contrast, Northeast carried 13,210 Boston-Augusta and 9,510 Boston-Lewiston passengers in 1969, its last full year of operations.

[32] By Mar. 31, 1972, Executive was operating in only 15 markets, compared to the 112 it served in 1971. It now provides scheduled air services in 11 communities—Albany, Augusta, Boston, Burlington, Keene, Lebanon, Lewiston, Montpelier, Portland, Waterville, and Worcester.

of the mail will be performed under Allegheny's currently effective mail rates. Allegheny will keep all the records and accounts and make all the required reports to the Postal Service regarding Suburban's transportation of the mail, and Allegheny, in turn, will pay Suburban 6 cents per pound for all categories of mail boarded on Suburban's Allegheny commuter flights at Lancaster, Reading, Philadelphia, and/or Newark. This rate will be subject to adjustment from time to time as the parties may agree.

The Reading Municipal Airport authority filed a letter supporting Allegheny's proposal and the Lancaster Airport Authority filed a motion to file a late-filed answer in support of Allegheny's application.[33]

Upon consideration of the pleadings and all the relevant facts, we have tentatively decided to approve the agreement in question, subject to certain conditions, and to authorize Allegheny to suspend service temporarily to the extent necessary to carry out the agreement. We have also decided to exempt Allegheny from the provisions of section 408 insofar as it otherwise would preclude the relationships between Allegheny and Suburban, and to exempt Suburban from the provisions of Part 298 to permit it to engage in transportation of mail by aircraft to and from Lancaster and Reading under Allegheny's currently effective service mail rates in accordance with the agreement we have tentatively approved.

In essence, the agreement contemplates a situation similar to other "Allegheny Commuter" agreements in which Allegheny employs an independent contractor to discharge its certificate obligation with small aircraft, rather than employing small aircraft in its own operations. The service as a practical matter will be held out and performed through the use of Allegheny's name and facilities.

Our analysis of the Allegheny-Suburban proposal indicates that approval of the agreement is likely to reduce Allegheny's subsidy need by a substantial amount, estimated by the carrier at $69,000. Furthermore, the communities support the proposal, and we find that service to the traveling public at both points will be improved by Suburban's proposed operations. Under the proposed operations, Suburban will replace Allegheny's present two CV-580 (50 passenger) round trips in the Lancaster/Reading-Pittsburgh markets with an initial pattern of six Twin Otter round trips in the Lancaster/Reading-Newark markets.[34] With an increase in frequency from five to 10 daily round trips at both Lancaster and Reading,[35] we expect a substantial increase in traffic at both cities.[36]

Suburban has been engaged in scheduled commuter operations since 1957 and, as indicated earlier, already provides service to both Lancaster and Reading. In 1971, the carrier attracted 5,662 Newark-Lancaster passengers, 10,994 Newark-Reading passengers, 6,013 Philadelphia-Lancaster passengers, and 7,019 Philadelphia-Reading passengers. Systemwide, Suburban carried 43,922 passengers in 15 short-haul markets in that year[37]; its total RPM's amounted to less than 0.5 percent of the average RPM's of the certificated local service industry. The carrier employs 30 pilots and 50 mechanics and is managed by Arthur M. Horst, who has over 25 years of experience in aviation.

We have also examined the agreement in light of the requirements of section 408 of the Act. We tentatively find and conclude that the same basic control factors which were found to exist in prior approval agreements are present in the agreement now under consideration, and that these factors indicate that Allegheny will control Suburban within the meaning of section 408 of the Act and may result in other relationships subject to section 408.

We have tentatively decided pursuant to section 408(a)(5) of the Act, as amended, to exempt the acquisition by Allegheny of control over Suburban, a noncertificated air carrier, from the requirements of section 408. The agreement in question will not create a monopoly, restrain competition, or jeopardize another air carrier not a party to the transaction, nor will it be inconsistent with the public interest. In these circumstances, requiring Allegheny to obtain approval under section 408 of the Act, and the applicable regulations, would unnecessarily delay the implementation of the agreement and subject it to unnecessary expense and would not be in the public interest.

In view of the foregoing, the Board tentatively finds and concludes (1) that subject to conditions, Agreement CAB 22801 will not be adverse to the public interest or in violation of the Federal Aviation Act; (2) that it is in the public interest to exempt the acquisition by Allegheny of control over Suburban from the requirements of section 408 of the Act, to the extent that it would otherwise prevent Allegheny from implementing such agreement; and (3) that, to the extent necessary to relieve Allegheny of its obligation to provide services in excess of those provided for by the agreement, a temporary suspension of service by Allegheny at Lancaster and Reading is in the public interest.

Next, we have examined the facts presented by the application in light of the court's findings in the ALPA case, and we tentatively find that with respect to Suburban, the statutory conditions for exemption from certification continue to exist.

First, we tentatively find and conclude for the reasons set forth earlier that the certification process would not be appropriate for Suburban's replacement services, which are not so wide ranging—or hold such promise of financial success—as to justify their independent certification. In this connection, it must be emphasized that the four markets in which Suburban will operate as a replacement commuter are not now receiving certificated service. Also, for the reasons earlier stated certification would effectively preclude the arrangement between Allegheny and Suburban, which we have tentatively found to be in the public interest and which has the support of the communities involved.

Second, we tentatively find and conclude that certification would be an undue burden on Suburban by reason of the limited extent of, and unusual circumstances affecting, its operations. Suburban's operations are limited in terms of the restricted size of its aircraft and the narrow scope of both the replacement services in issue and its overall operations. Given the limited scope of its services, as described above, the considerable expense of certification proceedings would subject Suburban to a financial burden disproportionate to its existing and proposed operations. Moreover, as we have stressed earlier, enforcement of section 401 requirements would be an undue burden not only because of the substantial cost of certification procedures, but also because certification would deprive Suburban of the necessary operating flexibility it must have to conduct nonsubsidized services with small aircraft in low density, short-haul markets.

We also tentatively find and conclude that Suburban should be granted an exemption from Part 298 of the Board's economic regulations in order to permit it to transport mail by aircraft to and from Lancaster and Reading under Allegheny's currently effective service mail rates. We find that Suburban's operations are limited in extent, as set forth earlier, and it appears that the compensation to be paid Suburban by Allegheny is reasonable. Furthermore, to require Suburban to undergo certification proceedings in order to carry the mail would deprive the public of a needed service and would subject the carrier to a

[33] We will grant the motion.

[34] The mileages in these markets are as follows: Newark-Lancaster, 119 miles; Newark-Reading, 97 miles; Philadelphia-Lancaster, 59 miles; and Philadelphia-Reading, 52 miles. We recognize that service to Pittsburgh from Lancaster/Reading will be more circuitous and somewhat more time consuming. However, these disadvantages will not apply to passengers using Pittsburgh as a transfer point because of the availability of on-line connections at both Philadelphia and Newark.

[35] Suburban currently operates three departures at both Lancaster and Reading serving the Philadelphia and Newark markets, in addition to Allegheny's two departures a day.

[36] We note that increases have occurred in other "Allegheny Commuter" markets. For example, at Johnstown during the 8 months ended December 31, 1969 (the last period in which Allegheny served Johnstown), 10,845 Johnstown passengers were enplaned by Allegheny. During the comparable 8-month period in 1970, the Allegheny Commuter enplaned 22,260 Johnstown-Pittsburgh passengers, an increase of more than 100 percent.

[37] Suburban now provides scheduled passenger services at eight cities—Allentown, Buffalo, Lancaster, Newark, Philadelphia, Reading, Washington, D.C., and Wilkes-Barre.

financial burden disproportionate to the authority sought and would not be in the public interest. We further tentatively find that Suburban's proposed replacement service is in the public interest and should offer the Postal Service substantial benefits without any increase in the costs of transportation. Allegheny will be the air carrier in relation to the Postal Service and payment by the Postal Service will be directly to Allegheny, which in turn will pay Suburban pursuant to contractual arrangements between them. The Board will tentatively approve this arrangement subject to a condition, making it clear that Suburban's compensation for its mail services is solely pursuant to its contract with Allegheny and that it may not claim additional amounts pursuant to section 406.

Finally, we are confident that there are no safety considerations which would warrant a determination that the substitute service arrangement is contrary to the public interest. Suburban has a history of safe operations and compliance with the FAA's standards. There is thus no basis to assume that its replacement services would pose a safety hazard to the public.

Texas International's agreement with Houston Metro Airlines. On March 8, 1972, pursuant to Part 261 of the Board's economic regulations and section 412 of the Act, Texas International filed a copy of an agreement entered into between it and Metroflight Airlines, Inc., doing business as Houston Metro Airlines. The agreement provides for the performance of reservation, ticketing, baggage handling, and similar ground services by Texas International for Metro's flights in the Houston-Galveston market. In return, Metro is to pay Texas International a fee of $2.50 for each Houston-Galveston passenger it boards.

Although Texas International will continue to provide one daily round trip in the market—the minimum level of service it must perform under its certificate—ALPA filed comments on the agreement and a motion for an evidentiary hearing.[39] Basically, ALPA contends that the agreement between Texas and Metro is a substitute service agreement similar to the Mohawk and Northeast agreements herein because the Court in ALPA v. C.A.B., supra, spoke of situations in which "a noncertificated carrier substantially takes over the route of a certificated carrier." ALPA argues that even though Texas International will still be performing its certificated operations, Metro is substantially replacing its service. ALPA alleges that prior to the agreement, Texas International had operated up to nine flights in the market mostly with Beech 99 equipment, and that after the agreement, Texas International cut its service to a single daily round trip with Convair 600 equipment. ALPA asserts that this is the type of suspension/substitution arrangement the Court was referring to when it spoke of "substantially" taking over the routes of a certificated carrier.

[39] Texas International filed reply comments.

We do not accept ALPA's contention that this agreement constitutes a replacement service similar to the situation discussed above.[39] Unlike the above cases, Texas International will continue to operate certificated services at Galveston, and, under these circumstances, we cannot find that any carrier is replacing its services.[40] Before 1970, Texas International's Houston-Galveston frequencies varied, ranging from one to three daily round trips. In early 1970, the carrier instituted an experimental program of service with Beech 99 aircraft to about 10 small Texas markets, including Houston-Galveston, Houston-Victoria, Dallas-Waco, and Dallas-Longview. Using smaller "air taxi type" aircraft, Texas International was naturally able to raise its frequency levels. However, the carrier has since decided to abandon its B–99 experiment and to return to the exclusive use of larger Convair 600's in all of these Texas markets—not only Houston-Galveston. The use of the larger aircraft has in turn resulted in frequency cutbacks in all of the markets. Consequently, ALPA's attempt to attribute Texas International's lower Houston-Galveston frequencies to its agreement with Metro is not persuasive.

However, assuming arguendo that the Court's findings in the ALPA case are applicable to Metro's Houston-Galveston services, we tentatively find that the statutory conditions for this exemption from certification continue to exist.

Houston Metro has been engaged in scheduled air taxi services since 1969. In 1971, it operated essentially intrametropolitan Houston services, carrying 76,934 passengers in the 31-mile Houston-Clear Lake City market, and 2,443 passengers between Houston's Hobby Airport and the Houston Intercontinental Airport. In addition, the carrier now provides seven daily round trips with Twin Otter aircraft in the 54-mile Houston-Galveston market. Metro's total RPM's in 1971 amounted to less than 0.3 percent of the average RPM's for the certificated local service industry.

Under these factual circumstances, we tentatively find that Metro's Houston-Galveston services pursuant to its agreement with Texas International are in the public interest, and that enforcement of the Act, to the extent it would prohibit such services, would not be in the public interest. First, the carrier's agreement with Texas International permits it to improve its existing services to the public, particularly with respect to reservations and baggage handling. Certification of Metro's services would, for reasons set forth earlier, not be appropriate because the carrier's Houston-Galveston services are not so widespread or so likely to achieve financial success as to warrant their independent certification.

Next, we tentatively find and conclude that certification would be an undue burden for Houston Metro by reason of the limited extent of, and unusual circumstances affecting its operations. The commuter's operations are limited in extent because of its small aircraft and the limited scope of both its Houston-Galveston services at issue and its systemwide operations. Considering its limited services, the substantial cost of certificate procedures would subject Houston Metro to a financial burden wholly disproportionate to its existing and proposed operations. In addition, certification would deprive the carrier of operating flexibility essential to its small aircraft services, a consideration we have emphasized throughout this order.

Finally, we are satisfied, on the basis of Metro's history of safe operations and in light of the FAA's responsibilities, that the carrier's Houston-Galveston services do not pose a safety hazard to the public.

Consequently, we tentatively find and conclude that the ground services agreement between Texas International Airlines, Inc., and Metroflight Airlines, Inc., doing business as Houston Metro Airlines, is not adverse to the public interest nor in violation of the Act and that it should be approved.

Interested persons will be given 21 days following the service date of this order to show cause why the tentative findings and conclusions set forth herein and in Appendix A[41] should not be made final. We expect such persons to direct their objections, if any, to the specific cases in issue, and to support such objections with detailed economic or legal analysis.

Accordingly, it is ordered, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein and in Appendix A[41] and granting the requested suspension and exemption authority and approval of agreements;

2. Any interested persons having objection to the issuance of an order making final the proposed findings, conclusions, suspension, and exemption authorizations and approvals set forth herein shall within 21 days after service of a copy of this order, file with the Board and serve upon all persons listed in Appendix B[42] a statement of objections together with such statistical data, and other materials and evidence relied upon to support the stated objections; answers to such objections shall be filed within 14 days, thereafter;

[39] For reasons detailed earlier, we will deny ALPA's request for a full evidentiary hearing to determine whether labor protective conditions should be imposed. We note, moreover, that in this particular case, there is no reason to believe that Texas International would be required to provide any more service than it now operates even if we were to disapprove its agreement with Metro. Under these circumstances, and in light of our prior discussion herein concerning labor protective conditions, we have tentatively decided that labor protective provisions should not be imposed.

[40] We are cognizant of Texas International's application in Docket 24599 to delete Galveston from its Route 82. We will pass on that application in due course.

[41] Appendix A filed as part of the original document.

[42] Appendix B filed as part of the original document.

3. Any interested persons requesting an evidentiary hearing shall state in detail why such a hearing is necessary and what relevant and material facts he would expect to establish through such a hearing. General, vague, or unsupported objections will not be entertained;

4. If timely and properly supported objections are filed, full consideration will be accorded the matters or issues raised by the objections before further action is taken by the Board;

5. In the event no objections are filed to any part of this order, all further procedural steps relating to such part or parts will be deemed to have been waived, and the case will be submitted to the Board for final action;

6. The motion of the Lancaster Airport Authority for leave to file an otherwise unauthorized document be and it hereby is granted;

7. The motion of the Air Line Pilots Association, International to reopen the record for evidentiary hearing filed in Dockets 21520, 21335, and 21533 be and it hereby is denied;

8. The motion of the Air Line Pilots Association, International that Agreement 22961 be set for evidentiary hearing be and it hereby is denied;

9. The petition of the State of Maine filed in Docket 21350 be and it hereby is denied; and

10. A copy of this order shall be served upon all persons listed in Appendix B.[42]

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-15849 Filed 9-15-72;8:50 am]

[Dockets Nos. 24137, 24139; Order 72-9-33]

SEDALIA, MARSHALL, BOONVILLE STAGE LINE, INC.

Order To Show Cause

Issued under delegated authority September 11, 1972.

Final service mail rates per great circle aircraft mile for the transportation of mail by aircraft as shown by the appendix were established by the Board and are currently in effect for Sedalia, Marshall, Boonville Stage Line, Inc. (Sedalia), an air taxi operating pursuant to 14 CFR Part 298.

By petitions filed January 17, 1972, Sedalia requested the Board to reopen its current service mail rates and fix new final service mail rates per great circle aircraft mile as set forth in the appendix.

By motions dated January 21 and January 24, 1972, the Postmaster General requested a 30-day extension of time in which to file a reply to Sedalia's petitions, stating that evaluation of rate adjustments requested by air taxi operators was a function of the regional personnel of the U.S. Postal Service. Therefore, in view of the time required properly to evaluate such requests, a determination of the position of the U.S. Postal Service could not be made in the normal time allowed for answers by the procedural rules of the Board. On February 2, 1972, the Postmaster General's motion for extension of time for answer was granted, extending the date for answer to February 22, 1972.[1]

Answer to Sedalia's petition was filed March 23, 1972, by the Postmaster General opposing the increase in the service mail rates, contending Sedalia had not furnished evidence justifying the increase.

On May 9, 1972, the Postmaster General petitioned the Board for leave to file an amended answer, which is granted, claiming that although the passage of time had not resulted in a complete submission of documentation by Sedalia, it had enabled the Postal Service to take a specific position on the carrier's petition. The amended answer of the Postmaster General rejected cost increases claimed by the carrier for maintenance, engine overhaul, and crew wages in excess of 3.4 percent, the Bureau of Labor Statistics "Consumer Price Index" change for the period involved, which is the maximum allowable by the Postal Service for the above functions. In addition, unsupported increases in landing fees had been denied and overhead had been adjusted to eliminate cost increases claimed by the carrier other than Federal aircraft registration tax. On June 1, 1972, Sedalia filed an unauthorized document stating that certain papers supporting the requested increase had been misplaced and had since been sent to the Postal Service. In response, on July 6, 1972, the Postal Service filed a petition increasing its own proposed rate, reflecting the recognition of overhead costs not previously documented.[2] On July 21, Sedalia filed an answer to that petition agreeing with the Postal Service.

On August 9, the Postal Service filed an amended petition for orders to show cause saying, among other things, that Sedalia had submitted evidence showing that, regarding Dockets 24137 and 24139, landing fees had increased effective August 1, 1972. After giving effect to the above adjustments the Postmaster General states that no objection would be made by the Postal Service to the issuance of an order by the Board establishing[2a] service mail rates per great circle aircraft mile as shown in the appendix.

It is in the public interest to fix, determine, and establish the fair and reasonable rate of compensation to be paid by the Postmaster General for the proposed transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, between the aforesaid points. Upon consideration of the petitions and other matters officially noticed, it is proposed to issue an order[3] to include the following findings and conclusions:

The fair and reasonable final service mail rates to be paid to Sedalia, Marshall, Boonville Stage Line, Inc., in its entirety by the Postmaster General pursuant to section 406 of the Act for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith, shall be the rates per great circle aircraft mile based on five round trips per week as set forth below:

Route and effective date	*Rate (cents per mile)*
Sidney and North Platte, Nebr.:	
From Mar. 26, 1972, to July 31, 1972	66.26
On and after Aug. 1, 1972	66.88
Shenandoah, Iowa, and Joplin, Mo., via Omaha, Nebr., Des Moines, Iowa, and Kansas City and Springfield, Mo.:	
From Jan. 17, 1972, to July 31, 1972	52.26
On and after Aug. 1, 1972	52.99

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, and regulations promulgated in 14 CFR Part 302, 14 CFR Part 298, and 14 CFR 385.16(f),

It is ordered, That:

1. Sedalia, Marshall, Boonville Stage Line, Inc., the Postmaster General, Ozark Air Lines, Inc., Frontier Air Lines, Inc., Braniff Airways, Inc., Delta Air Lines, Inc., United Air Lines, Inc., and all other interested persons are directed to show cause why the Board should not adopt the foregoing proposed findings and conclusions and fix, determine, and publish the final rates specified above for the transportation of mail by aircraft, the facilities used and useful therefor, and the services connected therewith as specified above as the fair and reasonable rate of compensation to be paid to Sedalia, Marshall, Boonville Stage Line, Inc.;

2. Further procedures herein shall be in accordance with 14 CFR Part 302, and notice of any objection to the rate or to the other findings and conclusions proposed herein, shall be filed within 10 days, and if notice is filed, written answer and supporting documents shall be filed within 30 days after service of this order;

3. If notice of objection is not filed within 10 days after service of this order, or if notice is filed and answer is not filed within 30 days after service of this order, all persons shall be deemed to have waived the right to a hearing and all other procedural steps short of a final decision by the Board, and the

[42] Appendix B filed as part of the original document.

[1] The Postmaster General, on February 15, 1972, by motion requested an additional 30-day extension of time to file his answer stating difficulties were encountered in the evaluation of the petitions by regional personnel of the Postal Service. Extension was granted February 22, 1972, extending the due date for answer to March 23, 1972.

[2] All the adjustments made herein by the Postal Service are in compliance with Regional Instruction 530-4, "Air Taxi Transportation Rate Adjustments, Part 298 Operators."

[2a] Appendix filed as part of the original document.

[3] As this order to show cause is not a final action, it is not regarded as subject to the review provisions of 14 CFR, Part 385. These provisions will apply to final action taken by the staff under authority delegated in § 395.16(g).

Board may enter an order incorporating the findings and conclusions proposed herein and fix and determine the final rate specified herein;

4. If answer is filed presenting issues for hearing, the issues involved in determining the fair and reasonable final rate shall be limited to those specifically raised by the answer, except insofar as other issues are raised in accordance with Rule 307 of the rules of practice (14 CFR 302.307); and

5. This order shall be served on Sedalia, Marshall, Boonville Stage Line, Inc., the Postmaster General, Ozark Air Lines, Inc., Frontier Air Lines, Inc., Braniff Airways, Inc., Delta Air Lines, Inc., and United Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-15850 Filed 9-15-72;8:51 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial Colorado 16799]

COLORADO

Designation of Gunnison Gorge Recreation Lands

Pursuant to section 2478 of the Revised Statutes, as amended (43 U.S.C. 1201), and in accordance with the regulations in 43 CFR, Subpart 2070, I hereby designate the public lands in the following described area as the Gunnison Gorge Recreation Lands:

Class III—Natural Environment Area

SIXTH PRINCIPAL MERIDIAN

T. 15 S., R. 93 W.
Sec. 6, E½ lot 10;
Sec. 7, lots 6, 7, 15;
Sec. 18, E½E½;
Sec. 19, NE¼, SW¼SE¼;
Sec. 20, S½NE¼, SW¼SW¼, E½SW¼, SE¼;
Sec. 21, W½, SE¼, W½NE¼, SE¼NE¼;
Sec. 22, SW¼, SW¼SE¼;
Sec. 27, N½, SW¼, NW¼SE¼;
Sec. 28, all;
Sec. 29, all;
Sec. 30, E½E½;
Sec. 31, E½NE¼;
Sec. 32, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 33, all;
Sec. 34, NW¼NW¼.
T. 15 S., R. 94 W.
Sec. 1, lots 23, 24, 33;
Sec. 12, lot 4, W½ lot 11, lot 17, W½ lot 18;
Sec. 13, W½NE¼, SW¼SW¼;
Sec. 23, NE¼, S½;
Sec. 24, NW¼, NE¼SW¼, W½SW¼;
Sec. 25, W½NW¼NW¼;
Sec. 26, all;
Sec. 35, all;
Sec. 36, W½.
T. 50 N., R. 8 W.
Sec. 5, all;
Sec. 6, all;
Sec. 7, lots 3, 4, NE¼NE¼, N½NW¼NE¼, SE¼SW¼;
Sec. 18, lots 1, 2, 3, 4, SW¼NE¼, E½NW¼, E½SW¼, NW¼SE¼, S½SE¼.

NEW MEXICO PRINCIPAL MERIDIAN

T. 51 N., R. 8 W.
Sec. 7, lots 1, 2, 3, 4;
Sec. 8, lots 2, 3, 4;
Sec. 17, W½;
Sec. 18, all;
Sec. 19, lots 1, 2, 4, NE¼, E½NW¼, SE¼SW¼, SW¼SE¼;
Sec. 20, NW¼, S½SW¼;
Sec. 29, NE¼NE¼, W½NE¼, W½, W½SE¼;
Sec. 30, all;
Sec. 31, lots 1, 2, 3, 4, NE¼, E½NW¼, E½SW¼, W½SE¼;
Sec. 32, W½.
T. 50 N., R. 9 W.
Sec. 1, lots 1, 2, 3, 4, S½NE¼, N½SE¼, SE¼SE¼;
Sec. 3, lots 3, 4, S½NW¼, SW¼, SW¼SE¼;
Sec. 10, all;
Sec. 11, W½NW¼, SE¼NW¼, SW¼, W½SE¼;
Sec. 12, NE¼SW¼, SW¼SW¼, SE¼;
Sec. 13, E½, W½NW¼, S½SW¼;
Sec. 14, NE¼, W½SE¼.
T. 51 N., R. 9 W.
Sec. 9, lot 1;
Sec. 10, lots 1, 2, 3, 4;
Sec. 11, lot 4;
Sec. 13, E½;
Sec. 15, W½E½, W½;
Sec. 16, E½E½;
Sec. 21, E½E½;
Sec. 22, NW¼NE¼, S½NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 24, SE¼NE¼, SE¼SW¼, NW¼SE¼, S½SE¼;
Sec. 25, all;
Sec. 26, S½NE¼, E½SE¼;
Sec. 27, W½, SW¼SE¼;
Sec. 28, E½E½;
Sec. 33, E½E½;
Sec. 34, NW¼NE¼, W½SW¼NE¼, W½, SW¼SE¼;
Sec. 35, E½E½;
Sec. 36, all.

The lands described as Class III—Natural Environment Area under the Bureau of Outdoor Recreation classification system aggregates approximately 21,095.18 acres.

Class IV—Unique Natural Area

SIXTH PRINCIPAL MERIDIAN

T. 15 S., R. 93 W.
Sec. 6, lots 8, 9, W½ lot 10;
Sec. 7, lots 8 through 14, inclusive, 16, 17, 18;
Sec. 18, lots 1 through 6, inclusive, W½E½, E½W½;
Sec. 19, lots 1, 2, 3, 4, E½W½;
Sec. 30, lots 1, 2, 3, 4, W½E½, E½W½;
Sec. 31, lots 1 through 5, inclusive, W½NE¼, E½NW¼, SE¼SW¼.
T. 15 S., R. 94 W.
Sec. 12, E½ lot 11, E½ lot 18;
Sec. 13, lots 1, 2, E½NE¼, W½SE¼;
Sec. 24, lots 1, 2, 3, 4, W½E½, SE¼SW¼;
Sec. 25, lots 1, 2, 3, 4, W½E½, E½NW¼, E½NW¼NW¼, SW¼NW¼, SW¼;
Sec. 36, lots 1, 2, 3, 4, W½E½.

NEW MEXICO PRINCIPAL MERIDIAN

T. 50 N., R. 8 W.
Sec. 7, lots 1, 2, S½NE¼, S½NW¼NE¼, E½NW¼, NE¼SW¼, SE¼;
Sec. 18, N½NE¼, SE¼NE¼, NE¼SE¼.
T. 51 N., R. 8 W.
Sec. 31, E½SE¼.
T. 50 N., R. 9 W.
Sec. 1, S½NW¼, SW¼SE¼;
Sec. 2, lots 1, 2, 3, 4, S½N½, SW¼, W½SE¼;
Sec. 3, lots 1, 2, S½NE¼, N½SE¼, SE¼SE¼;
Sec. 11, W½NE¼NE¼, SE¼NE¼NE¼, W½NE¼;
Sec. 12, NE¼, S½N½NW¼, S½NW¼, NW¼SW¼.
T. 51 N., R. 9 W.
Sec. 11, lots 1, 2, 3;
Sec. 12, lot 4;
Sec. 13, S½SW¼;
Sec. 14, E½E½, W½W½;
Sec. 15, E½E½;
Sec. 22, NE¼NE¼, SE¼SE¼;
Sec. 23, E½NE¼, W½W½;
Sec. 26, W½NW¼, SE¼NW¼, SW¼, W½SE¼;
Sec. 27, NE¼, N½SE¼, SE¼SE¼;
Sec. 34, E½NE¼, E½SW¼NE¼, N½SE¼, SE¼SE¼;
Sec. 35, W½E½, W½.

The lands described as Class IV—Unique Natural Area under the Bureau of Outdoor Recreation classification system aggregates approximately 8,094.37 acres.

Class VI—Historical Areas

NEW MEXICO PRINCIPAL MERIDIAN

T. 50 N., R. 9 W.
Sec. 1, SW¼;
Sec. 2, E½SE¼;
Sec. 11, NE¼NE¼NE¼;
Sec. 12, N½N½NW¼.
T. 51 N., R. 9 W.
Sec. 14, W½E½, E½W½;
Sec. 23, W½NE¼, NW¼SE¼, E½W½.

The lands described as Class VI—Historical Areas under the Bureau of Outdoor Recreation classification system aggregates approximately 890 acres.

The Gunnison Gorge Recreation Lands aggregates about 30,079.55 acres under the Bureau of Outdoor Recreation classification system.

HARRISON LOESCH,
Assistant Secretary of the Interior.

SEPTEMBER 11, 1972.

[FR Doc.72-15797 Filed 9-15-72;8:46 am]

DEPARTMENT OF COMMERCE

National Bureau of Standards

MAGNETIC TAPE

Notice of Three Proposed Federal Information Processing Standards

Under the provisions of Public Law 89-306, the Secretary of Commerce is authorized to make appropriate recommendations to the President relating to the establishment of uniform Federal automatic data processing standards.

Three proposed standards relating to magnetic tape are being recommended by the National Bureau of Standards. These standards, at such time as they may be approved by the Office of Management and Budget, will be published as Federal information processing standards.

Prior to the submission of the final endorsement of these proposals to the OMB, it is essential to assure that proper

consideration is given the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Proposed Federal information processing standards contain two basic sections: (1) An announcement section which provides information concerning the applicability, implementation, and maintenance of the standard, and (2) a specification section which details the technical requirements of the standard. Since the standards proposed for magnetic tape are implementations of American National Standards, only the announcement sections are being published herein. The detail technical specifications are included in the following three American National Standards: (1) X3B1/554–R, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI), dated August 25, 1972; (2) X3B1/555–R, Recorded Magnetic Tape for Information Interchange (1600 CPI, Phase Encoded), dated August 25, 1972; and (3) X3B1/556–R, Unrecorded Magnetic Tape for Information Interchange (Nine-Track 200 and 800 CPI, NRZI and 1,600 CPI, P.E.). A copy of these documents is available without cost from the Business Equipment Manufacturers Association (BEMA), 1828 L Street, Washington, DC 20036. The document number and title should be cited in the request.

Interested parties may submit comments to the Associate Director, ADP Standards, Center for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, within 60 days after publication of this notice in the FEDERAL REGISTER.

Dated: September 12, 1972.

LAWRENCE M. KUSHNER,
Acting Director.

DRAFT—FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION

Date ------

ANNOUNCING THE STANDARD FOR RECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE (800 CPI, NRZI)

NOTE: FIPS PUB 3–1 supersedes FIPS PUB 3 November 1, 1968.

Federal information processing standards publications are issued by the National Bureau of Standards under the direction of the Office of Management and Budget (OMB) in accordance with the provisions of Public Law 89–306 and OMB Circular No. A–86.

Name of Standard. Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI).

Category of Standard. Hardware Standard, Interchange Codes and Media.

Explanation. This standard specifies the recorded characteristics of nine-track, ½-inch tape, including the data format for implementing the Federal Standard Code for Information Interchange at the recording density of 800 characters per inch (CPI). It is one of a series of Federal standards implementing the Federal Standard Code for Information Interchange (FIPS 1) on magnetic tape media. This revision to FIPS PUB 3 reflects a change in scope from the earlier version of X3.22–1967, and encompasses the recorded tape requirements only. The unrecorded tape standard includes the requirements for the physical properties of the tape and reels that were previously included in FIPS 3.

Approving Authority. Office of Management and Budget.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Center for Computer Sciences and Technology).

Cross Index.

a. FIPS PUB 1, Federal Standard Code for Information Interchange.

b. FIPS PUB ------, Unrecorded Magnetic Tape for Information Interchange (nine-track 800 CPI, NRZI and 1,600 CPI, P.E.).

c. FIPS PUB ------, Recorded Magnetic Tape for Information Interchange (1,600 CPI, Phase Encoded).

d. AN Standard X3. ------, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI).

Applicability. This standard is applicable to all nine-track tape recording and reproducing equipments employing ½-inch tape and recording densities of 800 characters per inch (CPI). Federal information processing systems employing such equipment, including the associated programs, shall provide the capability to accept and generate tapes in compliance with the requirements set forth in the standard.

Implementation Schedule. The earlier version of this standard (FIPS 3) became effective on July 1, 1969. The changes provided by this revision become effective on the date of publication. All applicable equipment ordered on or after the date of this FIPS PUB must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below. Exceptions to this standard are made in the following cases:

a. For equipment installed or on order prior to the date of this FIPS PUB.

b. Where procurement actions are into the solicitation phase (i.e., request for proposals or invitation for bids have been issued) on the date of this FIPS PUB.

Waiver Procedure. Heads of agencies may waive the provisions of the implementation schedule. Proposed waivers relating to the procurement of nonconforming equipments will be coordinated in advance with the National Bureau of Standards. Letters should be addressed to the Director, Center for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. They should describe the nature of the waiver and set forth the reasons therefore.

Sixty days should be allowed for review and response by the National Bureau of Standards. The waiver is not to be made until a reply from the National Bureau of Standards is received; however, the final decision for granting the waiver is a responsibility of the agency head.

Specifications. This standard adopts in whole the requirements set forth in the American National Standard X3. ------–1972, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI), which was developed and approved by the American National Standards Institute.

Qualifications. It is emphasized that this standard is one of a series of standards implementing the Federal Standard Code for Information Interchange (FIPS 1) on nine-track, ½-inch computer tape. As such, it is not intended to be implemented to the exclusion of the nine-track, 1,600 CPI standard.

Where to Obtain Copies of the Specifications of the Standard

a. Federal Government activities should obtain copies from established sources within each agency. When there is no established source, purchase orders should be submitted to the General Services Administration, Specifications Activity, Printed Materials Supply Division, Building 197, Washington Navy Yard Annex, Washington, D.C. 20407. Refer to Federal Information Processing Standard ------. (Price ---- cents a copy.)

b. Others may obtain copies from the American National Standards Institute, 1430 Broadway, New York, NY 10018. Refer to American National Standard X3. ------, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI). Price is ---- a copy. (Discounts available on quantity orders. See ANSI catalog.)

DRAFT—FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION

Date ------

ANNOUNCING THE STANDARD FOR RECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE (1,600 CPI, PHASE ENCODED)

Federal information processing standards publications are issued by the National Bureau of Standards under the direction of the Office of Management and Budget (OMB) in accordance with the provisions of Public Law 89–306 and OMB Circular No. A–86.

Name of Standard. Recorded Magnetic Tape for Information Interchange (1,600 CPI, Phase Encoded).

Category of Standard. Hardware Standard, Interchange Codes and Media.

Explanation. This standard specifies the recorded characteristics of nine-track, ½-inch tape, including the data format for implementing the Federal Standard Code for Information Interchange at the recording density of 1,600 characters per inch (CPI). It is one of a series of Federal standards implementing the Federal Standard Code for Information Interchange (FIPS 1) on magnetic tape media.

Approving Authority. Office of Management and Budget.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Center for Computer Sciences and Technology).

Cross Index.

a. FIPS PUB 1, Federal Standard Code for Information Interchange.

b. FIPS PUB ------, Unrecorded Magnetic Tape for Information Interchange (nine-track 800 CPI, NRZI and 1,600 CPI, P.E.).

c. FIPS PUB 3–1, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI).

d. AN Standard X3, ------, Recorded Magnetic Tape for Information Interchange (1,600 CPI, Phase Encoded).

Applicability. The standard is applicable to all nine-track magnetic tape recording and reproducing equipments employing ½-inch tape at recording densities of 1,600 characters per inch (CPI). Federal information processing systems employing such equipment, including the associated program, shall provide the capability to accept and generate recording tapes in compliance with the requirements set forth in the standard.

Implementation Schedule. All applicable equipment ordered on or after the date of this FIPS PUB must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below. Exceptions to this standard are made in the following cases:

a. For equipment installed or on order prior to the date of this FIPS PUB.

b. Where procurement actions are into the solicitation phase (i.e., request for proposals or invitation for bids have been issued) on the date of this FIPS PUB.

Waiver Procedure. Head of agencies may wave the provisions of the implementation schedule. Proposed waivers relating to the

procurement of nonconforming equipments will be coordinated in advance with the National Bureau of Standards. Letters should be addressed to the Director, Center for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. They should describe the nature of the waiver and set forth the reasons therefore.

Sixty days should be allowed for review and response by the National Bureau of Standards. The waiver is not to be made until a reply from the National Bureau of Standards is received; however, the final decision for granting the waiver is a responsibility of the agency head.

Specifications. The standard adopts in whole the requirements set forth in the American National Standard X3._____–1972, Recorded Magnetic Tape for Information Interchange (1,600 CPI, P.E.), which was developed and approved by the American National Standards Institute.

Qualifications. It is emphasized that this standard is one of a series of standards implementing the Federal Standard Code for Information Interchange (FIPS 1) on nine-track, ½-inch computer tape. As such, it is not intended to be implemented to the exclusion of the nine-track, 800 CPI standard.

Where to Obtain Copies of the Specifications of the Standard

a. Federal Government activities should obtain copies from established sources within each agency. When there is no established source, purchase orders should be submitted to the General Services Administration, Specifications Activity, Printed Materials Supply Division, Building 197, Washington Navy Yard Annex, Washington, D.C. 20407. Refer to Federal Information Processing Standard _____. (Price____ cents a copy.)

b. Others may obtain copies from the the American National Standards Institute, 1430 Broadway, New York, N.Y. 10018. Refer to American National Standard X3. _____, Recorded Magnetic Tape for Information Interchange (1,600 CPI, Phase Encoded). Price____ a copy. (Discounts available on quantity orders. See ANSI catalog.)

DRAFT—FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATION

Date _____

ANNOUNCING THE STANDARD FOR UNRECORDED MAGNETIC TAPE FOR INFORMATION INTERCHANGE (NINE-TRACK 800 CPI, NRZI AND 1,600 CPI, P.E.)

Federal information processing standards publications are issued by the National Bureau of Standards under the direction of the Office of Management and Budget (OMB) in accordance with the provisions of Public Law 89-306 and OMB Circular No. A-86.

Name of Standard. Unrecorded Magnetic Tape for Information Interchange (Nine-track 800 CPI, NRZI and 1,600 CPI, P.E.).

Category of Standard. Hardware Standard, Interchange Codes and Media.

Explanation. This standard specifies the general, physical, and magnetic requirements of unrecorded ½-inch computer tape and the associated reels that are intended for use on nine-track recording equipments. The tape specifications set forth the minimum requirements of digital tape intended for use at recording densities of 800 and 1,600 characters per inch.

Approving Authority. Office of Management and Budget.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Center for Computer Sciences and Technology).

Cross Index.

a. FIPS PUB 3-1, Recorded Magnetic Tape for Information Interchange (800 CPI, NRZI).

b. FIPS PUB _____, Recorded Magnetic Tape for Information Interchange (1,600 CPI, Phase Encoded).

c. AN Standard X3. _____, Unrecorded Magnetic Tape for Information Interchange (nine-Track, 200 and 800 CPI, NRZI and 1,600 CPI, Phase Encoded).

Applicability. The standard is applicable to magnetic tape and reels intended for use on nine-track digital recording and reproducing equipments conforming to the requirements of FIPS PUB 3-1 and FIPS PUB _____. Magnetic tape conforming to the stated nine-track, 1,600 character per inch requirements may be employed on nine-track, 800 character per inch recording and reproducing equipments. It is emphasized, however, that tape in compliance with the nine-track, 800 character per inch requirements is not generally tested or intended for use at the recording density of 1,600 characters per inch.

Implementation Schedule. All applicable magnetic computer tape and reels ordered on or after the date of this FIPS PUB must be in conformance with this standard unless a waiver has been obtained in accordance with the procedure described below. Exceptions to this standard are made in the following cases:

a. For magnetic tape and reels procured or on order prior to the date of this FIPS PUB.

b. Where magnetic tape and reel procurement actions are into the solicitation phase on the date of this FIPS PUB.

Waiver Procedure. Heads of agencies may waive the provisions of the implementation schedule. Proposed waivers relating to the procurement of computer tape and reels that does not conform to this standard will be coordinated in advance with the National Bureau of Standards. Letters should be addressed to the Director, Center for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234. They should describe the nature of the waiver and set forth the reasons therefor.

Sixty days should be allowed for review and response by the National Bureau of Standards. The waiver is not to be made until a reply from the National Bureau of Standards is received; however, the final decision for granting the waiver is a responsibility of the agency head.

Specifications. This standard adopts the applicable 800 and 1,600 CPI requirements set forth in the American National Standard, Unrecorded Magnetic Tape for Information Interchange (nine-track, 200 and 800 CPI, NRZI and 1,600 CPI P.E.) X3._____–1971, which was developed and approved by the American National Standards Institute. The low performance requirements within the ANSI standard that pertain to nine-track, 200 CPI or 800 CPI magnetic tape shall be determined in accordance with a recording density of 800 characters per inch. Based on the limited need and utilization, the development of a Federal recorded standard applicable to nine-track, 200 CPI, NRZI recordings is not anticipated.

Qualifications. The procurement specifications for testing magnetic tape and reels in accordance with this standard will be provided by the General Services Administration.

This standard does not specify the frequency of testing or recertification to insure compliance with the stated requirements, nor does it specify the recorded characteristics of the tape. The recorded tape standards cited in the cross index section specify the technical parameters in support of the information interchange requirements of recorded magnetic tape.

Where to Obtain Copies of the Specifications of the Standard.

a. Federal Government activities should obtain copies from established sources within each agency. When there is no established source, purchase orders should be submitted to the General Services Administration, Specifications Activity, Printed Materials Supply Division, Building 197, Washington Navy Yard Annex, Washington, D.C. 20407. Refer to Federal Information Processing Standard _____. (Price ____ cents a copy.)

b. Others may obtain copies from the American National Standards Institute, 1430 Broadway, New York, NY 10018. Refer to American National Standard X3._____, Unrecorded Magnetic Tape for Information Interchange (nine-track 200 and 800 CPI, NRZI and 1,600 CPI, P.E.). Price is ____ a copy. (Discounts available on quantity orders. See ANSI catalog.)

[FR Doc.72-15810 Filed 9-15-72; 8:48 am]

Office of Business Services

NATIONAL EXPORT EXPANSION COUNCIL

Notice of Meeting

A meeting of the National Export Expansion Council (NEEC) will be held from 9 a.m. to 12:15 p.m. and 2 to 4:15 p.m. on Friday, September 22, 1972, in the Chinese Room at the Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC. A luncheon session also is scheduled from 12:15 p.m. to 2 p.m. at which time 14 Presidential "E" and "E Star" Awards will be presented by the Secretary of Commerce.

The purpose of the NEEC is to provide advice and information to the Secretary and other Department of Commerce officials on actions and measures needed to improve the competitive position of U.S. goods and services in world markets.

The intended agenda [1] is as follows:

[1] Subject to minor modifications up to date of meeting.

September 22	Plenary session	Plenary Business Meeting
		Chinese Room
9 a.m.	Opening remarks	Carl A. Gerstacker, NEEC Chairman.
9:05 a.m.	Overview of Current U.S. Trade Position, Including East-West Trade.	Peter G. Peterson, Secretary of Commerce.
9:30 a.m.	Discussion	
10 a.m.	DIB-Program Priorities	Andrew E. Gibson, Assistant Secretary for Domestic and International Business.
10:40 a.m.	Break	
11 a.m.	Domestic International Sales Corp. (DISC)	Edwin S. Cohen, Under Secretary of the Treasury.
11:40 a.m.	Report on Business Reaction to the DISC Program.	Charles E. Rice, Monsanto Co.
12 noon	Recess	
12:15 p.m.	Luncheon—"E" Award Presentations	*Main Ballroom*
2 p.m.	Threats to the American Multinational Corp.	Robert L. McNeill, Executive Vice Chairman, Emergency Committee for American Trade.
	NEEC Committee Reports	*Chinese Room*
2:45 p.m.	Committee on Chemicals	Joseph C. Venuto, Hercules, Inc.
	Committee on Office Machines and Computers.	George H. Geick, Sperry Rand Corp.
	Committee on Tele-Communications	John McDavid, Northern Electric Co.
3:30 p.m.	Open Forum-Discussion	Carl A. Gerstacker, Moderator.
4:15 p.m.	Adjourn	

The membership of the NEEC consists of 96 American business leaders drawn from all major segments of industry with experience and/or interest in international trade.

A limited number of seats—approximately 20—will be available to the public and the press. Presentations or comments during the meeting are limited to members of the NEEC, speakers on the agenda or invited government officials. Persons who wish to attend as observers should contact Mr. Edward F. Doidge, telephone 202—967-4577 by 12 p.m., Thursday, September 21, 1972.

H. PHILLIP HUBBARD,
Deputy Director,
Office of Business Services.

[FR Doc.72-15897 Filed 9-15-72;8:53 am]

Office of Import Programs

IOWA STATE UNIVERSITY

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00330-33-14200. Applicant: Iowa State University, Ames Laboratory, Ames, Iowa 50010. Article: Image analysing computer, Quantimet 720. Manufacturer: Metals Research, Ltd., United Kingdom. Intended use of article: The article is intended to be used for analysis of multiphase samples, at high and low magnifications, with the scanning tube attached to a number of different microscopes.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The applicant's use of the article to determine the area fraction of sample cross section which is occupied by one phase and one type of structure at low magnification and the area fraction and projected vertical length of small sections of a sample at high magnification requires the maximum image resolution in terms of the smallest detectable and countable objects. The foreign article provides 720 scan lines resolution. The most closely comparable domestic instrument, the Model QMS, manufactured by Bausch and Lomb provides 525 scan lines resolution. We are advised by the National Bureau of Standards (NBS) in its memorandum dated August 10, 1972, that the capability for maximum image resolution in the foreign article is pertinent to the purposes for which the article is intended to be used. NBS also advises that it knows of no domestically manufactured instrument scientifically equivalent to the foreign article for the applicant's intended use.

For the foregoing reasons we find that the Model QMS is not of equivalent scientific value to the foreign article for such purposes as this article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.72-15812 Filed 9-15-72;8:48 am]

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C. 20230.

Docket No. 72-00234-88-80045. Applicant: New York State Department of Transportation, 1220 Washington Avenue, Albany, NY 12226. Article: FB400 television borehole telescope. Manufacturer: Eastman International Co., G.m.b.H., West Germany. Intended use of article: The article is intended to be used in geological investigation of boreholes, water engineering, tunnel and gallery work, and general geological exploration to determine additude of planes of weakness in rock.

Comments: No comments have been received with respect to this application. Decision: Application denied. An instrument of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The following characteristics of the foreign article are alleged by the applicant to be pertinent for its intended purposes: (1) Normal NX size holes (3-inch diameter), (2) an inclined mirror to view the sides of the hole, (3) a servomotor to rotate the mirror through 360°, (4) a compass for obtaining azimuth of view, (5) an inclinometer for obtaining inclination of the holes, (6) incandescent lamps illuminating the sides of the boreholes, and (7) a moisture warming device. The article also provides readout of the above functions at the surface and a watertight housing probe capable of withstanding a pressure equivalent to a 1,300-foot hydrostatic head. We are advised by the National Bureau of Standards (NBS) in its memorandum dated July 17, 1972, that Lenox Instrument Co. (Lenox) manufactures borehole scopes and could provide a custom made instrument to the applicant's requirements. NBS advises further that Lenox has previously assembled such instruments, and that it could manufacture an instrument scientifically equivalent to the foreign article for the applicant's intended use.

It is noted that this application is a resubmission of Docket No. 68-00434-88-80045 and 71-00141-88-80045, both of which were denied without prejudice to resubmission. In the notice of denial without prejudice to resubmission dated June 21, 1968, for Docket No. 68-00434-88-80045, the applicant was advised that Westinghouse X-Ray Division (Westinghouse) and Lenox manufacture instruments similar to the foreign article. In the resubmission (Docket No. 71-00141-88-80045), the applicant omitted any reference to the instruments manufactured by these two domestic manufacturers. In the notice of denial without prejudice to resubmission dated August 3, 1971, for Docket No. 71-00141-88-80045, the applicant was again advised of the instruments manufactured by Westinghouse and by Lenox. The applicant was also specifically asked why these domestic instruments cannot be used for the intended purpose of the foreign article. In the current application, the applicant again omitted any reference to the instruments of the two domestic firms and compared the foreign article with the Laval TV borehole camera and the oceanographic TV camera.

Accordingly, we find that a television borehole camera of equivalent scientific value to the foreign article for such purposes as the article is intended to be used is being manufactured in the United States.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.72-15813 Filed 9-15-72;8:48 am]

UNIVERSITY OF CALIFORNIA

Notice of Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (37 F.R. 3892 et seq.).

A copy of the record pertaining to this decision is available for public review during ordinary business hours of the Department of Commerce, at the Office of Import Programs, Department of Commerce, Washington, D.C.

Docket No. 72-00183-79-16095. Applicant: University of California San Diego School of Medicine, Department of Radiology, 5046 Basic Science Building, La Jolla, Calif. 92037. Article: Multiwire

proportional counter. Manufacturer: CERN European Organization for Nuclear Research, Switzerland. Intended use of article: The article will be used in a research program concerned with investigation of the radiation hazards of manned space flight to study the spatial and energy deposition of secondary charged particles which may be important in defining the mechanisms by which radiation damage is incurred in human cells. Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The applicant's investigation of the radiation hazards of manned space flight with reference to the spatial and energy deposition of secondary charged particles will require an instrument of the same general category as the foreign article. The foreign article has the capability for the intended radiation energy studies. We are advised by the National Bureau of Standards, in its memorandum dated August 15, 1972, that the capability of the article described above is pertinent to the purposes for which the article is intended to be used. NBS also advises that it knows of no domestically manufactured instrument which satisfies the pertinent requirement and, accordingly, which is scientifically equivalent to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

SETH M. BODNER,
Director, Office of Import Programs.

[FR Doc.72-15811 Filed 9-15-72;8:48 am]

Office of Textiles

IMPORTERS' TEXTILE ADVISORY COMMITTEE

Notice of Public Meeting

SEPTEMBER 15, 1972.

A. Importers' Textile Advisory Committee (the Committee).

B. The purpose of the Committee is to advise Government officials of the effects on import markets of the wool and man-made fiber textile agreements negotiated under the Agricultural Act of 1956, as amended, and of the cotton textile agreements negotiated under the Long-Term Arrangement Regarding International Trade in Cotton Textiles and the Agricultural Act of 1956, as amended.

C. The meeting is scheduled for September 26, 1972, at 2 p.m., in room 4830, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230.

D. The agenda for the meeting is:

1. Review of import trends.
2. Report on conditions in the domestic market.
3. Implementation of textile agreements.
4. Report on Study of the GATT All-Fiber Textile Working Party.
5. Other business.

E. The Committee's membership is currently comprised of 12 members representing textile importing firms.

F. The room in which the Committee is scheduled to meet has limited seating capacity.

G. The meeting will be open to public observation but not public participation, except by invitation.

H. Further information concerning the Committee meeting, including a roster of Committee members, may be obtained from Arthur Garel, Director, Office of Textiles, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230.

STANLEY NEHMER,
Deputy Assistant Secretary for Resources.

[FR Doc.72-15951 Filed 9-15-72;11:10 am]

Social and Economic Statistics Administration

CENSUS ADVISORY COMMITTEE OF THE AMERICAN STATISTICAL ASSOCIATION

Notice of Public Meeting

The Census Advisory Committee of the American Statistical Association will convene on September 28, 1972, at 10 a.m., and September 29 at 9 a.m. The committee will meet in Room 2113, Federal Building 3, at the Bureau of the Census in Suitland, Md.

The Census Advisory Committee of the American Statistical Association was established in 1919 to advise the Director, Bureau of the Census in all aspects of the Bureau's statistical programs, and to respond to the Bureau's requests for opinions and judgments in the whole area of its operations.

The committee is composed of 15 members appointed by the president of the American Statistical Association.

The agenda for the September 28 meeting is: (1) General review of Census Bureau programs, staff changes, and other topics, (2) Programs for access and use of census data, (3) Research on use of administrative records for population estimates, (4) Progress report on Consumer Expenditure Surveys, and (5) Research on attitude and opinion questions.

The agenda for the September 29 meeting, which will adjourn at 12:30 p.m. is: (1) Plans for the 1974 Census of Agriculture, and (2) General discussion including a discussion of committee recommendations.

A limited number of seats—approximately 15—will be available to the public. A brief period will be set aside on September 29 for public comment. Extensive questions or statements must be submitted in writing to the Committee Guidance and Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting should contact the Committee Guidance and Control Officer, Mr. Thomas B. Jabine, Chief, Statistical Research Division, Bureau of the Census, Room 3573, Federal Building 3, Suitland, Md. (Mail address: Washington, D.C. 20233). Telephone 301—763-5350.

HAROLD C. PASSER,
Administrator, Social and Economic Statistics Administration.

[FR Doc.72-15861 Filed 9-15-72;8:51 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health

ARTIFICIAL KIDNEY-CHRONIC UREMIA ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Artificial Kidney-Chronic Uremia Advisory Committee, September 18-19, 1972, at 9 a.m., National Institutes of Health, Bethesda, Md. This meeting will be closed to the public, to review, discuss, and evaluate and/or rank contract proposals in accordance with section 13 (d) of Executive Order 11671 and the Secretary's determination.

Name of the person from whom rosters of committee members and/or summary of the meeting may be obtained: Dr. Robert J. Wineman.

JOHN F. SHERMAN,
Deputy Director, NIH.

SEPTEMBER 12, 1972.

[FR Doc.72-15882 Filed 9-15-72;8:53 am]

CIVIL SERVICE COMMISSION

FIREFIGHTERS, CLEAR AIR FORCE BASE, ALASKA

Establishment of Minimum Rates and Rate Ranges

Under the authority of 5 U.S.C. 5303 and Executive Order 11073, the Civil Service Commission has established special minimum salary rates and rate ranges as follows:

GS-081 FIREFIGHTERS

Geographic Coverage: Clear Air Force Base, Alaska
Effective Date: First day of the first pay period beginning on or after September 17, 1972

(PER ANNUM RATES)

Grade	1	2	3	4	5	6	7	8	9	10
GS-3	$7,380	$7,574	$7,768	$7,962	$8,156	$8,350	$8,544	$8,738	$8,932	$9,126
GS-4	7,852	8,070	8,288	8,506	8,724	8,942	9,160	9,378	9,596	9,814
GS-5	8,295	8,539	8,783	9,027	9,271	9,515	9,759	10,003	10,247	10,491
GS-6	8,697	8,969	9,241	9,513	9,785	10,057	10,329	10,601	10,873	11,145

All new employees in the specified occupational levels will be hired at the new minimum rate.

As of the effective date, the agency will process a pay adjustment to increase the pay of employees on the rolls in the affected occupational levels. An employee who immediately prior to the effective date was receiving basic compensation at one of the statutory rates shall receive basic compensation at the corresponding numbered rate authorized by this notice on or after such date. The pay adjustment will not be considered an equivalent increase within the meaning of 5 U.S.C. 5335.

Under the provisions of section 3-2b, Chapter 571, FPM, the agency may pay the travel and transportation expenses to first post of duty, under 5 U.S.C. 5723, of new appointees to the positions cited.

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

[FR Doc.72-15842 Filed 9-15-72;8:50 am]

ENVIRONMENTAL PROTECTION AGENCY

NATIONAL AMBIENT AIR QUALITY STANDARDS

State Implementation Plans; Notice of Public Hearings

On July 27, 1972 (37 F.R. 15094), the Administrator published proposed regulations to correct certain deficiencies in State plans for implementation of the national ambient air quality standards. Pursuant to a notice published on August 18, 1972 (37 F.R. 16694), public hearings were held on the proposed regulations in Montana and Utah on August 30, 1972, and September 14, 1972, respectively. Such hearings will be reconvened at the dates, times, and places specified below:

Montana: October 17 at 9 a.m., Capitol Building, Senate Chambers, Helena. Hearing Officer: Leonard W. D. Campbell.

Utah: October 27 at 9 a.m., State Office Building, Highway Auditorium, Salt Lake City. Hearing Officer: Leonard W. D. Campbell.

Persons wishing to participate in these public hearings should signify their intentions by notifying the hearing officer, and, where practicable, supplying five copies of their statements 5 days in advance of the hearing date. Written statements may also be submitted for the record of the hearing. Notifications and copies of statements should be addressed to:

Environmental Protection Agency, Hearing Officer, Regional Counsel, 1860 Lincoln Street, Suite 900, Denver, CO 80203.

Copies of the proposed regulations which will be considered at these public hearings are available from the Agency's Regional Office at the following address:

Environmental Protection Agency, Air and Water Programs Division, 1860 Lincoln Street, Suite 900, Denver, CO 80203.

Dated: September 14, 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

[FR Doc. 72-15873 Filed 9-15-72;8:52 am]

FEDERAL MARITIME COMMISSION

[Docket No. 70-9; Independent Ocean Freight Forwarder License 516]

BOLTON & MITCHELL, INC.

Grant of Petitions for Reconsideration and Denial of Motion To Dismiss

On July 28, 1972, respondent Bolton & Mitchell, Inc. filed a petition for reconsideration of the Commission's decision issued in the subject proceeding on June 9, 1972, the due date of said petition having been enlarged to and including July 25, 1972.

On July 25, 1972, Hearing Counsel filed its petition for reconsideration in the above-styled case.

On July 31, 1972, respondent filed a motion to dismiss Hearing Counsel's petition for reconsideration as not timely filed, to which Hearing Counsel replied on August 4, 1972.

Upon consideration of the petitions of both Hearing Counsel and respondent BMI, respondent's motion to dismiss and Hearing Counsel's reply, the Commission has determined that reconsideration of its decision in this proceeding is warranted at this time and therefore proposes to grant such additional review. The Commission, however, is of the opinion that a grant of extension of filing time and therefore reconsideration, to one party and not the other would be unreasonable and unfair, giving preference to one party over another.

Good cause appearing therefor:

It is ordered, That the petitions for reconsideration of respondent Bolton & Mitchell, Inc. and Hearing Counsel be granted.

It is further ordered, That respondent BMI's motion to dismiss Hearing Counsel's petition as not timely filed be denied.

It is further ordered, That parties to this proceeding may file appropriate replies in accordance with 46 CFR 502.262 (Rule 16(b)), § 502.74 (Rule 5(n)) and Subpart H (Rule (8)).

By the Commission.

[SEAL] FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-15851 Filed 9-15-72;8:51 am]

[Docket No. 72-50; Independent Ocean Freight Forwarder License 1085]

FLORIDA-PANAMA FORWARDERS, INC.

Order of Investigation and Hearing

On July 28, 1965, Florida-Panama Forwarders, Inc., was issued independent ocean freight forwarder license FMC No. 1085. The issuance of the license was pursuant to section 44(b) of the Shipping Act, 1916, and the provisions of Commission General Order 4 governing the activities of licensed independent ocean freight forwarders.

It has come to the attention of the Commission that Florida-Panama Forwarders, Inc., received freight moneys totaling $1,623.63 paid to it by shipper clients on four export shipments which moved in July 1971. The common carrier involved in the movement was Linea Andina S.A. and the carrier's agent was Canadian Gulf Line of Florida, Inc. Information available to the Commission indicates that Florida-Panama Forwarders, Inc., has not paid such freight moneys over to the common carrier or its agent.

Section 510.23(f) of Commission General Order 4 requires that each licensee promptly pay over to the oceangoing common carrier, or its agent, within 7 days after the receipt thereof, or within 5 days after departure of the vessel from each port of loading, whichever is later, all sums advanced the licensee by its principal for freight and transportation charges.

Section 510.9 of General Order 4 provides that a license may be revoked after notice and hearing for reasons which include:

(b) Failure * * * to comply with lawful rules, regulations, or orders of the Commission.

* * * * *

(e) Such conduct as the Commission shall find renders the licensee unfit or unable to carry on the business of forwarding.

Now, therefore, it is ordered, That pursuant to sections 22 and 44 of the Shipping Act, 1916 (46 U.S.C. 821, 841(b)), a proceeding is hereby instituted to determine whether Florida-Panama Forwarders, Inc., in failing to pay over to the oceangoing common carrier freight moneys within the period stipulated under § 510.23(f), has violated such section of General Order 4.

It is further ordered, That this proceeding determine whether, because of the foregoing violations, independent ocean freight forwarder license No. 1085, issued to Florida-Panama Forwarders, Inc., should be suspended or revoked pursuant to section 44 of the Shipping Act, 1916, and § 510.9 of Federal Maritime Commission General Order 4.

It is further ordered, That Florida-Panama Forwarders, Inc., 242 Northeast Second Avenue, Miami, FL, be named respondent in this proceeding and that the matter be assigned for a hearing before an Examiner of the Commission's Office of Hearing Examiners at a date and place to be announced by the presiding examiner.

It is further ordered, That this order be published in the FEDERAL REGISTER and a copy of the order and notice of hearing be served upon the respondent.

It is further ordered, That any person other than the respondent, who desires to become a party to this proceeding and participate therein, shall file a petition to intervene with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, with copies to respondent.

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding, including notice of time and place of hearing or prehearing conference, shall be mailed directly to all parties of record.

By the Commission.

[SEAL] JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.72-15852 Filed 9-15-72;8:51 am]

[No. 72-41]

TRUCK DETENTION AT PORT OF NEW YORK

Notice of Withdrawal of Assignment

SEPTEMBER 11, 1972.

In view of the amended notice of proposed rule making, issued by the Federal Maritime Commission in this proceeding on September 8, 1972, please disregard the notice of assignment issued by me on August 15, 1972.

CHARLES E. MORGAN,
Administrative Law Judge.

[FR Doc.72-15853 Filed 9-15-72;8:52 am]

FEDERAL POWER COMMISSION

ALASKA POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON ENVIRONMENTAL CONSIDERATIONS AND CONSUMER AFFAIRS

Agenda of Meeting

Meeting will be held on September 19, 1972, at 10:30 a.m., City Council Chambers, Loussac Library, Anchorage, Alaska.

Presiding: Commissioner Max C. Brewer.

1. Meeting called to order by R. J. Cross, alternate secretary.
2. Introduction:
   (a) Nature of subcommittee assignments.
   (b) Approaches.
3. Discussion of subcommittee work plan:
   (a) Objectives.
   (b) Scope of study.
   (c) Work plan to accomplish subcommittee report.
   (d) Time schedules.
   (e) Report outline.
4. Preparation of subcommittee report to Executive Advisory Committee meeting of September 20, 1972.
5. Other business pertinent to subcommittee assignment.
6. Adjournment.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15821 Filed 9-15-72;8:48 am]

ALASKA POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON ECONOMIC ANALYSIS AND LOAD PROJECTIONS

Agenda of Meeting

Meeting will be held on September 19, 1972, at 9 a.m., City Council Chambers, Loussac Library, Anchorage, Alaska.

Presiding: Dr. Dale A. Swanson, Chairman.

1. Meeting called to order by Thomas B. Heath, Alternate Secretary.
2. Introduction.
   (a) Nature of subcommittee assignments.
   (b) Approaches.
3. Discussion of subcommittee work plan.
   (a) Objectives.
   (b) Scope of study.
   (c) Work plan to accomplish subcommittee report.
   (d) Time schedules.
   (e) Report outline.
4. Preparation of subcommittee report to Executive Advisory Committee meeting of September 20, 1972.
5. Other business pertinent to subcommittee assignment.
6. Adjournment.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15822 Filed 9-15-72;8:48 am]

ALASKA POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON COORDINATED SYSTEM DEVELOPMENT AND INTERCONNECTIONS

Agenda of Meeting

Meeting will be held on September 19, 1972, at 1:30 p.m., City Council Chambers, Loussac Library, Anchorage, Alaska.

Presiding: Mr. William C. Rhodes, Chairman.

1. Meeting called to order by James V. House, Alternate Secretary.
2. Introduction:
   (a) Nature of subcommittee assignments.
   (b) Approaches.
3. Discussion of subcommittee work plan:
   (a) Objectives.
   (b) Scope of study.
   (c) Work plan to accomplish subcommittee report.
   (d) Time schedules.
   (e) Report outline.
4. Preparation of subcommittee report to Executive Advisory Committee meeting of September 20, 1972.
5. Other business pertinent to subcommittee assignment.
6. Adjournment.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15823 Filed 9-15-72;8:48 am]

ALASKA POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON RESOURCES AND ELECTRIC POWER GENERATION

Agenda of Meeting

Meeting will be held on September 19, 1972, at 3 p.m., City Council Chambers, Loussac Library, Anchorage, Alaska.

Presiding: Deputy Commissioner Dale Wallington for Commissioner Charles Herbert, Chairman.

1. Meeting called to order by T. R. Cantine, Alternate Secretary.
2. Introduction.
   (a) Nature of subcommittee assignments.
   (b) Approaches.
3. Discussion of subcommittee work plan.
   (a) Objectives.
   (b) Scope of work.
   (c) Work plan to accomplish subcommittee report.
   (d) Time schedules.
   (e) Report outline.
4. Preparation of subcommittee report to Executive Advisory Committee meeting of September 20, 1972.
5. Other business pertinent to subcommittee assignment.
6. Adjournment.

MARY B. KIDD,
Acting Secretary.

[F.R. Doc.72-15824, Filed 9-15-72;8:49 am]

[Docket No. E-7523]

CENTRAL TELEPHONE AND UTILITIES CORP.

Notice of Application

SEPTEMBER 12, 1972.

Take notice that on August 23, 1972, Central Telephone and Utilities Corp. (Applicant), filed an application seeking authority pursuant to section 204 of the Federal Power Act to extend until December 31, 1974, the final maturity date of short-term unsecured promissory notes, and to extend until December 31,

1973, the final issue date of short-term unsecured promissory notes, in an aggregate principal amount at any one time outstanding of $85 million.

Applicant is incorporated under the laws of the State of Kansas, with its principal business office in Lincoln, Nebr. It is engaged in electric utility operations in the southeastern part of Colorado and the central and western portions of the State of Kansas.

The proceeds from the issuance of short-term notes are to provide temporary funds for the construction, completion, extension of improvement of facilities of Applicant and for advances to and investment in subsidiaries of Applicant to be used for the construction and improvement of facilities of such subsidiaries pending permanent financing. The estimated construction programs for the above purposes for 1973 and 1974 are $130,482,600 and $137,030,800, respectively.

Any person desiring to be heard or to make any protest with reference to said application should, on, or before, September 29, 1972, 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15826 Filed 9-15-72;8:49 am]

[Docket No. CS66-15]

DALPORT OIL CORP.

Notice of Petition To Waive Regulations

SEPTEMBER 12, 1972.

Take notice that by letter filed on August 23, 1972, in Docket No. CS66-15, Dalport Oil Corp. (Petitioner), 3471 First National Bank Building, Dallas, Texas 75202, requests that the Commission waive in part subsection (c) of § 157.40 of the regulations under the Natural Gas Act (18 CFR 157.40(c)) so as to permit the sale of natural gas under its small producer certificate from reserves purchased by it from Cities Service Oil Co., a large producer.

Section 157.40(c) provides in part that sales may not be made pursuant to a small producer certificate from reserves acquired by a small producer by purchase of developed reserves in place from a large producer.

Petitioner states that the lease in which it has acquired Cities' one-sixteenth interest is practically depleted and the consideration paid was only $62.50. Petitioner states, however, that it is its intention to keep producing from the lease.

The subject letter is being construed as a petition for waiver of Commission regulations under § 1.7(b) of the Commission's rules of practice and procedure (18 CFR 1.7(b)). Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than October 11, 1972, views and comments in writing concerning the petition for waiver. An original and 14 conformed copies should be filed with the Secretary of the Commission. The Commission will consider all such written submittals before acting on the petition.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-15827 Filed 9-15-72;8:49 am]

[Docket No. RP73-23]

LAWRENCEBURG GAS TRANSMISSION CORP.

Notice of Proposed Change in Tariff

SEPTEMBER 12, 1972.

Take notice that Lawrenceburg Gas Transmission Corp. (Lawrenceburg) on August 31, 1972, tendered for filing proposed changes in its FPC Gas Tariff, Original Volume No. 1, to become effective as of September 1, 1972. The proposed changes would incorporate a purchased gas adjustment (PGA) clause in Lawrenceburg's tariff pursuant to § 154.38(d)(4) of the Commission's regulations under the Natural Gas Act.

Lawrenceburg states that its PGA clause does not provide for deferred accounting as provided for in § 154.38(d)(4)(iv) of the regulations as it purchases from only one supplier, Texas Gas Transmission Corp. (Texas Gas), and that it will be possible for Lawrenceburg to receive timely notification of periodic and semiannual rate changes from Texas Gas in order to file for a rate change to be effective coincidentally with that of Texas Gas. Lawrenceburg says that it also has not included in its PGA clause the 1 mill (0.1 cent per Mcf) minimum adjustment provision contained in § 154.38(d)(4)(iii) and that it proposes to revise its tariff rates whenever Texas Gas changes its tariff sheets regardless of the rate per Mcf amount of change. Lawrenceburg requests that the Commission waive the minimum adjustment provision of § 154.38(d)(4)(iii) of the regulations in order that it can remain economically stable without having to protect itself through the complexities of deferred unrecovered gas cost accounting.

Copies of the filing were served on Lawrenceburg's jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 25, 1972. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-15828 Filed 9-15-72;8:49 am]

[Docket No. CI73-169]

MESA PETROLEUM CO.

Notice of Application

SEPTEMBER 12, 1972.

Take notice that on September 5, 1972, Mesa Petroleum Co. (Applicant), Post Office Box 2009, Amarillo, TX 79105, filed in Docket No. CI73-169 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Panhandle Eastern Pipeline Co. from the Hugoton Field, Stevens and Grant Counties, Kans., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 20,000 Mcf of gas per day at 39 cents per Mcf at 14.65 p.s.i.a. from January 1, 1973, through December 31, 1973, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70).

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1972, 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). 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 certifi-

cate 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15829 Filed 9-15-72;8:49 am]

[Project No. 2709]

MONONGAHELA POWER CO. ET AL.

Notice of Revised Application for License for Unconstructed Project; Correction

SEPTEMBER 12, 1972.

In regard: Applications of Monongahela Power Company, Potomac Edison Company, and West Penn Power Company.

The following change should be made in the notice of revised application for license for unconstructed project issued June 30, 1972 (37 F.R. 13584):

Page 2, first paragraph, (13) should read:

(13) Two independent overhead single circuit 500 kv. transmission lines constructed from the project 500 kv. switchyard and extending in a northeasterly direction for about 1.2 miles to a point just beyond the crest of Cabin Mountain and then extending in a northerly direction for about 10.8 miles where a connection would be made with applicants' existing 500 kv. line from Monongahela Power Company's Prunytown substation to VEPCO's Mount Storm generating plant.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15830 Filed 9-15-72;8:49 am]

[Docket No. CP71-18]

NEW ENGLAND LNG CO., INC.

Notice of Petition To Amend

SEPTEMBER 12, 1972.

Take notice that on August 29, 1972, New England LNG Co., Inc. (Petitioner), 95 East Merrimack Street, Lowell, MA 01853, filed in Docket No. CP71-18, a petition to amend the order of the Commission issued in said docket on January 14, 1971 (45 FPC 142), pursuant to section 7(c) of the Natural Gas Act by authorizing the sale and delivery of 230,000 Mcf of liquefied natural gas (LNG) to Valley Gas Co. (Valley) at Lowell Gas Co.'s (Lowell) LNG storage facilities at Tewksbury, Mass., for Valley's account, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that pursuant to a letter agreement dated July 31, 1970, it was to deliver the LNG to Valley at Valley's LNG storage facility in Cumberland, R.I. Petitioner states that such deliveries have now become impossible because Valley's LNG storage facility developed cold spots and will not be repaired and operational again until August 1973, at the earliest. Therefore, Petitioner seeks authorization to sell 230,000 Mcf of LNG to Valley and store said LNG at Lowell's LNG storage facility in Tewksbury, Mass., for Valley's account. Petitioner states that by the terms of an exchange agreement involving Tennessee Gas Pipeline Co., a Division of Tenneco, Inc. (Tennessee), Lowell will vaporize the Valley-account gas into its own distribution system and back-off on its supply of gas from Tennessee, which gas Valley will in turn receive for the 1972-73 winter season.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before October 2, 1972, 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-15831 Filed 9-15-72;8:49 am]

[Project No. 2180]

OWENS-ILLINOIS, INC.

Notice of Application for New License

SEPTEMBER 12, 1972.

Public notice is hereby given that application has been filed June 26, 1970, under section 15 of the Power Act (16 U.S.C. 791a-825r) by Owens-Illinois, Inc. (Correspondence to: Mr. Dwight H. Morehead, Secretary and Counsel, Owens-Illinois, Inc., Owens-Illinois Building, Toledo, Ohio 43601, and Dr. R. B. Valley, Operation and Environmental Control Superintendent, Owens-Illinois, Inc., Tomahawk, Wis. 54487) for a new license for constructed Project No. 2180, known as Grandmother Falls, located in Lincoln County, Wis., near the town of Tomahawk on the Wisconsin River.

The capacity of the Grandmother Falls project is 3,000 kw. (4,500 h.p.). The project consists of: (1) A concrete gravity dam about 450 feet long consisting of an integral powerhouse 114 feet long, a nonoverflow section 100 feet, and a gated section 236 feet long containing 19- by 26-foot steel tainter gates; (2) a 250-foot-long earth dike; (3) a 758-acre pond at normal pool elevation of 1,419.3 feet USC&GS; (4) a powerhouse containing three generating units, each rated at 1,000 kw. under a 19-foot head; (5) an outdoor substation containing three 1,250-kv.-a. 2.3/44-kv. transformers; (6) a 5½-mile-long 44-kv. transmission line; (7) a mill substation consisting of nine 44,000/480-v. transformers and three 44/4.16-kv. transformers; and (8) all other facilities and interest appurtenant to the operation of the project.

Three separate areas totaling 181.7 acres are being reserved for future campgrounds. There are four free undeveloped public boat landing sites, two of which are on lands owned by the town of Bradley. Additionally, fishing is permitted in project waters. Applicant proposes to cooperate with appropriate agencies in the future development of the company areas and to provide other recreational facilities as the need arises.

According to the application: (1) Applicant's market for project power is Applicant's paper mill at Tomahawk, Wis. Applicant has installed reaeration (air venting) to two of the three turbines for the purpose of reducing the dissolved oxygen deficiency of the water downstream from the Grandmother Falls Dam; (2) the estimated net investment in the project was $799.34 as of December 31, 1971; (3) Applicant did not provide an estimate in regard to severance damages in the event of take over by the United States; (4) the annual taxes paid to State and local governments is $23,000 annually.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 3, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15832 Filed 9-15-72;8:49 am]

[Docket No. CI73-173]

PAR OIL CORP.

Notice of Application

SEPTEMBER 13, 1972.

Take notice that on September 7, 1972, Par Oil Corp. (Applicant), 504 Beck Building, Shreveport, La. 71101, filed in Docket No. CI73-173, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Co. (United) from the Sligo Field, Bossier Parish, La., all as more fully set forth in the application which is on file

with the Commission and open to public inspection.

Applicant proposes to sell United 2,000 Mcf of natural gas per day at 35 cents per Mcf at 15.025 p.s.i.a. for a period of 1 year from the date of initial delivery within the contemplation of section 2.70 of the Commission's general policy and interpretations.

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 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 September 25, 1972, 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). 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.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15820 Filed 9-15-72;8:48 am]

[Docket No. E-7768]

PUBLIC SERVICE ELECTRIC AND GAS CO.

Notice of Proposed Changes in Rates and Charges

SEPTEMBER 12, 1972.

Take notice that Public Service Electric and Gas Co. (P.S.E. & G.) on August 30, 1972, tendered for filing proposed changes in its electric rate schedules FPC No. 40 and FPC No. 41 (high tension service), to become effective on October 31, 1972. The proposed changes would increase revenues from jurisdictional sales and service by $785,238 annually on the basis of a 1971 test year.

P.S.E. & G. states that the principal reason for the proposed increase is that, because of the continued inflationary trend, the current rates do not provide sufficient revenue to meet operating expenses, taxes, and fixed charges nor a reasonable rate of return on the present fair value of the electric facilities installed to supply the borough of Milltown, the borough of South River and Jersey Central Power and Light Co. The proposed increased rates are designed to yield an overall rate of return of 4.79 percent on the present fair value of installed electric facilities serving the resale class of customers.

The company proposes to withdraw rate schedule FPC No. 39 and to substitute therefore rate schedule FPC No. 41, in order to enable it to bill customers with similar electrical characteristics on the same rate schedule. The company also proposes the following major changes in the fuel adjustment factor of both rate schedules FPC Nos. 40 and 41: (1) Modification of the increment above or below the base cost from 0.5 cent to 0.1 cent, (2) increase in the base cost from 29 cents per million B.t.u. to 60 cents per million B.t.u.; and (3) determination of the average cost of fossil fuels delivered alongside or at the siding of generating stations located in the State of New Jersey on a monthly basis rather than on a 12-months-ended basis in order to enable the company to charge or credit the customers for fuel cost variations above or below the base cost on a more current basis.

Copies of this application have been served on all jurisdictional customers and interested State commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 29, 1972. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-15833 Filed 9-15-72;8:49 am]

[Docket No. CP73-52]

TRANSCONTINENTAL GAS PIPE LINE CORP. AND MID LOUISIANA GAS CO.

Notice of Application

SEPTEMBER 12, 1972.

Take notice that on August 24, 1972, Transcontinental Gas Pipe Line Corp. (Transco), Post Office Box 1396, Houston, TX 77001, and Mid Louisiana Gas Co. (Mid Louisiana), 21st Floor Lykes Center, 300 Poydras Street, New Orleans, LA 70130, hereinafter referred to jointly as Applicants, filed in Docket No. CP73-52 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing: Transco to transport additional volumes of natural gas for Mid Louisiana; Mid Louisiana to render underground storage service to Transco; Transco and Mid Louisiana to make additional exchanges of natural gas; Mid Louisiana to sell, from the southern part of its system, natural gas to Transco on an excess availability basis; and Transco to construct and operate additional measuring facilities, all as more fully described in the application which is on file with the Commission and open to public inspection.

Applicants seek authorization for the transportation of natural gas by Transco for Mid Louisiana and for the underground storage of natural gas by Mid Louisiana for Transco, in accordance with an agreement dated June 29, 1972. Applicants seek authorization for Transco to transport additional volumes of natural gas for Mid Louisiana which, in conjunction with that transported under existing transportation arrangements between the two companies, will have the effect during the period October 1, 1972, to October 1, 1990, of permitting Mid Louisiana to deliver to Transco near the Hester Storage Field (Hester), St. James Parish, La., up to 100,000 Mcf per day for redelivery to Mid Louisiana at the interconnection of the main line systems of the two companies (Ethel) in East Feliciana Parish, La. In addition, Applicants state that Mid Louisiana may deliver up to 30,000 Mcf per day to Transco at Ethel for redelivery at Hester. Applicants also request authority, under the proposed arrangement and for the same period, for Mid Louisiana to make 2,500,000 Mcf of storage capacity available in the reservoir of the Hester Storage Field for use in storing gas for the account of Transco; and subject to that capacity limitation, Transco may deliver up to 15,000 Mcf per day to Mid Louisiana for injection into storage and may request the withdrawal of up to 25,000 Mcf per day of gas stored for its account. Applicants state that Transco will pay Mid Louisiana approximately $21,000 per month until the existing transportation agreement between the two companies expires in 1976 and thereafter will pay Mid Louisiana $12,500 per month for the storage, net of the transportation service.

Pursuant to the terms of an agreement dated June 30, 1972, Applicants seek authorization to make additional exchanges of gas at Cameron Meadows, Ethel, and Cameron Parish, La., or Hester when the party receiving the request for delivery has gas and delivery capacity available for such use. Applicants also seek authorization for Mid Louisiana to make sales of gas to Transco on an excess availability basis from the southern part

of its system in accordance with terms of the executed service agreement dated June 29, 1972. Applicants state that said gas will be delivered at either Ethel or Hester.

Applicants request authorization for Transco to install and operate certain facilities to increase the capacity of Transco's existing measurement facilities at Ethel, East Feliciana Parish, La. Transco estimates the cost of the proposed enlargement to be $57,200, which cost will be financed from cash on hand.

Applicants state that the proposed exchange arrangements and the sales by Mid Louisiana of excess availability gas are designed to add flexibility to the operations of both systems and thereby make needed gas available to the public served by the two companies.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1972, 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 i n 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 o wn 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 Applicants to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-15834 Filed 9-15-72;8:49 am]

[Docket No. CP73-55]

TRUNKLINE GAS CO. AND UNITED GAS PIPE LINE CO.

Notice of Application

SEPTEMBER 12, 1972.

Take notice that on August 28, 1972, Trunkline Gas Co. (Trunkline), 3000 Bissonnet, Houston, TX 77005, and United Gas Pipe Line Co. (United), 1525 Fairfield Avenue, Shreveport, LA, hereinafter referred to jointly as Applicants, filed in Docket No. CP73-55 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas until January 1, 1973, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants seek authorization for the exchange of up to 15,000 Mcf of natural gas per day, pursuant to the terms of an agreement dated August 16, 1972. Applicants state that Trunkline will deliver or cause to be delivered gas to United through United's measuring facilities located in section 21, Township 18 South, Range 12 East, Terrebonne Parish, La. Applicants further state that United will deliver or cause to be delivered to Trunkline the same quantity of gas through existing metering facilities operated by Trunkline at the tailgate of Humble Oil & Refining Co.'s Garden City plant located in St. Mary Parish, La., or other mutually agreeable points of exchange.

Applicants state that no new facilities will be constructed to effectuate the exchange.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 3, 1972, 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,
Secretary.

[FR Doc.72-15835 Filed 9-15-72;8:50 am]

FEDERAL RESERVE SYSTEM

BANK OF VIRGINIA CO.[1]

Order Approving Acquisition of Richmond Finance Corporation and Hanover Mortgage Corp.

Bank of Virginia Co., Richmond, Va., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire all of the voting shares of (1) Richmond Finance Corp., Richmond, Va., a company that engages in the activity of making personal loans or extensions of credit to individuals, and acting as agent for credit life, accident and health insurance in connection with such loans; and (2) Hanover Mortgage Corp., Richmond, Va., a company that engages in the activity of making mortgage loans principally secured by junior liens on commercial, residential and unimproved real estate, and acting as agent for credit life, accident and health insurance in connection with such loans. Such activities have been determined by the Board to be closely related to the business of banking.

Notice of the applications, affording opportunity for interested persons to submit comments and views on the public interest factors has been duly published (37 F.R. 12188). The time for filing comments and views has expired, and none have been timely received.

Applicant, parent holding company of Bank of Virginia-Central, Richmond (Bank), controls 15 other banks in other markets, with aggregate deposits of $781.1 million, representing 8.5 percent of the total commercial deposits in Virginia. Bank is the third largest banking institution in the Richmond Standard Metropolitan Statistical Area ("SMSA"), where it holds 19 percent of deposits in that market. Applicant's nonbanking subsidiaries include both domestic and foreign factoring companies, a leasing corporation and a mortgage company. None of applicant's nonbanking subsidiaries are engaged in making consumer loans and the loans of its mortgage company are primarily secured by first liens on real estate.

Richmond Finance Corp. is engaged in the business of making small loans to individuals secured primarily by liens on used motor vehicles. It competes with 16 other small loan companies in the Richmond SMSA and based on its decline in volume of business ($1,255,000 in 1968 to $576,000 in 1971) offers but limited competition to these competitors. While Bank, on occasion, extends credit for the purchase of used cars, there is no significant existing competition between Bank and Richmond Finance Corp. in the consumer small loan market.

Hanover Mortgage Corp. (Hanover), is engaged in the business of making loans to individuals for its own account secured

[1] Virginia Commonwealth Bankshares, Inc. changed its name to Bank of Virginia Co., during the processing of this application.

Applicant, parent holding company of

primarily by second mortgages on real estate. As of January 31, 1972, Hanover held total outstanding mortgage loans of $2.3 million, representing approximately 3 percent of all second mortgage loans outstanding in the Richmond SMSA. Bank's second mortgage loans in the market area are nominal ($498,000) and, in view of bank regulations restricting the eligibility of loans secured by junior liens, not likely to increase substantially. The Board therefore, concludes that consummation of the proposed acquisition of Hanover would have no significant adverse effects on existing competition, nor foreclose the development of future competition.

Financial factors, as discussed in an accompanying order of today's date involving applicant's proposed retention of Rusch Factors, Inc., are consistent with approval. Acquisition of Richmond Finance Corp. and Hanover will not place additional demands on applicant's earnings or adversely affect applicant's financial condition in any manner.

Approval of each acquisition will make available to Richmond Finance Corp. and Hanover the financial resources of applicant and enable both companies to better serve their customers and provide more effective competition to their competitors in the market area. The resulting benefits in terms of public needs and convenience, and increased competition would, in the Board's judgment, outweigh any possible adverse effect on competition.

Based on the foregoing and other considerations reflected in the record, the Board hereby approves the applications. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasions thereof.

By order of the Board of Governors,[2] effective September 8, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-15802 Filed 9-15-72;8:47 am]

BANK OF VIRGINIA CO.

Order Approving Retention of Rusch Factors, Inc.

Bank of Virginia Co.,[1] Richmond, Va., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to retain all of the voting shares of Rusch Factors, Inc. (Rusch), Richmond, Va., a company that engages in the activities of full notification and nonnotification factoring of accounts receivable, secured and unsecured commercial financing without restriction as to the nature of security taken, including but not limited to providing guarantees of letters of credit and issuing letters of guaranty of any kind. Such activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a)(1)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (37 F.R. 7951). The time for filing comments and views has expired, and none have been timely received.

Applicant, parent holding company of Bank of Virginia—Central, Richmond, (Bank), controls 16 banks with aggregate deposits of $781.1 million, representing 8.5 percent of the total deposits in commercial banks in Virginia. Bank is the third largest banking institution in the Richmond SMSA and it controls 19 percent of deposits in that market. Applicant's nonbanking subsidiaries include both domestic and foreign factoring companies, a leasing corporation and a mortgage company.

Rusch, with offices in Barrington, R.I., New York, N.Y., and Richmond, Va., is an "old-line" factoring company originally established in 1827 and acquired by applicant under section 4(c)(5) of the Bank Holding Company Act in July, 1969.[3] Under section 4(c)(5), Rusch is not authorized to conduct full service factoring operations at locations other than such locations where applicant's subsidiary banks are authorized to engage in business.[3] Applicant now seeks permission to operate Rusch under authority of section 4(c)(8) so that Rusch would not be subject to the "loan production" restriction at its New York and Rhode Island offices and could engage in full service factoring activities at those offices.

Since applicant's acquisition of Rusch in 1969, its factored accounts outstanding have increased from $52.2 million to $99.1 million. Rusch has only a small share of the New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, and Vermont factoring markets where total outstanding factored accounts of Rusch's major competitors are approximately $6 billion.

Applicant has a factoring subsidiary located in Canada and its subsidiary banks located in Virginia engage to some extent in the same type of commercial financing engaged in by Rusch. The factoring activities of applicant's subsidiaries, other than Rusch, appear to be insubstantial in Rusch's primary service area. The Board therefore concludes that the proposed retention of Rusch by applicant would not have any significant adverse effect on either existing or potential competition in any relevant area.

There is no evidence in the record to indicate that the proposed retention would lead to an undue concentration of resources, conflicts of interest, or unsound banking practices. Some benefits may accrue to the public through the proposed retention, since applicant would be able to offer full service factoring, rather than merely loan production facilities, to its customers in New York and Rhode Island, thereby possibly providing more competition to the larger factoring companies.

In its consideration of the application, the Board noted that applicant has substantial short term debt, utilized to carry receivables of nonbank subsidiaries. In addition, applicant has issued significant long term debt primarily to make additions to the capital accounts of its subsidiary banks and affiliated companies and to acquire foreign companies. Although applicant's resulting overall debt level is relatively high in relation to other bank holding companies, each of applicant's nonbank subsidiaries has been profitable and each appears to have a reasonable capital base. Moreover, applicant and its subsidiaries are considered capably managed.

Based on the foregoing circumstances, the Board concludes that the financial and managerial factors are consistent with approval and that the public interest considerations reflected in the record are favorable. Accordingly, the application is approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof.

By order of the Board of Governors,[4] effective September 8, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-15801 Filed 9-15-72;8:47 am]

CHASE MANHATTAN CORP.

Acquisition of Bank

The Chase Manhattan Corp., New York, N.Y., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C.

[2] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, and Sheehan. Absent and not voting: Governors Robertson, Daane, and Bucher.

[1] Virginia Commonwealth Bankshares, Inc. changed its name to Bank of Virginia Co. during the processing of this application.

[3] Prior to June 30, 1971, a bank holding company could, under section 4(c)(5), directly acquire shares of a corporation to perform, at locations at which the bank is authorized to engage in business, functions, such as factoring, that national banks are empowered to perform directly (12 CFR 7.1105; 225.4(e); 250.141).

[3] Rusch's offices in New York and Rhode Island are "loan production offices" where Rusch may solicit loans, assemble credit information, prepare applications for loans, and perform other similar agent type activities for Rusch's main office in Richmond, Va.

[4] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, and Sheehan. Absent and not voting: Governors Robertson, Daane, and Bucher.

1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of Chase Manhattan Bank of the Mid-Hudson (National Association), Saugerties, N.Y., the successor by merger to the Saugerties National Bank and Trust Co., Saugerties, N.Y. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than October 2, 1972.

Board of Governors of the Federal Reserve System, September 11, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-15798 Filed 9-15-72;8:46 am]

NORTHWEST BANCORPORATION

Order for Oral Presentation

On March 21, 1972, there was published in the FEDERAL REGISTER (37 F.R. 5775) a notice of receipt by the Board of Governors of an application filed pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y by Northwest Bancorporation, Minneapolis, Minn. (Applicant), for permission to acquire voting shares of T. G. Evensen & Associates, Inc., Minneapolis, Minn.

The application states that the proposed subsidiary provides financial advice to State and local governmental units, particularly with respect to the advisability of obtaining long-term capital funds through municipal bond sales, and that the proposed subsidiary analyzes existing debt and ability to pay, gathers information needed by prospective investors, prepares and distributes prospecti to potential investors, solicits bids from bond dealers and other interested bidders, acts as coordinator until consummation of the financing, and advises clients on other financial questions. The notice advised that the application was available for study at the office of the Board of Governors and the Federal Reserve Bank of Minneapolis, and designated a period within which comments and views on the proposed acquisition could be filed with the Board.

Having considered all comments submitted on the proposal, including a request, with accompanying statement of reasons, that a hearing be conducted on the application, the Board has concluded that the public interest would be served by the conduct of an oral presentation with respect to the application. The Board has, accordingly, directed that an oral presentation be held on October 17, 1972, commencing at 10 a.m., at the Federal Reserve Bank of Minneapolis, 73 South Fifth Avenue, Minneapolis, MN. The Board has designated an official of the Federal Reserve Bank of Minneapolis to serve as Hearing Officer for the conduct of the oral presentation. The proceeding will consist of presentations of statements in oral or written form, together with any supporting or supplementary written submissions allowed by the Hearing Officer, all of which are to be addressed to the factors set forth in section 4(c)(8) of the Bank Holding Company Act[1] as applied to this application.

Any person desiring to give testimony, present evidence, or otherwise participate in these proceedings should file with the Secretary, Federal Reserve Bank of Minneapolis, 73 South Fifth Avenue, Minneapolis, MN 55480, on or before October 3, 1972, a written request containing a statement of the nature of the petitioner's interest in the proceedings, the extent of the participation desired, a summary of the matters concerning which petitioner wishes to give testimony or submit evidence, and the names and identity of witnesses who propose to appear. Requests will be presented to the Hearing Officer for his determination, and persons submitting them will be notified of his decision.

By order of the Board of Governors,[2] September 1, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-15799 Filed 9-15-72;8:47 am]

SHOREBANK, INC.

Order Approving Acquisition of Banks

Shorebank, Inc., Quincy, Mass., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire at least 80 percent of the voting shares of the Mechanics Bancorp, Inc., Worcester, Mass., a one-bank holding company which owns 100 percent of the voting shares (less directors' qualifying shares) of the Mechanics National Bank of Worcester, Worcester, Mass. (Mechanics Bank); and to acquire at least 80 percent of the voting shares of First Agricultural National Bank of Berkshire County, Pittsfield, Mass. (Agricultural Bank).

Notice of the applications, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, organized in 1968, controls three banks holding aggregate deposits of $225 million, representing 1.9 percent of total commercial bank deposits in Massachusetts, and is the seventh largest banking organization in the State. (All banking data are as of December 31, 1971, and reflect holding company acquisitions and formations approved through July 31, 1972.) The acquisitions of Mechanics Bank and Agricultural Bank would increase Applicant's share of State deposits by 1.6 percentage points, thereby making it the sixth largest banking organization in the State.

Mechanics Bank ($96 million in deposits), the only banking subsidiary of the Mechanics Bancorp, Inc., operates its main office and five branches in Worcester, and three offices in nearby towns. It ranks as third largest among the eight banks in the Worcester SMSA (Standard Metropolitan Statistical Area) and among the 13 Worcester County banks. The two largest county banks hold total deposits of $336 and $164 million, respectively, and together control 70.6 percent of the aggregate deposits in the Worcester SMSA. It appears that the area banks would not be adversely affected by the proposed affiliation.

Agricultural Bank ($91 million in deposits) operates its main office and five branches in Pittsfield. It also maintains six other branches throughout Berkshire County, where it ranks as the largest commercial bank, and controls 48.2 percent of county deposits. The remaining five county banks hold total commercial bank deposits ranging from $64 million to $3.5 million. It appears that banking operations are well apportioned throughout the county as the needs of the area demand and that the proposed affiliation of Agricultural Bank with Applicant would not adversely affect other county banks.

The closest subsidiary offices of Applicant and Mechanics Bank are 21 miles apart, and 120 miles separate Applicant's nearest office to Agricultural Bank. There is no meaningful competition between any of Applicant's subsidiaries and the proposed subsidiaries, nor between Mechanics Bank and Agricultural Bank, and it appears unlikely that significant competition would develop in the future due to the distances separating the banking offices and State laws that restrict branching to the home office county.

Applicant states its objective is to build a holding company of such strength that it would become a strong competitive force among the large Massachusetts banking organizations. The State's two largest multibank holding companies

[1] Section 4(c)(8) provides in pertinent part that a bank holding company may acquire:
Shares of any company the activities of which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. In determining whether a particular activity is a proper incident to banking or managing or controlling banks the Board shall consider whether its performance by an affiliate of a holding company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

[2] Voting for this action: Vice Chairman Robertson and Governors Mitchell, Daane, Brimmer, Sheehan, and Bucher. Absent and not voting: Chairman Burns.

each hold over $1 billion in deposits, and the five largest banking organizations control 60 percent of the deposits of commercial banks in the State. Upon consummation of the proposed acquisitions, Applicant, as the sixth largest banking organization, would control less than half the amount of deposits held by the fifth largest organization. The acquisition by Applicant of smaller banks in the markets or de novo entry probably would not substantially change its present position. However, the acquisition of subject banks would enable Applicant to compete more effectively with the State's larger banking organizations. Competitive considerations are consistent with approval of the applications.

The finanical and managerial resources of Applicant, its subsidiaries and the proposed subsidiaries are considered to be generally satisfactory. Prospects for Applicant appear favorable, as do the prospects for Mechanics Bank and Agricultural Bank under Applicant's control. Banking factors are, therefore, consistent with approval of the applications.

The major banking needs of the respective areas are served at the present time. However, Applicant proposes to assist subject banks in offering a broader range of financial services to their customers. Accounts receivable financing and equipment leasing would be added to present services offered by the two banks, and international banking services would be introduced at Agricultural Bank. Considerations relating to the convenience and needs of the communities to be served are consistent with and add some weight toward approval of the applications. It is the Board's judgment that consummation of the proposed acquisitions would be in the public interest, and that the applications should be approved.

On the basis of the record, the applications are approved for the reasons summarized above. The transactions shall not be consummated (a) before the 30th calendar day following the effective date of this order or (b) later than 3 months after the effective date of this order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Boston pursuant to delegated authority.

By order of the Board of Governors,[1] effective September 8, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[1] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, and Sheehan. Absent and not voting: Governors Robertson, Daane, and Bucher.

[FR Doc.72-15800 Filed 9-15-72;8:47 am]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 72-17]

PHYSICAL SCIENCES COMMITTEE OF THE SPACE PROGRAM ADVISORY COUNCIL

Notice of Public Meeting

The NASA Physical Sciences Committee of the Space Program Advisory Council will meet on September 19 and 20, at the Lunar Science Institute, 3303 NASA Road 1, Houston, TX 77058. The meeting will be held in the Hess Room. Members of the public will be admitted to the meeting, which will follow the agenda below, on a first come first served basis up to the seating capacity of the room, which is about 40 persons. Visitors may enter the Lunar Science Institute and the meeting room without prior clearance. They will be requested to sign a visitors register.

The NASA Physical Sciences Committee serves in an advisory capacity only. The Committee is concerned with all aspects of the physical sciences which are relevant to space, including lunar and planetary exploration, astronomy, and space physics. The current chairman is Dr. William A. Fowler. There are 13 members. The following agenda covers all the topics expected to be discussed at the September 19 and 20, 1972, meeting. For further information please contact Dr. Lawrence D. Kavanagh, Area Code 202, 755-3674.

SEPTEMBER 19, 1972

Time	*Topic*
9-12 a.m.	Status Reports (Purpose: To review the current state of NASA-sponsored research in the physical sciences, including recently-launched spacecraft and spacecraft under construction). 1. Physics and Astronomy report. 2. Planetary programs report. 3. Future programs report.
3-4 p.m.	Review of Lunar Science Institute Summer Study on Post-Apollo Lunar Science (Purpose: To review the specific recommendadations made by this study. The Committee will be asked to either endorse or comment on these recommendations).
4-5 p.m.	Preview of Apollo 17 (Purpose: To provide the Committee with background information on scientific activities planned for this mission).

SEPTEMBER 20, 1972

Time	*Topic*
9-12 a.m.	Space Shuttle plans for sortie mode of operations (Purpose: To provide Committee with up-to-date report on space shuttle planning and on sortie laboratory planning including science working group activity to identify most desirable types of sortie labs. Committee will be asked to comment on the activity, offer suggestions, and recommend additional or modified courses of action if it deems appropriate).
1-5 p.m.	Discussion: Thrusts in Physical Sciences for the 1980's (Carryover item begun at previous meeting. Committee has been asked to prepare for NASA a statement of definitive goals recommended to be pursued in the major areas of Physical Science in space in the decade of the 1980's. A discussion and formulation of a set of formal recommendations will be conducted).

HOMER E. NEWELL,
Associate Administrator, National Aeronautics and Space Administration.

[FR Doc.72-15796 Filed 9-15-72;8:46 am]

SECURITIES AND EXCHANGE COMMISSION

[811-2216]

DEAN WITTER MASTER APPRECIATION PORTFOLIO PLAN

Notice of Filing of Application Declaring That Company Has Ceased To Be Investment Company

SEPTEMBER 11, 1972.

Notice is hereby given that Dean Witter Master Appreciation Portfolio Plan (formerly Optimum Appreciation Portfolio) (Applicant), 45 Montgomery Street, San Francisco, CA 94104, an unincorporated association registered under the Investment Company Act of 1940 (Act) as an open-end, nondiversified investment company, has filed an application pursuant to section 8(f) of the Act for an order of the Commission declaring that Applicant has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations set forth therein which are summarized below.

Applicant registered under the Act by filing its Form N–8A on August 4, 1971. On December 5, 1971, Applicant filed a registration statement on Form N–8B–1 under the Act and a registration statement on Form S–5 under the Securities Act of 1933. The registration statement under the Securities Act of 1933 did not become effective and Applicant has requested that it be withdrawn. Applicant has never made a public offering of its shares and has no intention of making such offering in the future. Applicant also states that it now has no shareholders and will have none in the future.

Section 3(c)(1) of the Act exempts from the definition of investment company any issuer whose outstanding securities are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 6, 1972, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon Applicant at the address stated above. Proof of such service (by affidavit or in case of an attorney at law by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion. 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 Investment Company Regulation, pursuant to delegated authority.

[SEAL] RONALD F. HUNT, *Secretary.*

[FR Doc.72–15790 Filed 9–15–72;8:46 am]

[70–5233]

NORTHEAST UTILITIES

Notice of Proposed Issue and Sale of Common Stock by Holding Company at Competitive Bidding

SEPTEMBER 11, 1972.

Notice is hereby given that Northeast Utilities (Northeast), 174 Brush Hill Avenue, West Springfield, MA 01089, a registered holding company, has filed a declaration with this Commission pursuant to the Public Utility Holding Company Act (Act), designating sections 6 and 7 of the Act and Rule 50 promulgated thereunder as applicable to the following proposed transaction. All interested persons are referred to the declaration, which is summarized below, for a complete statement of the proposed transaction.

Northeast proposes to issue and sell, subject to the competitive bidding requirements of Rule 50, 4 million additional shares of its authorized but unissued common stock, par value $5 per share. The proceeds from the proposed sale of the common stock (which Northeast tentatively estimates at about $60 million) will be used to make capital contributions of $5 million each to the Hartford Electric Light Co. and to Western Massachusetts Electric Co. in October 1972 and to reduce short-term borrowings incurred by Northeast to make investments in its subsidiaries. Such investments in subsidiaries included capital contributions made in February 1972 of $35 million to the Connecticut Light and Power Co. and $15 million to the Hartford Electric Light Co. for the purpose of repaying short-term borrowings made by those companies to finance in part their respective construction programs (see Holding Company Act Release No. 17464 February 24, 1972). It is estimated that Northeast's short-term borrowings at the end of 1972 will amount to $55 million, which are expected to be repaid through future sales of common stock pursuant to future filings with the Commission.

It is stated that no State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transaction. Fees and expenses incident to the proposed transaction are to be filed by amendment.

Notice is further given that any interested person may, not later than September 27, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. 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 declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, certificate) should be filed with the request. At any time after said date, the declaration, as filed or as it may be amended, may be 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] RONALD F. HUNT, *Secretary.*

[FR Doc.72–15791 Filed 9–15–72;8:46 am]

INTERSTATE COMMERCE COMMISSION

[Notice 77]

ASSIGNMENT OF HEARINGS

SEPTEMBER 13, 1972.

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 noti-

fied of cancellation or postponements of hearings in which they are interested.

MC 41432 Sub 117, East Texas Motor Freight Lines, Inc., now assigned October 16, 1972, at Atlanta, Ga., is postponed indefinitely.

MC 106497 Sub 62, Parkhill Truck Co., now being assigned hearing November 1, 1972 (3 days), at Memphis, Tenn., in a hearing room to be later designated.

MC-130139, Leisure, Inc., now being assigned for continued hearing October 24, 1972 (3 days), at Boston, Mass., in a hearing room to be later designated.

MC-F-11094, Navajo Freight Lines, Inc.—Investigation of Control—Garrett Freightlines, Inc., MC-F-11198, Navajo Freight Lines, Inc.—Control—Garrett Freightlines, Inc., now assigned September 18, 1972, at Washington, D.C., is postponed to September 19, 1972, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 70083 Sub 22, Drake Motor Lines, Inc., now assigned October 2, 1972, at Philadelphia, Pa., is postponed to November 6, 1972, in Conference Room A, Federal Building, 1421 Cherry Street, Philadelphia, PA.

MC 69635 Sub 4, The Fortune Corp., now assigned October 3, 1972, at Olympia, Wash., is postponed indefinitely.

MC 107295 Sub 593, Pre-Fab Transit Co., now being assigned hearing November 27, 1972 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 124211 Sub 210, Hilt Truck Line, Inc., now being assigned hearing November 28, 1972, at Columbus, Ohio, in a hearing room to be later designated.

MC-F-11423, Tower Lines, Inc.—Control and Merger—All Ohio Trucking Co., and MC 65941 Sub 72, Tower Lines, Inc., now being assigned hearing November 29, 1972 (3 days), at Columbus, Ohio, in a hearing room to be later designated.

MC 51146 Sub 273, Schneider Transport, Inc., now being assigned hearing December 4, 1972 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC 109397 Sub 274, Tri-State Motor Transit Co., now being assigned hearing December 5, 1972 (1 day), at Columbus, Ohio, in a hearing room to be later designated.

MC-F-11471, Suburban Motor Freight, Inc.—Control and Merger—The Hauselman Transportation Co., MC 44447 Sub 28, Suburban Motor Freight, Inc., and FD 27038, Suburban Motor Freight, Inc., Notes, now being assigned hearing December 6, 1972 (3 days), at Columbus, Ohio, in a hearing room to be later designated.

MC 120657 Sub 4, Dugan Truck Line, Inc., now assigned October 16, 1972, at Hutchinson, Kans., is postponed to October 24, 1972, in the Hilton Inn, Hutchinson, Kans.

MC-113855 Sub 254, International Transport, Inc., now being assigned hearing November 2, 1972 (1 day), at St. Paul, Minn., in a hearing room to be later designated.

MC-105501 Sub 6, Terminal Warehouse Co., now assigned continued hearing November 3, 1972 (1 day), at St. Paul, Minn., in a hearing room to be later designated.

MC-136510, Over-Land Coach Lines, Inc., assigned November 6, 1972, at Philadelphia, Pa., will be held in U.S. Customs Court Room 300, U.S. Customhouse, Second and Chestnut Street.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-15838 Filed 9-15-72;8:50 am]

[Notice 125]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceeding within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-73660. By order of August 31, 1972, the Motor Carrier Board, on reconsideration, approved the transfer to Wenzl and Fujan, Inc., Lincoln, Nebr., of the operating rights in Certificates Nos. MC-123021 (Sub-No. 2) and MC-123021 (Sub-No. 3), issued July 13, 1961, and June 12, 1962, respectively, to James D. Lockard, Stella, Nebr., authorizing the transportation of sand, gravel, dirt, and rocks, broken or crushed, in dump vehicles, between points in North Dakota, South Dakota, Iowa, Nebraska, Kansas, and Missouri; and sand, gravel, dirt, rocks, and crushed limestone, in dump vehicles, between points in Nebraska and Iowa. The service authorized herein is subject to restrictions. Frederick J. Coffman, 521 South 14th Street (Post Office Box 80806), Lincoln, NE 68501, attorney for applicants.

No. MC-FC-73790. By order of August 30, 1972, the Motor Carrier Board on reconsideration approved the transfer to Price Truck Line, Inc., Wichita, Kans., of the certificates and certificate of registration issued in No. MC-69834 and subnumbers thereunder to Andrew J. Price, doing business as Price Truck Line, Wichita, Kans., authorizing the transportation of general commodities, with usual exceptions, over regular routes between Wichita, Kans., and Belle Plaine, Kans., and over irregular routes between Wichita, Kans., and Strother Field, Kans.; and evidencing a right to engage in interstate or foreign commerce corresponding in scope to the grant of regular-route authority in certificate routes Nos. 323, 134, and 52 issued by the Kansas Corporation Commission. Paul V. Dugan, Suite 1400, K. S. B. & T. Building, Wichita, Kans. 67202, attorney for applicants.

No. MC-FC-73791. By order of August 31, 1972, the Motor Carrier Board approved the transfer to Witzel Truck Lines, Inc., Burlington, Colo., of the operating rights in Certificate No. MC-93307 issued March 4, 1969, to Fred E. Witzel, doing business as Witzel Truck Lines, Burlington, Colo., authorizing the transportation of livestock, lumber and millwork, cement, fruits and vegetables, emigrant movables, grain, hay, farm machinery, and feeds, between, from and to, specified points in Colorado and Kansas, varying with the commodity involved. Roger Sollenbarger, 9480 West 14th Avenue, Lakewood, CO 80215, attorney for applicants.

No. MC-FC-73868. By order of August 30, 1972, the Motor Carrier Board approved the transfer to Dixie Vacuum Tanks, Inc., Beaumont, Tex., of Certificate of Registration No. MC-120571 (Sub-No. 1), issued August 22, 1968, to French, Ltd., of Houston, Inc., Houston, Tex., evidencing a right to engage in transportation in interstate or foreign commerce corresponding in scope to the grant of authority in SMC Certificate No. 25479 (old certificate No. 8226) issued by the Railroad Commission of Texas. Austin L. Hatchell, 1102 Perry Brooks Building, Austin, Tex. 78701, attorney for applicants.

No. MC-FC-73883. By order entered August 31, 1972, the Motor Carrier Board approved the transfer to Rush Trucking, Inc., Fort Lauderdale, Fla., of the operating rights set forth in Permit No. MC-134161 (Sub-No. 1), issued August 25, 1970, to Perry C. Byers, doing business as Matthewson's Parcel Delivery Service, Tampa, Fla., authorizing the transportation of (1) cosmetics, (2) toilet preparations, toilet articles, and related premiums, and (3) equipment and supplies used in connection with the display and sale of the commodities named in (1) and (2) above, from Tampa, Fla., to points in Pinellas and Hillsborough Counties, Fla., under a continuing contract or contracts with Avon Products, of Atlanta, Ga. Guy H. Postell, Suite 713, 3384 Peachtree Road NE., Atlanta, GA 30326, attorney for applicants.

No. MC-FC-73893. By order entered August 30, 1972, the Motor Carrier Board approved the transfer to Hubert Leonard, doing business as Richard Rieken Moving and Storage, Lyndhurst, N.J., of the operating rights set forth in certificate No. MC-60611, issued February 18, 1969, to Richard Rieken, Jr., doing business as Richard Rieken Moving and Storage, New Milford, N.J.; authorizing the transportation of: Household goods as defined by the Commission, between points within 100 miles of Dumont, N.J. Arthur Kronenberg, 39 Hudson Street, Hackensack, NJ 07601, attorney for applicants.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-15841 Filed 9-15-72;8:50 am]

[Notice 123]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 12, 1972.

The following are notices of filing of applications[1] 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 107295 (Sub-No. 632 TA), filed August 23, 1972. Applicant: PRE-FAB TRANSIT CO., 100 South Main Street, Post Office Box 146, Farmer City, IL 61842. Applicant's representative: Bruce J. Kinnee (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Metal overhead doors, door sections and parts, and accessories* used in the installation thereof, from Tiffin, Ohio, to points in Utah, for 180 days. Supporting shipper: John E. Zoller, Marketing Manager, Quincy Manufacturing Co., Division of Rowe Manufacturing Co., Wall Street of Hudson Street, Tiffin, Ohio 44883. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 518 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

No. MC 112822 (Sub-No. 244 TA), filed August 24, 1972. Applicant: BRAY LINES INCORPORATED, Post Office Box 1191, 1401 North Little Street, Cushing, OK 74023. Applicant's representative: Joe W. Ballard (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and dehydrated potato products*, from Burley, Idaho, to points in Oklahoma, for 180 days. Supporting shipper: Ore-Ida Foods, Inc., Vernal R. Smart, Traffic Manager, Post Office Box 10, Boise, Idaho 83707. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 240 Old Post Office Building, 215 Northwest Third Street, Oklahoma City, OK 73102.

No. MC 113362 (Sub-No. 245 TA), filed August 22, 1972. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Applicant's representative: Milton D. Adams, 1105½ Eighth Avenue NE., Austin, MN 55912. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by wholesale, retail, and chain food business houses, from Springfield, Mo., to points in Arkansas, Illinois, Iowa, Kansas, Louisiana, Minnesota, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wisconsin, for 180 days. Supporting shipper: The R. T. French Co., 1 Mustard Street, Rochester, N.Y. 14609. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309.

No. MC 113908 (Sub-No. 237 TA), filed August 24, 1972. Applicant: ERICKSON TRANSPORT CORPORATION, 2105 East Dale Street, Post Office Box 3180, Springfield, MO 65804. Applicant's representative: B. B. Whitehead (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feed and feed ingredients*, in bulk, in tank vehicles, between Verona, Mo., and West Alexendria, Ohio, for 180 days. Supporting shipper: Hoffman-Taff, Inc., Subsidiary of Syntex Laboratories, Inc., Post Office Box 1246 S.S.S. Springfield, MO 65805. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1100 Federal Office Building, 911 Walnut Street, Kansas City, Mo. 64106.

No. MC 115818 (Sub-No. 11 TA), filed August 23, 1972. Applicant: WESTBURY TRANSPORT, INC., 397 East 54th Street, East Paterson, NJ 07407. Applicant's representative: Werner & Alfano, 2 West 45th Street, New York, NY 10036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Carpeting, padding, and floor tile, and materials and supplies*, except in bulk, used in the installation of the above-named commodities, between shipper's warehouse at Carle Place, Long Island, N.Y., on the one hand, and, on the other, points in New Jersey and Connecticut, restricted under a continuing contract, or contracts, with Korvettes, Division of Arlen Realty & Development Corp., for 180 days. Supporting shipper: Korvettes, Division of Arlan Realty & Development Corp., 397 East 54th Street, East Paterson, NJ 07407. Send protests to: District Supervisor Joel Morrows, Interstate Commerce Commission, Bureau of Operations, 970 Broad Street, Newark, NJ 07102.

No. MC 117613 (Sub-No. 13 TA), filed August 30, 1972. Applicant: DONALD M. BOWMAN, JR., Box 26, 15 East Oak Ridge Drive, Hagerstown, MD 21740, Residence: North Clifton Drive, Williamsport, Md. 21795. Applicant's representative: Charles E. Creager, Suite 523, 816 Easley Street, Silver Spring, MD 20910. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick*, from Rossville, Md., to points in the District of Columbia and Virginia, for 180 days. Supporting shipper: Baltimore Brick Co., a subsidiary of the Arundel Corp., 501 St. Paul Place, Baltimore, MD 21202. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 118178 (Sub-No. 12 TA), filed August 30, 1972. Applicant: BILL MEEKER, 1632 North Mosley, Post Office Box 11184, Wichita, KS 67202. Applicant's representative: Gailyn L. Larsen, Post Office Box 80806, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cider*, from Alton, Ill., to points in Kansas; Des Moines, Iowa; Kansas City, Joplin, and Springfield, Mo.; Omaha and Lincoln, Nebr.; and Oklahoma City, Okla., for 90 days. Supporting shipper: National Vinegar Co., Box 255, Alton, IL. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 118628 (Sub-No. 3 TA), filed August 23, 1972. Applicant: FLOYD HILL, doing business as DELTA TRANSFER LINES, 1101 North Third Avenue, Post Office Box 993, Jasper, AL 35501. Applicant's representative: Denning & Wohlstetter, 1700 K Street NW., Washington, DC 20006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *used household goods*, between points in Bibb, Blount, Calhoun, Cherokee, Clay, Cleburne, DeKalb, Etowah, Fayette, Jefferson, Lamar, Marion, Pickens, Randolph, St. Clair, Shelby, Talladega, Tuscaloosa, Walker, and Winston Counties, Ala., for 180 days. Supporting shippers: Smyth Worldwide Movers, Inc., 11616 Aurora Avenue, North Seattle, WA 98133; VanPac Carriers, Inc., 2114 MacDonald Avenue, Richmond, CA 94801. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 814, 2121 Building, Birmingham, Ala. 35203.

No. MC 129615 (Sub-No. 10 TA) (Amendment), filed August 8, 1972, published in the FEDERAL REGISTER, August 30, 1972, amended and republished as amended this issue. Applicant: AMERICAN INTERNATIONAL DRIVE-AWAY, 2000 West 16th Street, Long Beach, CA 90813. Applicant's representative: Ed

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

Helmer (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor homes, campers, and recreational vehicles*, in driveaway service, in interstate or foreign commerce, between points in Luzerne and Lackawanna Counties, Pa., on the one hand, and, on the other, points in the United States, for 180 days. Supporting shipper: Fleetwood Enterprises, Inc., 3125 Myers Street, Post Office Box 7638, Riverside, CA 92503. Send protests to: John E. Nance, Officer in Charge, Interstate Commerce Commission, Bureau of Operations, Room 7708, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012. NOTE: The purpose of this republication is to broaden the territorial scope.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-15839 Filed 9-15-72;8:50 am]

[Notice 124]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 13, 1972.

The following are notices of filing of applications[1] 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 (6) 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 35835 (Sub-No. 28 TA), (Correction), filed August 14, 1972, published in the FEDERAL REGISTER issue of September 8, 1972, and republished as corrected this issue. Applicant: JENSEN TRANSPORT, INC., 300 Ninth Avenue SE., Independence, IA 50644. Applicant's representative: Kenneth F. Dudley, 611 Church Street, Post Office Box 279, Ottumwa, IA 52501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lactose and lactose products*, from Independence, Iowa, to Sturgis, Mich., and Columbus, Ohio, for 180 days. Supporting shipper: Wapsie Valley Creamery, Post Office Box 391, Independence, IA 50644. Send protests to: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 677 Federal Building, Des Moines, Iowa 50309. NOTE: The purpose of this republication is to reflect a correction in the commodity description which was inadvertently shown as *lacrose* and Lactose products in the previous publication.

No. MC 102982 (Sub-No. 27 TA), filed August 24, 1972. Applicant: GEORGE W. KUGLER, INC., 2800 East Waterloo Road, Post Office Box 6064, Ellet Station, Akron, OH 44312. Applicant's representative: George P. McMahon, 100 East Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Clay and refractory products and fittings, attachments, materials and supplies* used in the installation thereof, from Somerville, N.J., to points in Pennsylvania, New York, Connecticut, Massachusetts, Rhode Island, Maine, Vermont, New Hampshire, Delaware, Maryland, Virginia, West Virginia, Ohio, North Carolina, Indiana, Michigan, Illinois, Kentucky, Wisconsin, Tennessee, and the District of Columbia, for 180 day. Supporting shipper: Clow Corp., Robinson/Streator Division, Valley Road, Post Office Box 1073, Somerville, NJ 08876. Send protests to: Franklin D. Bail, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 181 Federal Office Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 108449 (Sub-No. 344 TA), filed August 22, 1972. Applicant: INDIANHEAD TRUCK LINE, INC., 1947 West County Road C, St. Paul, MN 55113. Applicant's representative: W. A. Myllenbeck (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum gas*, in bulk, in tank vehicles, from Providence, R.I., to Berlin, Bridgeport, Bristol, Greenwich, Hartford, Manchester, New Haven, Norwich, Putnam, and Trumbull, Conn.; Gorham, and Portland, Maine; Athol, Barre, Boston, Braintree, Brockton, Cambridge, Danvers, Everett, Fall River, Fitchburg, Gardner, Haverhill, Holyoke, Kingston, Lawrence, Leominister, Lynn, Malden, Norwood, Palmer, Plymouth, Springfield, Taunton, and Worcester, Mass.; Concord, Keene, and Rochester, N.H.; Coventry, Cumberland, Pawtucket, Peace Dale, Providence, Tiverton, Wakefield, Warren, West Warwick, and Wood River, R.I., for 180 days. Supporting shipper: Petrolane Inc., Wilton, Conn. 06897. Send protests to: District Supervisor Raymond T. Jones, Interstate Commerce Commission, Bureau of Operations, 448 Federal Building, 110 South Fourth Street, Minneapolis, Minn. 55401.

No. MC 112822 (Sub-No. 245 TA), filed August 29, 1972. Applicant: BRAY LINES INCORPORATED, Post Office Box 1191, 1401 North Little Street, Cushing, OK 74023. Applicant's representative: Marion F. Jones, Suite 420 Denver Club Building, Denver, CO 80202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the plantsites and warehouse facilities of U.S. Plywood-Champion Papers, Inc., at or near Asheville, Waynesville, and Canton, N.C., Piqua and Hamilton, Ohio; Courtland, Ala., and Houston, Tex., to the Kansas City-Kansas-Missouri commercial zone, and points in that part of the United States west of the eastern boundary of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas, for 180 days. Supporting shipper: Klaus H. Permer, Champion International Corp. (formerly U.S. Plywood-Champion Papers Inc.), Knightsbridge Drive, Hamilton, Ohio. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 114840 (Sub-No. 11 TA) (Correction), filed August 1, 1972, published in the FEDERAL REGISTER, issue of August 23, 1972, corrected and republished in part as corrected this issue. Applicant: EUGENE EBY, GLENN EBY, AND WAYNE EBY, doing business as EBY BROTHERS, Route 2 (Ada County), Boise, Idaho 83702. Applicant's representative: Kenneth G. Bergquist, Post Office Box 1775, Boise, ID 83701. NOTE: The purpose of this partial republication is to set forth the destination point in (1) (b) above to read and (b) points in Idaho to points in Nevada. The rest of the notice remains the same.

No. MC 115955 (Sub-No. 23 TA), filed August 24, 1972. Applicant: SCARI's DELIVERY SERVICE, INC., Post Office Box 2627, Willmington, DE 19805, Off Arnold Avenue and Skeets Road, Greater Wilmington Airport, New Castle, DE 19720. Applicant's representative: Richard P. Horgan (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except motor vehicles and commodities in bulk) having a prior or subsequent movement over railroad trailer on flatcar service, between railroad trailer on flatcar facilities in Philadelphia, Pa.; Wilmington, Del.; and Alexandria, Va.; on the one hand, and, on the other, the facilities of E. I. du Pont de Nemours & Co., located at or near Seaford, Wilmington, Newport, Edge Moor, Lewes, New Castle, and Glasgow, Del., Gibbstown, Carney's Point, Deepwater, Gloucester, and Pennsauken, N.J., and Philadelphia, Pa.; restricted to the transportation of traffic originating or destined to the named facilities, for 180 days. Supporting shipper: E. I. du Pont de Nemours &

[1] Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

Co., Wilmington, Del. 19898. Send protests to: Peter R. Guman, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 1518 Walnut Street, Room 1600, Philadelphia, PA 19102.

No. MC 117686 (Sub-No. 138 TA), filed August 23, 1972. Applicant: HIRSCHBACH MOTOR LINES, INC., 3324 U.S. Highway 75 North, Post Office Box 417, Sioux City, IA 51102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), in interstate or foreign commerce, from Lubbock, Tex., to points in Arkansas, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin, for 180 days. Supporting shipper: John Morrell & Co., 208 South La Salle Street, Chicago, IL 60604. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 123392 (Sub-No. 43 TA), filed August 31, 1972. Applicant: JACK B. KELLEY, INC., U.S. 66 West at Kelley Drive, Route 1, Box 444, Amarillo, TX 79106. Applicant's representative: Jack B. Kelley (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Anhydrous hydrogen chloride*, in bulk, in tube trailers, from Freeport, Tex., to Tulsa, Okla., San Diego and Los Angeles, Calif. Supporting shipper: S. F. Burke, Manager, Traffic Services, Air Products and Chemicals, Inc., Post Office Box 538, Allentown, PA 18105. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H–4395, Herring Plaza, Amarillo, TX 79101.

No. MC 124170 (Sub-No. 30 TA), filed August 29, 1972. Applicant: FROSTWAYS, INC., 3900 Orleans, Detroit, MI 48207. Applicant's representative: Robert D. Schuler, 1 Woodward Avenue, Suite 1700, Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209, 272, in vehicles equipped with mechanical refrigeration, from Coldwater, Mich., to Chicago, Ill.; Indianapolis, Ind., Louisville, Ky., Baltimore, Md.; Boston and Springfield, Mass.; Albany, Rochester, Syracuse, and New York, N.Y.; Cincinnati, Cleveland, and Columbus, Ohio; and Washington, D.C., for 180 days. Supporting shipper: Walter Packing Co., 70 Clyde Drive, Coldwater, MI 49036. Send protests to: Melvin F. Kirsch, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell, Detroit, MI 48226.

No. MC 127902 (Sub-No. 5 TA), filed August 31, 1972. Applicant: DIETZ MOTOR LINES, INC., Post Office Box 1427, 1816 Ninth Avenue Drive NE., Hickory, NC 28601. Applicant's representative: M. L. Dietz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *New furniture and furniture stock*, from Flora, Miss., to Lenoir and Bryson City, N.C., and (2) *furniture stock*, in return movement, from Lenoir, N.C., to Flora, Miss., for 180 days. Supporting shipper: Consolidated Furniture Industries, Lenoir, N.C. 28645. Send protests to: Frank H. Wait, Jr., Interstate Commerce Commission, Bureau of Operations, Suite 417, BSR Building, 316 East Morehead Street, Charlotte, NC 28202.

No. MC 128305 (Sub-No. 5 TA), filed August 31, 1972. Applicant: STALCUP TRUCKING, INC., 795 Teakwood, Coos Bay, OR 97420. Applicant's representative: Robert R. Hollis, Commonwealth Building, Portland, Oreg. 97402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, from points in Del Norte and Humboldt Counties, Calif., to points in Coos County, Oreg., for 180 days. Supporting shipper: Menasha Corp., Paperboard Division, Post Office Box 329, North Bend, OR 97459. Send protests to: District Supervisor A. E. Odoms, Bureau of Operations, Interstate Commerce Commission, 450 Multnomah Building, 319 Southwest Pine Street, Portland, OR.

No. MC 136748 (Sub-No. 1 TA), filed August 30, 1972. Applicant: CONSOLIDATED PARCEL SERVICE, INC., 9847 Page, St. Louis, MO 63132. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by department and other retail stores, no single package to exceed 100 pounds in weight or a length of 12 feet, from St. Louis, Mo., to points in those parts of Madison and St. Clair Counties extending to the western boundary of Madison County (using the Mississippi River as a line), thence straight north to the northwest boundary of Madison County (using the western boundary of Madison County as a line), thence straight east to the intersection of Highway 159 (using the northern boundary of Madison County as a line), thence south on Highway 159 to the intersection of Highway 140, thence east on Highway 140 to the intersection of Highway 4, thence south on Highway 4 to the intersection of Highway 177, thence west on Highway 177 to the intersection of Highway 158, thence southwest on Highway 158 to the southwest boundary of St. Clair County, thence northwest to the Mississippi River (using the southwest boundary of St. Clair County as a line), for 180 days. Supporting shippers: Wolff's, 700 Olive Street, St. Louis, MO 63101; Venture Stores, 615 Northwest Plaza, St. Ann, MO 63074; Boyd's, 600 Olive Street, St. Louis, MO 63101; Stanley Home Products, Post Office Box 15074, Chouteau Station, St. Louis, MO; The Singer Co., 8460 Watson Road, Suite 230, St. Louis, MO 63119; Lane Bryant, Seventh and Washington, St. Louis, MO 63101; Famous-Barr, 601 Olive Street, St. Louis, MO 63101. Send protests to: District Supervisor J. P. Werthmann, Bureau of Operations, Interstate Commerce Commission, Room 1465, 210 North 12th Street, St. Louis MO 63101.

No. MC 136875 (Sub-No. 1 TA), filed August 29, 1972. Applicant: CARGO CARRIERS CORP., 605 Third Avenue, Suite 1501, New York, NY 10016. Applicant's representative: Marvin J. Goldstein (same address as above). Authority sought to operate as a *contract carrier*, motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by department stores and *supplies and equipment* used in the conduct of such business, between the stores and facilities of Ohrbachs, Inc., in New York, N.Y., and Nassau County, N.Y., and Bergen, Passaic, Middlesex, and Essex Counties, N.J., for 150 days. Supporting shipper: Ohrbach, Inc., 5 West 34th Street, New York, NY 10001. Send protests to: Paul W. Assenza, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, Room 1807, New York, NY 10007.

No. MC 136996 (Sub-No. 1 TA), filed August 28, 1972. Applicant: IDEAL TRANSPORTATION COMPANY, 1623 West Main Street, Zanesville, OH 43703. Applicant's representative: David L. Pemberton, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pig iron*, in bulk, in dump vehicles, from Ashland, Ky., to Dayton, Ohio, for 180 days. Supporting shipper: David J. Joseph Co., 801 West Eighth Street, Cincinnati, OH. Send protests to: District Supervisor Frank L. Calvary, Interstate Commerce Commission, Bureau of Operations, 255 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 136998 TA, filed August 25, 1972. Applicant: KORAL SALES, INC., doing business as, KSI, Route No. 2, Box 659, Kenosha, WI 53180. Applicant's representative: Jerry Seidman (same address as above). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Furniture, lamps, and parts for both, wrought iron, plastics, and general surplus commodities*, from Paterson, N.J., to Chicago, Ill., Kenosha and Milwaukee, Wis., Los Angeles, San Francisco, and San Diego, Calif., Mexico, return movement is also requested to transport *furniture, lamps, and parts for both, wrought iron, plastics, and general surplus commodities*, from San Yisdor, Calif., San Diego, Calif., Los Angeles, Calif., Chicago, Ill., Kenosha, Wis., Milwaukee, Wis., and Paterson, N.J., for 180 days.

Supporting shipper: Mex-Am Enterprises, Ltd., Route No. 2, Box 659, Kenosha, WI 53180 (Annette Seidman, president). Send protests to: District Supervisor John E. Ryden, Interstate Commerce Commission, Bureau of Operations, 135 West Wells Street, Room 807, Milwaukee, WI 53203.

No. MC 138000 TA, filed August 30, 1972. Applicant: ARTHUR H. FULTON, Stephens City, Va. 22655. Applicant's representative: Charles E. Creager, Suite 523, 816 Easley Street, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Veneer*, between Martinsburg, W. Va., on the one hand, and, on the other, points in Indiana, Kentucky, North Carolina, South Carolina, and Pennsylvania; and (2) from Martinsburg, W. Va., to points in Vermont, for 180 days. Supporting shipper: Berkeley Face Veneer, Post Office Box 1493, Martinsburg, WV 25401. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th Street and Constitution Avenue NW., Washington, D.C. 20423.

No. MC 138000 (Sub-No. 1 TA), filed August 30, 1972. Applicant: ARTHUR H. FULTON, Stephens City, Va. 22655. Applicant's representative: Charles E. Creager, Suite 523, 816 Easley Street, Silver Spring, MD 20910. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Apples, apple products, and juices*, from Mount Jackson, Va., to points in Indiana, for 180 days. Supporting shipper: Bowman Apple Products Co., Inc., Mount Jackson, Va. 22842. Send protests to: Robert D. Caldwell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 12th and Constitution Avenue NW., Washington, D.C. 20423.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-15840 Filed 9-15-72;8:50 am]

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SATURDAY, SEPTEMBER 16, 1972
WASHINGTON, D.C.

PART II

Volume 37 ■ Number 181

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN GEORGIA 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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1007, 1071, 1073, 1090, 1094, 1096, 1097, 1098, 1102, 1103, 1108]

[Docket No. AO-366-A8, etc.]

MILK IN THE GEORGIA 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.
	Group I	
1007	Georgia	AO-366-A8
1071	Neosho Valley	AO-227-A26
1073	Wichita, Kans	AO-173-A26
1090	Chattanooga, Tenn	AO-266-A15
1094	New Orleans, La	AO-103-A33
1096	Northern Louisiana	AO-257-A20
1097	Memphis, Tenn	AO-219-A25
1098	Nashville, Tenn	AO-184-A31
1102	Fort Smith, Ark	AO-237-A20
1103	Mississippi	AO-346-A14
1108	Central Arkansas	AO-243-A22

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 October 7, 1972. Seventeen 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 Atlanta, Ga., on October 18–20, 1971, at Dallas, Tex., on November 9 and 10, 1971, and at Bloomington, Minn., on November 16–18, 1971, pursuant to notice thereof which was issued October 4, 1971 (36 F.R. 19604).

This hearing was a single proceeding on proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in 33 marketing areas. In addition to those listed at the beginning of this document, such marketing areas include the following:

GROUP II

Red River Valley	Central West Texas
Oklahoma Metropolitan	Austin-Waco, Texas
Lubbock-Plainview, Texas	Corpus Christi, Texas
North Texas	Central Arizona
San Aantonio, Texas	Texas Panhandle
	Rio Grande Valley

GROUP III

Minnesota-North Dakota	Minneapolis-St.Paul, Minn.
Southeastern Minnesota-Northern Iowa	Duluth-Superior
Quad Cities-Dubuque	Cedar Rapids-Iowa City
Greater Kansas City	Eastern South Dakota
Nebraska-Western Iowa	North Central Iowa
	Des Moines, Iowa

Because of the length of the recommended decision being issued under this proceeding, and to facilitate its distribution to interested parties, this decision is being published in the FEDERAL REGISTER in the form of three separate documents. Each contains the proposed amendments for the group of 11 orders listed at the beginning of the document and, for the convenience of interested parties, an identical set of findings and conclusions. The three documents constitute, however, a single recommended decision under this proceeding.

The material issues on the record of the hearing relate to:

1. Application of a uniform milk classification plan in the 33 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 of end-of-month inventory;

(e) Classification of shrinkage, milk dumped, and milk disposed of for animal feed;

(f) Allocation of receipts to utilization;

(g) Obligations relative to other source milk; and

(h) Reports;

5. Changing the butterfat differentials;

6. Advance announcement of prices for surplus milk;

7. Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders; and

8. A uniform "equivalent price" provision.

General setting of the hearing. This hearing is the second of two regional hearings on the proposed use of a uniform plan for classifying milk for pricing purposes under Federal milk orders. The first hearing, which was held at Clayton, Mo., on July 14–22, 1970, was for seven midwestern markets. A recommended decision based on the seven-market hearing was issued on June 4, 1971, and exceptions have been filed. A final decision is pending.

Prior to the first hearing, the National Milk Producers Federation, an organization of cooperative associations of dairy farmers and federations of such cooperative association, undertook the development of a uniform milk classification plan for use under 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, several cooperative associations petitioned the Department for a hearing on proposals relating to the classification and pricing of milk in seven midwestern markets. After the hearing and issuance of a recommended decision, these cooperatives, along with other producer groups, requested a similar hearing for an additional 33 markets. The two hearings together involve a group of 40 contiguous markets located throughout the central part of the United States.

As in the case of the seven markets, the main thrust of the cooperatives' proposals for the 33 markets was the proposed use of an identical classification plan under each of the orders. As proposed, the new plan would have three classes of utilization rather than the two classes now provided in most of these orders. 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 pricing proposals by the cooperatives would provide that the new Class II price under all but the Central Arizona order be the Minnesota-Wisconsin price plus an amount ranging from 10 to 20 cents, depending on the order involved. Prices would increase generally from north to south. For the Central Arizona order, which now has three classes, local producers proposed retention of the Class II price now in effect (a butter-nonfat dry milk formula price plus 25 cents).

Producers took diverse positions concerning the appropriate Class III price for the 33 markets. Two regional cooperatives operating largely in the Upper Midwest proposed that the Class III price under all 33 orders be based on a formula reflecting market prices for butter, nonfat dry milk and cheddar cheese. A regional cooperative operating in the southeastern United States proposed that the Class III price in five of its local markets be based on the Minnesota-Wisconsin price, with reductions of 5 to 15 cents to be applicable in four of the markets. Another regional cooperative proposed for 15 southwestern markets that the Class III price under each order for the principal surplus products be the lower of the present surplus price now in effect or the Minnesota-Wisconsin price. In the case of still three other markets, local producer groups asked that their present surplus prices (all

based solely or in part on butter-nonfat dry milk formulas) be retained.

Cooperatives also proposed that a single butterfat differential apply to all prices under each order. This differential, which would be identical among the 33 orders, would be based on the Chicago butter price times a factor of 0.115.

A uniform classification plan for the 33 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 33 subject markets. Without 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 and pricing scheme.

A more detailed description of the proposals by producers and handlers is set forth in the discussion of the material issues.

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 33 markets.* Each of the 33 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 pool plants to other plants, and for allocating a handler's receipts to his utilization to determine the classification of his producer milk. Each order would use the same Class II and Class III price formulas. Also, all butterfat received from producers would be priced at the same level regardless of use.

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 33 subject orders was promulgated, the classification plan adopted reflected the marketing conditions and practices prevailing at the time in the local area concerned. Because local conditions and practices 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, emergence of regional cooperatives, new processing and packaging techniques, and concentration of processing and packaging operations in large, specialized facilities.

Numerous cases were cited by handlers of products being distributed throughout multi-state regions from centralized processing facilities. Products frequently mentioned include frozen desserts, yogurt, various cream products and cottage cheese. Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these specialty 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.

Although the 33 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 33 orders under consideration.

In conjunction with the development of uniform provisions pertaining to the classification and pricing of milk, it is desirable to also develop a single format of order provisions for use in each of these orders. All orders contain essentially the same categories of provisions, such as those relating to the definition of a pool plant or other source milk, those setting forth the class price formulas, or those describing how the uniform price shall be computed. At present, however, many of the orders are structured in such a way that provisions serving essentially the same purpose under all orders do not appear in each order in the same place or under the same section title.

Coordination of the orders in this respect will be helpful to those in the industry who must work with several orders, a situation that is becoming increasingly common as individual cooperatives and handlers continue to expand their marketing activities into more and more regulated markets. Moreover, the opportunity to effect changes in a relatively large number of orders at the same time makes the adoption of a uniform order format a particularly desirable step at this juncture of the order program.

Each of the 11 orders included in this document is set forth in its entirety at the end of the document. Each order reflects the revised order format as well as the classification and pricing amendments adopted herein. In adapting each order to the new format, no substantive changes have been made in those provisions not under consideration at the hearing. Since the classification and pricing amendments may be less discernable to the reader with the reprinting of the complete order, the sections in each order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the 33 subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in

the 33 orders as a "fluid milk product." [1]

Class I milk should include also any skim milk and butterfat not specifically accounted for in Class II or Class III, other than shrinkage permitted as Class III classification.

Except for sterilized products, most of the products listed above for inclusion in Class I are now included in the Class I classification under each of the 33 orders. Only in the case of milk shake mixes might there be a higher classification under the adopted amendments than at present. Under some orders, such mixes are now included in the lowest class. This higher classification would be limited, however, to only those milk shake mixes containing less than 20 percent total solids.

The adopted Class I classification would not include eggnog, yogurt, cream or mixtures of cream and milk or skim milk containing 9 percent or more butterfat (such as half and half). A Class I classification now applies to eggnog in 10 of the 33 markets, and to yogurt in 19 of the markets. In all markets, sweet cream (except that in frozen, concentrated, aerated or sterilized form) and half and half are now Class I products. The classification of sour cream and sour cream mixtures, on the other hand, varies considerably among the orders.

Seven of the 33 orders now include ending inventories of packaged fluid milk products in Class I. As discussed later, such inventories would not be classified as Class I milk under the revised orders.

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 milkshake and ice milk mixes, sterilized fluid milk products, cream, eggnog, yogurt, fluid milk products to which nonfat milk solids have been added and ending inventory. The clasification of cream, eggnog, 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.

Milkshake 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.

Cooperatives proposed that milkshake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milkshake mixes be in Class II. The national organizations of fluid milk and ice cream processors, on the other hand, asked that all milkshake mixes be included in the lowest classification.

Milkshake 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 milkshake 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.

Milkshake 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 milkshake 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 classification plan adopted herein includes frozen deserts 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 milkshake 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 milkshake 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 milkshake 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.

As proposed by cooperatives and the national organizations of fluid milk and ice cream processors, no exception to the Class I classification of milk should be made for fluid milk products in sterilized form. 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 customers.

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 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, 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 butterfat, and more than 20 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 33 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

[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.

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 exclusion, to assure that the fluid milk product definition would include those products, and only those products, warranting a Class I classification.

Handlers 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 believe that this procedure would result in less confusion within the industry concerning the application of this definition. Also, handlers were concerned that defining a fluid milk product on the basis of product composition would deter the development and marketing of new products. They contended that the proposed composition standards could embrace a new product that was intended by the processor to be marketed in direct competition with products that would be included in Class II or Class III rather than in competition with Class I products.

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 33 orders will provide a uniform basis for identifying those products that are to be defined as "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 fluid or frozen milk 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. 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.

These composition 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, i.e., the traditional milk beverages. It is intended that these standards apply only to milk products, and only to such products that are being marketed for consumption in fluid form. Such standards would not be applied to products such as soups, which are not customarily thought of as milk products, or to products that would be a type of frozen dessert marketed for consumption in frozen form.

In determining whether or not a milk product is embraced by the composition standards of the fluid milk product definition, such standards should be applied to the composition of the product in its finished form. A product may be modified by the addition of nonfat milk solids or concentrated through the removal of water. In these cases, the composition standards should be applied to the composition of the product as it is marketed, not to the composition of the product on a skim equivalent basis. Application of the composition standards on the latter basis could result in defining as a fluid milk product a product clearly not intended as a milk beverage. For all other purposes under the order, however, the product should be accounted for on a skim equivalent basis.

In applying the 6.5 percent nonfat milk solids standard, it is intended that this standard apply to such solids in any form except sodium caseinate. As set forth in the "filled milk" decision applicable to most of the 33 orders, sodium caseinate in any product is treated under the orders as a nonmilk ingredient.[3] There is no basis for changing this procedure.

The use of composition standards as a means of defining fluid milk products should not deter the development of new milk products, as handlers contended. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered. The use of composition standards should result, however, in a more uniform classification among orders of new products developed for fluid consumption.

3. *Classification and pricing of milk not needed for Class I use.* Two use classes, Class II and Class III, should be provided in each of the 33 orders for skim milk and butterfat utilized for other than Class I purposes. The 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 Class III milk should be the basic formula price for the month.

Class II milk should include skim milk and butterfat disposed of in the form of eggnog, yogurt or a "fluid cream product", i.e., cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat. Any product containing 6 percent or more nonmilk fat (or oil) that resembles any of these products likewise should be in this class. Also, eggnog, yogurt and fluid cream products that are in inventory at the end of the month in packaged form should be in Class II.

Included also in this classification should be skim milk and butterfat used to produce cottage cheese, lowfat cottage cheese and dry curd cottage cheese. Skim milk disposed of in any Class II product that is modified by the addition of nonfat milk solids should be Class II 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 III milk should include skim milk and butterfat used to produce cheese (other than cottage cheese, lowfat cottage cheese and dry curd cottage cheese), butter, plastic cream, frozen cream anhydrous milkfat, any milk product in powdered form, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, 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.

[3] Official notice is taken of the Assistant Secretary's decision issued on Oct. 13, 1969 (34 F.R. 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

Other Class III uses should include 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 and Class II products not included in Class I or Class II. 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 from which there is no disposition of fluid milk products or fluid cream 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 disposed of for animal feed, or is dumped if the market administrator is notified of such dumping in advance and is given the opportunity to verify such disposition. Also, shrinkage within certain limits should be classified as Class III milk.

The present classification of milk used in the adopted Class II and Class III classifications is quite varied among the 33 orders. Seven of the orders provide for three use classes while 26 have two classes of utilization. Under four of the three-class orders cottage cheese is classified separately from all other uses. One order classifies cottage cheese and sales of milk to commercial food establishments in an intermediate class. Two orders have a separate use class for milk used in cheddar cheese. Substantial variation exists among the 33 orders in the classification of skim milk and butterfat in eggnog, yogurt, sour cream, milkshake mixes, and milk disposed of to commercial food establishments. The treatment of milk dumped, and milk in inventory at the end of the month, also differs under the several orders.

There is now a variety of price formulas under the 33 orders for milk in other than Class I uses. Seventeen orders use the Minnesota-Wisconsin manufacturing milk price. Four orders use a combination of the Minnesota-Wisconsin price and a butter-nonfat dry milk formula price. Four orders use a combination of a butter-nonfat dry milk formula price and a cheddar cheese formula price. Six orders use a butter-nonfat dry milk formula price, with four of these employing a seasonal adjustment. Two orders use the U.S. manufacturing milk price with a seasonal adjustment for milk used to produce butter, nonfat dry milk and cheddar cheese. This variety of price formulas can result in as many as eleven different prices for milk put to similar uses. Also, four additional prices can result under the five orders that have an intermediate classification and price for milk used to produce cottage cheese.

Cooperatives proposed that each of the 33 orders provide for an intermediate classification (Class II) for skim milk and butterfat disposed of as cream, now a Class I use, and that used to produce several other products now in the lowest-priced class under most of the orders. The proposed Class II uses would include cottage cheese, frozen desserts, milkshake mixes for further processing in commercial establishments, egg nog, yogurt, 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, their new Class II also would include cream, mixtures of cream and milk or skim milk containing 9 percent or more butterfat, cream in plastic, frozen, aerated or sterilized form, sour cream, sour mixtures, and anhydrous milkfat.

Under the cooperatives' proposal, the Class II price in 32 markets would be the Minnesota-Wisconsin price plus 10 to 20 cents (increasing generally from north to south). Eleven markets in the States of Minnesota, Iowa, North Dakota, South Dakota, and Tennessee would have a price differential of plus 10 cents. The remainder of the 32 markets would have plus 15 cents, except for a plus 20 cents in the Corpus Christi and Rio Grande Valley markets. A cooperative in the Central Arizona market proposed that the present Class II price, which is 25 cents over the Class III price, be retained in that market.

The Class III uses proposed by the cooperatives would include dried products, cheese (except cottage cheese), butter, condensed whey and buttermilk for animal feed, dumpage, ending inventory, shrinkage, and the non-Class I portion of modified fluid milk products.

The cooperatives' Class III pricing proposals varied by regions. Two cooperatives operating primarily in the Upper Midwest proposed the adoption of a weighted butter-nonfat dry milk (55 percent) and cheese (45 percent) formula using "the product yield factors and make allowances used by the Department in its CCC Price Support Program." While suggesting that such a pricing formula would be appropriate for all 33 markets, they particularly urged its adoption for 11 upper midwestern markets. For five southern markets, the principal cooperative in such markets proposed the use of the Minnesota-Wisconsin price with minus adjustments for certain markets, as follows: Chattanooga, 5 cents; Mississippi and New Orleans, 10 cents; and Georgia, 15 cents. For 15 markets in the Southwest, the principal cooperative there proposed that the Class III price be the higher of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. Under its proposal, milk used in butter, notfat dry milk and cheddar cheese would be priced, however, at the lower of the Minnesota-Wisconsin price or the current price for the lowest utilization in the respective order. The principal cooperative in the Central Arizona market proposed retention of the Class III price now applicable in that market, which is based on a butter-nonfat dry milk formula.

In support of their proposed Class II and Class III use categories, the several cooperatives contended that there are significant differences in the competitive position of, and demand for, milk so used. They stated that handlers demand quality milk on a regular basis for the proposed Class II products, and that in the various markets alternative supplies of milk for such uses generally cannot be obtained for less than the Class II prices they propose for producer milk. Moreover, they claimed that products in such Class II uses should bear, along with fluid milk products, part of the cost necessary to attract an adequate market supply. With respect to the Class III classification, proponents stated that their proposed Class III products are the residual uses of milk associated with fluid markets. Consequently, the local production of such products is related to the amount of reserve or excess milk in the market. Such products, they claimed, can be stored for long periods and do not need to be made on a regular basis.

Proponent cooperatives pointed out that the present Class I classification of cream and cream mixtures has placed these products in a poor competitive position in the marketplace relative to nondairy substitutes. By shifting these products to a lower-priced class, proponents hope it will allow the industry to maintain its present small share of the cream and dessert topping market and provide it a chance to perhaps recapture some of the market that it has lost.

In support of their various Class III pricing proposals, the cooperatives urged basically that such prices reflect the net value that can be obtained by cooperatives handling reserve supplies. They claimed that such value should take into consideration (1) product values of butter, nonfat dry milk, and cheese; (2) the cost of moving milk to available outlets; and (3) the burden of "balancing" the fluid milk supply in each market.

With respect to certain southern markets, it was contended that the net value that can be obtained for reserve milk supplies tends to differ from market to market depending upon surplus disposal conditions that prevail in each market. The principal variable factor mentioned was the cost incurred in transporting reserve supplies to available processing plants. For example, there are no plants processing hard cheese, butter, or nonfat dry milk in Georgia. Consequently, the principal cooperative in the area transports much of the reserve milk supply associated with the Georgia market to manufacturing plants located in Tennessee. The amounts so transported have ranged from one to 11 million pounds per month. The cooperative stated that for the 12 months ending with August 1971 it netted an average of 37.6 cents per hundredweight less than the Georgia order Class II price on such shipments because of the cost of hauling the milk.

Extra transportation costs are incurred also by the cooperative with respect to its disposition of reserve milk supplies in the Mississippi and New Orleans markets. In the Nashville market, on the other

hand, the same cooperative realized an average of 9.7 cents over the Nashville Class II price for the milk it moved to nonpool plants for manufacturing use during the 12 months ending with August 1971. For the Chattanooga market, the cooperative realized slightly less than the Class II price for milk moved to nonpool plants.

Another condition which the cooperative contended has influenced the returns it is able to realize on reserve milk supplies is that the quantity of such milk to be processed varies both seasonally and on certain days of the week. During the month of September, the reserve milk supply handled by the cooperative is at its lowest level. In September 1970, for example, the cooperative processed less than 500,000 pounds of milk at each of its major butter-nonfat dry milk processing plants (Lewisburg, Tenn., and Franklinton, La.). The following April, it processed 23.9 and 5.8 million pounds of milk, respectively, at such plants.

Reserve milk supplies increase on Sundays compared to other days because bottling plants in the markets served by the cooperative usually process milk only 5 or, at the most, 6 days a week. The needs of bottling plants are highest on Thursdays since sales of packaged milk tend to be higher on Thursday and Friday than on other days of the week.

Because of these circumstances, this cooperative proposed that the Class III prices adopted for the four southeastern markets of Georgia, Mississippi, New Orleans, and Chattanooga be fixed from 5 to 15 cents under the Minnesota-Wisconsin price. This was proposed to enable the cooperative to absorb the costs of transporting reserve milk supplies to manufacturing plants and of maintaining unused capacity in its manufacturing plants during the seasonally short production months and on peak bottling days.

The principal cooperative in the southwestern markets proposed that the current provisions for pricing market surplus be maintained in the several orders throughout that region since such provisions tend to recognize individual market problems of surplus disposal. The problems mentioned by the witnesses for the cooperative are (1) uneven surplus milk volumes to be disposed of, and (2) costs of transporting milk to plants for manufacturing use. They stated that each market differs as to the volume of day-to-day, weekend, holiday, and seasonal surplus to be processed, which tends to result in variations in supply balancing costs among markets. Also, the surplus in each market is situated at varying distances from available processing plants. In Texas, for example, most of the manufacturing use outlets are situated in the northern part of the State at Muenster, Sulphur Springs, and Rusk. While the cooperative operates a small cheddar cheese plant at San Antonio, Tex., at times the San Antonio surplus cannot be processed there and is transported over 300 miles to Muenster or Sulphur Springs. During the Christmas holiday weekend in 1970, the cooperative moved 75 tank truck loads of surplus milk out of Texas to plants as far north as Iowa for manufacturing.

Two regional cooperatives operating primarily in the Upper Midwest urged that a uniform Class III price formula be used for all 33 markets. They contended that Class III products, such as hard cheese, butter, and nonfat dry milk, compete in a nationwide market and therefore the price of producer milk used to produce such products should be the same under each of the orders.

In support of their proposed butter-nonfat dry milk-cheese product price formula, these cooperatives pointed out that about half of the manufacturing grade milk in Minnesota and Wisconsin is now handled by as few as three cooperative associations. They contended that, because of this, cooperatives are in a position to influence the level of prices paid for such milk and, in turn, influence the level of the order prices based on the Minnesota-Wisconsin price. Any upward swing in prices, they indicated, could be detrimental to the processors of butter and nonfat dry milk.

Proponents also stated that there have been periods of time when the open market cheese prices have increased relative to prices of butter and nonfat dry milk. When this has resulted in higher pay prices at cheese plants, butter-powder plants also have tended to pay higher prices to hold their milk supplies in competition with cheese plants. Proponents argued that such higher pay prices at butter-powder plants should not be reflected in Federal order surplus prices when the market values of butter and powder are not increased also. They contended that the order price should reflect changes in the market value of manufactured products to provide handlers a fixed processing margin on the butter and nonfat dry milk they process.

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. It is their position that under a three-class system the only products that should be included in Class II are yogurt, eggnog, cottage cheese, cream, and any mixtures of cream and milk or skim milk containing 9 percent or more butterfat. While the associations did not endorse a three-class system, they proposed that under such a plan the difference between the Class II and Class III prices be not more than 10 cents.

Certain individual handlers, particularly those operating plants in more than one market, testified that because of intermarket competition each order should provide for the same classification and pricing scheme. One such handler testified further that the Class III price should be the lower of the Minnesota-Wisconsin price or a butter-powder formula price (Chicago butter price times 4.2, plus nonfat dry milk price times 8.2, less 48 cents). Another urged adoption of the dairy price support level as the Class III price. A third handler proposed the use of the announced price support, adjusted to a 3.5 percent butterfat basis by a differential factor of the Chicago butter price multiplied by 0.12, and further adjusted by plus 15 cents during the period September through March.

Proponents of using the dairy price support level as the Class III price urged that such price be adopted to provide a more stable price by avoiding the month-to-month changes that tend to occur in the Minnesota-Wisconsin price. Proponents pointed out that basing the Class III price on the price support level, which is announced for each marketing year (April–March), would result in handlers knowing the minimum price before the milk is received. The Minnesota-Wisconsin price is announced about 5 days after the end of each month.

Class III. As stated at the outset, two classes of utilization should be provided under each order for milk not needed for Class I use. Before discussing the basis for establishing an intermediate price class, consideration should be given to the Class III price issue since the level of such price bears on what the Class II price should be.

Basically, there are two questions to be resolved concerning the Class III price issue: (1) Should the Class III price be uniform among the 33 markets, and (2) what is the appropriate pricing mechanism for determining the Class III price in each market?

The very purpose of the classification proposals considered at this hearing strongly supports the same Class III price under each order. The essence of the proposals by producers and handlers alike was that a particular product should be classified in each market in the same class. Although the various witnesses were not in agreement on the classification scheme that should be adopted, the common purpose of their proposals was the resolution of the many differences among the 33 orders in the classification of milk. It was the general consensus that with the burgeoning intermarket sales of various milk products over increasingly wider areas, these differences in classification are causing undue competitive inequities among handlers in various markets seeking the same outlets for milk.

Any attempt to resolve these competitive inequities through the adoption of a uniform classification plan cannot be divorced from consideration of the prices that would be applicable to each class. The classification of milk does nothing more than determine what uses of milk will be subject to different levels of price. The equity benefits to handlers of using the same classification plan in all markets can be fully realized only if the price for each class is uniform (except for appropriate location adjustments) in all markets. The use of several different Class III price formulas in these markets would nullify much of the intended effectiveness of classifying a particular product in the same class in each market.

Certain cooperatives urged that the Class III price of a market reflect the supply "balancing" costs of individual

cooperatives. This could lead only to a proliferation of different Class III prices rather than a reduction or elimination of price differences in these markets. In balancing milk supplies for the fluid market, a cooperative incurs various costs. The extent of these costs is dependent on many factors, including the cooperative's share of the market, the location and availability of surplus disposal outlets, whether it operates a manufacturing plant, and policies and practices of the organization and its management. If such costs were to be a main consideration in establishing the Class III price for an individual market, such price would need to vary greatly among markets since the supply balancing situation differs from market to market.

The costs of supply balancing services performed by a cooperative should be reflected as a service charge to the handlers who receive the benefit of the service. A cooperative's cost of supply balancing service varies among handlers according to each handler's procurement practices. A handler that regularly accepts the full production of a given number of producer-members of the cooperative incurs the costs of balancing his own supply. On the other hand, a handler that limits his purchases of milk from a cooperative to 5 days a week, for example, to match his daily bottling schedule shifts the burden of balancing his milk supply to the cooperative. Most supply balancing costs are attributable to the variation between the quantity of milk produced and the demand for milk for Class I use. Since the balancing costs are incurred in serving the Class I market, the incidence of the costs should fall on such use of milk. This connection between these services and the Class I demand is recognized in many of these markets through the assessment by cooperatives of a service charge on their milk delivered to handlers for Class I use.

For these reasons, a uniform Class III price should prevail under each of the 33 orders.

What is the appropriate pricing mechanism for determining the Class III price in each market?

It is the returns from all classes of milk, of course, that provide farmers the incentive to produce the needed milk supplies. Consequently, to the extent that the price for reserve milk in a market contributes less than its full market value to producers' returns, the Class I price must be higher than otherwise necessary to make up the difference. It is therefore in the public interest that the reserve milk supplies be priced at the highest practicable level consistent with orderly disposal of the milk.

In the highly competitive dairy industry, processors of ungraded milk buying in competition purchase milk from farmers at prices commensurate with the ability of the more efficient processors to pay for a supply. As shifts in the relationship between finished product prices take place, one group of processors may be able to pay higher prices than another for raw milk. Other processors must meet, or nearly so, these prices or risk the loss of their milk supplies. If a dairy concern in the unregulated manufactured products market fails to make the necessary adjustments to meet procurement competition, it will, in time, be forced out of business. This is a normal business risk in the unregulated competitive market.

Since excess market supplies normally must be channeled into manufacturing uses, such milk should be priced competitively with manufacturing grade milk. Plants regulated under an order compete not only with other regulated plants but also with unregulated plants for the sale of cheese, butter, and nonfat dry milk. If the Class III price were based primarily upon the market price of certain manufactured products (e.g., butter and nonfat dry milk) minus a specified processing allowance, handlers under the order would be assured, regardless of current values of producer milk competitively procured for the several manufactured product uses in Class III, of a predetermined operating margin. The unregulated processors of manufacturing grade milk, on the other hand, must pay whatever price to dairy farmers is required to maintain milk supplies, which is determined from competition with other processors.

If there is a significant decrease in the price of a particular product, and of that product only, manufacturers of that product, buying in competition with manufacturers of other products, are not necessarily able to effectuate an immediate offsetting adjustment in their pay prices to farmers. When surplus prices under the order are based on product prices, however, handlers have the benefit of an offsetting adjustment automatically reflected in the price they pay for the milk used in these products. They are protected in procurement competition by being able to pay the blended price to producers. This is an advantage not available to manufacturers purchasing unregulated milk. Unless regulated handlers are to have a competitive advantage, or disadvantage, in the manufactured milk product market relative to unregulated plant operators, it is desirable to maintain under the milk orders a close alignment of the Class III prices with the farm prices paid by unregulated plants in the manufacturing milk industry.

The Minnesota-Wisconsin price, as a competitive pay price for about half of the manufacturing grade milk in the United States, reflects the value of milk for those products being disposed of in a national market. It is an average of prices being paid by processors who are meeting the competitive test of the unregulated marketplace. Use of the Minnesota-Wisconsin pay price series not only maintains a reasonably consistent basis of pricing surplus milk among the regulated markets but also achieves price parity between regulated and unregulated plants engaged in a similar enterprise since it provides the regulated manufacturer essentially the same margin for processing as is experienced in the unregulated market. As noted, such price is now the surplus price determinant under 17 of the 33 orders and is the principal basis for determining surplus prices under 4 additional orders. It is therefore concluded that the Minnesota-Wisconsin price should be the minimum price under each order for reserve supplies of producer milk.

Class II. Certain uses of producer milk not needed for Class I purposes should be priced higher than the Minnesota-Wisconsin price. These uses, to be included in the Class II classification, were set forth at the beginning of this discussion on pricing surplus milk. The Class II price differential under the orders should be 20 cents over the Minnesota-Wisconsin price.

Of the products adopted herein for inclusion in Class II, the one of principal importance is cottage cheese. In 1970, about 850 million pounds of the skim milk and butterfat utilized by pool handlers under the 33 orders was used to produce cottage cheese. Cottage cheese production accounted for 83 percent of the milk used that year in the proposed Class II products. About 15 percent of the milk not needed for Class I use under the 33 orders in 1970 was utilized in cottage cheese production. For this discussion the term "cottage cheese" encompasses cottage cheese (i.e., creamed cottage cheese), lowfat cottage cheese, and dry curd cottage cheese.

Five of the 33 orders under consideration now provide a higher price for milk used in cottage cheese than the price provided for milk used in butter, nonfat dry milk or cheddar cheese. There are 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 a market, as is the case with respect to butter and nonfat dry milk, for instance. Unlike such other manufactured products, cottage cheese has a more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers normally want adequate supplies of fresh, high-quality producer milk to be made available at their plants at all times for cottage cheese use.

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 of 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.

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. Although local producers

represent the regular source of milk for cottage cheese production, a handler may choose to use milk from some other source for this purpose. Such milk could not be obtained on a regular basis, however, at less than the cost of producer milk under the adopted pricing scheme.

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 milk for cottage cheese. 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 somewhat bulky and perishable item, from distant areas to outlets in the 33 markets would generally negate any seeming price advantage attributable to differences in applicable order prices.

Milk used in yogurt should be priced at the Class II price level. 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 from milk priced under the 33 orders. In 1970, 14 million pounds, or 1.4 percent of the skim milk and butterfat in the adopted Class II uses, were utilized in yogurt production in the 33 markets. 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 prefer milk. 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, these conditions warrant that producer milk in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

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, yogurt cones, 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 or Class III, in 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 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 similar purposes. Like classification for these cream products will result in uniform pricing to handlers for milk used in products competing in the same trade channels for essentially similar uses.

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 and handlers 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 only 1.5 percent of the present Class I market. Thus, this classification change will have relatively little effect in total on the 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 (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

With the reclassification of cream, movements of cream to or from a plant no longer should be considered in determining whether a plant meets the pooling requirements of the order.

Class II milk should include eggnog. Although eggnog is prepared for use as a beverage and is now a Class I use in 10 of the 33 markets, proponent cooperatives contended it should not be a Class I product because of competition from imitation products. Eggnog has a relatively high butterfat content and the limited sales of the product are highly seasonal. In 1970, only 12.6 million pounds of eggnog, with an average butterfat content of 7 percent, were disposed of by pool handlers under the 33 orders. An estimated 40 percent of the marketings of this type of product is in the form of imitation eggnog. Classification of eggnog in Class II rather than Class I will materially enhance the competitive position of the product in the marketplace.

Most of the orders now provide that any "filled" product containing 6 percent or more nonmilk fat (or oil) shall be in the surplus price class. With the establishment of an intermediate price class under each of the 33 orders, it is appropriate that any such filled products that resemble the proposed Class II products made with milk fat likewise be included in this 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 Class II as cooperatives proposed. 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, 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. Moreover, such products are relatively storable and can be made in the flush milk production months for sale during the low production months.

When the cost of converting producer milk into a concentrated "intermediate" product is considered, such milk priced 20 cents 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 subject orders. As adopted herein, 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 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 33 orders.

Although cooperatives proposed Class II price differentials of 10, 15, 20, and 25 cents, the Class II differential for each market should be 20 cents. The distribution of the adopted Class II products from a single plant often extends over a broad region encompassing several Federal order marketing areas. For example, yogurt produced at a plant in Kansas is distributed in Kansas, Missouri, Texas, Oklahoma, Colorado, Arkansas, Nebraska, Iowa, North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Michigan, Wyoming, and Indiana. There also are extensive intermarket sales of cottage cheese and cream products. Because of this intermarket competition, a uniform

Class II price differential should be provided in these orders to complement the uniform classification provisions. A price differential of 20 cents is a reflection of at least the minimum additional value that producer milk used in the adopted Class II products has to regulated handlers.

In proposing a generally uniform classification plan for the 33 markets, cooperatives emphasized that any new plan adopted should not result in lower total returns to producers. Handlers, on the other hand, stressed that their total cost of milk should not be increased.

Providing for classification and pricing provisions that are generally uniform among the various markets cannot necessarily encompass at the same time the maintenance of precisely the same value of producer milk in each market. With the many classification and pricing differences that now exist among the 33 orders, resolution of these differences through a uniform classification and pricing plan would be expected to have some effect on the value of producer milk in individual markets. While the provisions adopted in this decision are not designed to change the value of producer milk in the aggregate, their effect on producer returns or handlers' costs in an individual market cannot be controlling in deciding on the matter of classification and pricing here under consideration.

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 33 subject orders.

(a) *Other source milk 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.

At present, fluid milk products 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.[3] Under the revised classification plan, however, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, it is desirable, nevertheless, 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.

Other source milk should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the revised classification plan.

Producers and handlers proposed that Class II products received at a pool plant in packaged form and then disposed of from the plant without further processing be treated as "pass-through" products. Under this treatment such "pass-through" products would not be considered as other source milk and would not be subject to the allocation and pricing provisions of the order.

Although no handler obligation would apply under the provisions adopted herein to these receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

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. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the adopted provisions directly to the handler's Class I utilization. No handler obligation would apply under the order to such receipts.

Other source milk should include any disappearance of manufactured milk products for which the handler fails to establish a disposition. Fifteen of the 33 orders now have a provision concerning the unaccounted for disappearance of such products. The other 18 orders do not specify such disappearance as other source milk.

It is reasonable that each handler be required to account fully for all milk and milk products received or processed at his plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over his competitors who properly account for all milk. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

(b) *Accounting for nonfat milk solids added to milk and milk products.* Except for two orders, 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, all but two of the orders under consideration provide 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 the lowest class.

The Neosho Valley and Fort Smith orders presently do not set forth a specific procedure for accounting for nonfat milk solids added to milk and milk products. As proposed by producers, such orders should be made uniform in this respect with the other orders under consideration.

Cooperatives proposed that the amount of a modified fluid milk product that is classified as Class I milk be the actual weight of the modified product rather than the weight of a like unmodified product. Proponents stated that the use of the weight of the modified product would accommodate some of the technical problems of laboratory analysis when this procedure is used in verifying the amount of nonfat milk solids added to natural milk or skim milk. They indicated that since the results of laboratory tests are expressed as a percentage of the weight of the product being tested, using the actual product weight factor would simplify the accurate accountability of modified products.

There was no showing of the extent to which laboratory analysis of modified products is used in verification by market administrators in these markets. Also, there is no indication that modified products are not being accounted for in an accurate manner. Thus, it is not clear from this record that the proposed procedure is necessary for more accurate product accounting or that it 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 that 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, for example, 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 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,

[3] The terms "pool plant" and "nonpool plant" will be used occasionally throughout this decision. Most of the 33 orders define such terms for the purpose of distinguishing between those plants that are fully regulated under the order and those plants that are not so regulated. In some orders, the terms "fluid milk plant" and "nonfluid milk plant", or "approved plant" and "unapproved plant", are used for the same purpose. When reference is made in this decision to a "pool plant" or a "nonpool plant," it is intended (unless noted otherwise) that the reference apply correspondingly to the other types of plants.

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. The method of accounting for modified fluid milk products should apply in like manner to these modified Class II products. Since these cream products are now defined as fluid milk products, this accounting procedure already applies under all but two of the orders. Accordingly, if eggnog, yogurt, or any fluid cream product is modified by the addition of nonfat milk solids, such product would be classified as Class II 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 would be classified in Class III.

(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 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 subsequent 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 another order plant or a producer-handler plant. To determine such classification, the nonpool plant's utilization must be assigned to it 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 adopted 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.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, 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 in bulk 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 Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions 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.

Certain changes should be made in each order concerning the classification of products transferred from a pool plant to a producer-handler. Under the revised classification plan, 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 maintaining reserve supplies for the Class I sales of producer-handlers. 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.

Each order should provide that fluid milk products transferred from a pool plant to a producer-handler under another order be classified as Class I milk. With two exceptions, this classification now applies under these orders with respect to such transfers made on an intramarket basis. The San Antonio and Mississippi orders have no provisions for classifying such transfers since there is no producer-handler definition under the San Antonio order and since producer-handlers under the Mississippi order are not permitted to receive milk from other plants without loss of their producer-handler status.

The producer-handlers, in their capacity as handlers, have been exempt from the pricing and pooling provisions of the various orders. In consideration of this exemption, each order, except as noted, 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.

In addition to the Class I classification of all fluid milk products transferred from a pool plant to a producer-handler, several orders provide for a similar classification of all fluid milk products transferred to a government-operated plant. Such plants are exempt from the pooling and pricing provisions of the order in much the same manner as producer-handlers. It is appropriate, therefore, that the adopted method for classifying bulk fluid cream products transferred to a producer-handler likewise apply to transfers of bulk fluid cream products to government-operated plants.

The orders should be uniform with respect to the conditions under which the classification provisions apply to bulk milk movements from one regulated market to another. Although each order now has the same rules for classifying such movements of milk, their application is limited under some orders to only those movements in the form of interplant transfers. This is because such

orders do not permit milk to be moved between markets by diversion.

Since the advent of farm bulk tanks, the diversion of producer milk from pool plants to manufacturing plants has been a common method of handling milk not needed for the fluid market. Under some orders, such diversions are permitted to be made only to unregulated nonpool plants. For a number of markets where available manufacturing facilities are associated with another regulated market, the orders permit producer milk to be diverted to other order plants. Corollary provisions in the order regulating the manufacturing plant specify that such milk, although having been delivered directly from the farm, shall not be considered as producer milk in the market to which diverted if the milk comes into the market for manufacturing use.

In connection with developing uniform classification provisions for the 33 orders, provisions should be made under each order for the diversion of milk to other order plants for Class II or Class III use. This will contribute to a more uniform application of the classification provisions to all regulated handlers. At the same time, such provisions will foster the efficient handling of surplus milk in these markets by permitting the disposal of such milk directly from farms to manufacturing plants in other markets, rather than having such intermarket movements limited to the more expensive method of transferring milk from one plant to another. With the safeguards adopted herein, returns to producers in the market to which the milk is diverted will not be affected by the processing of this surplus milk in their market since the diverted milk will continue to be pooled in the market from which diverted.

The classification of fluid milk products 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, 20 of the 33 orders under consideration provide for the Class I classification of milk moved beyond a specified distance, regardless of its ultimate use at the nonpool plant. In the case of milk transferred to less distant plants, recognition is given under the classification provisions of the 20 orders to the nonpool plant's actual utilization.

Cooperatives proposed the removal of all mileage limitations affecting the classification of transfers and diversions. They claimed that these provisions are not appropriate under today's marketing conditions and that their removal would facilitate the orderly disposition of reserve milk supplies.

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 33 markets.

(d) *Classification of end-of-month inventory.* Each of the orders should be made uniform with respect to the classification of inventory on hand at the end of the month. Fluid milk products in either packaged or bulk form that are in a handler's end-of-month inventory should be classified as Class III milk. Such inventory should be subject in the following month to reclassification in a higher class. Ending inventory of fluid cream products, eggnog and yogurt, when held in bulk form, likewise should be classified in Class III and subject to reclassification. Such products held in packaged form at the end of the month should be classified as Class II milk.

Presently, 22 of the 33 orders classify all ending inventories of fluid milk products (which now include most cream products) in the lowest class. Under the remaining orders, such inventories in bulk form are classified in the lowest class, while a Class I classification applies to such inventories in packaged form. In the latter case, a handler's obligation for the Class I inventory is adjusted in the following month by whatever amount the Class I price in such month changes from the Class I price level initially applicable to the inventory. This assures that such inventory is priced on a current basis when disposed of on routes.

Cooperatives proposed that each order classify all ending inventories of fluid milk products in Class III. They claimed that this procedure would be less complicated for handlers and would facilitate the administration of the order since handlers only occasionally would have any adjustment in their pool obligation as a result of having Class III inventory reclassified in a higher class. Proponents stated that with packaged inventory in Class I, as under 11 of these orders now, each handler usually has some adjustment each month in his obligation for Class I inventory. The cooperatives' proposed classification of ending inventory 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 orders. Either type of inventory classification procedure now being used in these markets results over the long run in essentially the same pool obligation for handlers and the same returns to producers. In this circumstance, the substantial support among the industry for classifying all ending inventories of fluid milk products in the lowest class suggests that this procedure be used under all orders. Under this procedure, such inventories would be subject in the following month to reclassification in a higher class, as determined through the allocation of a handler's receipts to his utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory. This is the same reclassification procedure that now applies under the orders to inventories of fluid milk products in bulk form.

Fluid cream products in bulk form that are on hand at the end of the month likewise 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 closing inventory of bulk cream in Class III and then apply a reclassification charge should the cream, as beginning inventory the following month, be allocated to a higher class.

Fluid cream products, yogurt, and eggnog that are on hand in packaged form at the end of the month should be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the following month, would be allocated in the following month directly to the handler's Class II utilization.

Cooperatives proposed that for classification purposes ending inventory include only those products that are actually on the premises of a pool plant. Under their proposal, the premises of a plant would be limited to a location having equipment for receiving, cooling, processing, and storing milk. However, products being held in trucks parked at that location would not be a part of the handler's closing inventory. Also, a storage facility at a distributing point for packaged products in transit to wholesale and retail outlets would not be considered under their proposal as an extension of the premises of a plant. Cooperatives proposed also that ending inventory include any bulk milk that is in transit from a pool plant to another plant at the end of the month. Proponents claimed that defining ending inventory

in this manner would facilitate the administration of the order.

The present orders do not specify at what point in a handler's distribution system fluid milk products shall be or shall not be considered for classification purposes as being in a handler's closing inventory. This is a matter that has been left to the accounting guidelines established by market administrators in their administration of the orders. It is recognized that 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, distributing points, or trucks in transit to distributing points or places of sale. No significant problems concerning the determination of what constitutes closing inventory were brought to light at the hearing. Therefore, the cooperatives' proposal in this regard need not be adopted at this time.

For the first month that the revised classification plan is effective, certain transitional provisions relating to inventory should apply. Such provisions are necessary to assure that all handlers under an order will be subject to the same pricing for milk used in packaged fluid milk products and fluid cream products whether such products enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

As indicated, 22 of the orders under consideration presently classify ending inventories of fluid milk products, including cream items, in the lowest class. Thus, in the last month that the present classification plan is effective, handlers under these orders will have paid the corresponding class price for these products. In the first month under the new plan, such inventories that had been held over in the form of a fluid milk product or a bulk fluid cream product would be allocated to the extent possible to the handler's Class III utilization. Should such inventories be allocated to a higher class, the appropriate reclassification charge would apply.

Under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new amendments, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

Under the remaining 11 orders, which now classify ending inventories of packaged fluid milk products in Class I, a pool credit should apply to such inventories in the first month that the revised classification plan is effective. Under the new plan, beginning inventories of fluid milk products and, for the first month, all fluid cream products would be allocated to the extent possible to Class III. Again, this allocation assumes that such inventories were priced at the lowest class price in the preceding month. Since such inventories in packaged form will have been priced at the preceding month's Class I price, handlers under these 11 orders should receive a credit on such packaged inventories equal to the difference between the preceding month's Class I price and lowest class price. If a higher classification results through the allocation procedure, the appropriate reclassification charge would apply.

(e) *Classification of shrinkage, milk dumped and milk disposed of for animal feed.* Each of the orders should provide for generally uniform provisions for classifying skim milk and butterfat dumped, disposed of for animal feed, or in shrinkage.

In the case of shrinkage, the cooperative associations requested that no change be made in the present order provisions, except to classify shrinkage in Class III insofar as it is now classified in the lowest class of each order.

The shrinkage provisions adopted herein are basically similar to the shrinkage provisions now effective under 28 of the 33 orders. The classification of shrinkage in the lowest use class (subject to certain limitations), as now provided in all the orders, would be continued under the adopted three-class system. Modifications of shrinkage provisions in the individual orders are in the nature of certain refinements now applicable under several of the orders.

The amount of shrinkage that may be classified in the lowest class under the 33 orders is presently limited with respect to receipts of producer milk and certain interplant transfers. In 32 of the orders, 2 percent is the maximum shrinkage allowed in the lowest class in the case of such receipts. One and one-half percent is the rate usually applicable to bulk receipts of interplant transfers, but generally no limit applies in the case of receipts of other source milk requested for lowest class use. These allowances are adopted for each order in the new uniform provisions.

Also adopted is the commonly used method of prorating total plant shrinkage to (1) those kinds of receipts on which the shrinkage limitations apply, and (2) other receipts, principally other source milk in the form of fluid milk products requested for Class II or Class III use. To the extent that the quantity of shrinkage prorated to the first category exceeds the established limit, the excess would be classified in Class I.

The adopted provisions recognize that shrinkage normally experienced varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to delivery of milk by a cooperative association handler from farms to plants in tank trucks, a Class III shrinkage allowance of 0.5 percent of such milk is provided. Any excess shrinkage over 0.5 percent is classified as Class I milk.

The Class III shrinkage allowance to the processing plant receiving the milk from the cooperative would be 1.5 percent. This maintains a total of 2 percent Class III shinkage allowance for such milk from producers in the receiving and processing operations.

The provisions adopted herein are designed to carry out the appropriate division of shrinkage whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if he buys the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for the cooperative association delivering the milk.

As provided herein, when a plant operator disposes of bulk milk by transfer to another plant, his shrinkage allowance would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to another plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This is the same procedure applicable to cooperative bulk tank deliveries to pool plants. Similar handling is involved.

This kind of division of the 2 percent shrinkage allowance, both in the case of transfers from cooperatives to plants and for transfers between plants, has been found practical and has been well accepted in the markets where it now applies. Such division of the shrinkage allowance, therefore, should be included also in the Cedar Rapids-Iowa City, North Central Iowa, Des Moines, Fort Smith, and Austin-Waco orders that now treat shinkage in a somewhat different manner.

As has been indicated, the uniform shrinkage provisions adopted would allow for certain typical variations of individual handler operations. Thus, the provisions should be adaptable to methods of milk handling now in use in all 33 markets. Testimony on the record did not provide any basis for retaining the many minor differences in shrinkage provisions that exist among these orders. In view of these conditions, it is appropriate that the orders have basically uniform shrinkage provisions.

The single exception to the maximum 2 percent shrinkage allowance will be in the Neosho Valley order that now allows up to 5 percent shrinkage in the surplus class for skim milk during April, May, and June. Although the record does

not indicate why a need exists for such a substantially different allowance in one market, no change should be made in the allowance until the matter can be explored further.

A proposal in the hearing notice by two trade associations of processors would amend the orders to allow shrinkage on milk solids used in fortifying fluid milk products. While such an allowance now applicable under the North Texas order would be continued in that market, a basis for adoption in the other orders was not developed on the record. It would be important to have, for the other markets, evidence of current plant practices with respect to use of nonfat solids used for fortification and the effect of accounting and recordkeeping procedures on quantities reported as loss. Such data were not presented and thus there is no substantial basis on which to broaden the use of such provision.

Milk or milk products dumped or disposed of for animal feed are minor categories of disposition. Both cases involve quantities of milk products that for one reason or another are not salable for human consumption. Such dispositions are likely to occur in normal plant operations. Route returns that may be nonsalable because of dating regulations often may not be reprocessed economically into other products. Additives such as flavoring or nondairy solids may make reprocessing impractical. Also, in manufacturing operations, spoilage may occur, or culturing processes may breakdown, rendering the product nonsalable for human consumption.

The cooperatives proposed that there be no change in the present classification of dumpage and animal feed other than to include such uses in the lowest class in those orders specifically recognizing such dispositions. Several milk dealers and two trade associations of processors also proposed that dumpage and animal feed dispositions be classified in the lowest use class. They requested, however, that these provisions be included in the several orders not now containing such provisions.

In the three-class system adopted in this decision, dumpage and animal feed dispositions are classified in the lowest use class. This conforms to the classification plans in those orders that provide specifically for such dispositions. Existing provisions recognize that such dispositions provide little or no return to the handler.

There are differences among the orders as to the type of products for which the lowest classification is permitted when disposed of for animal feed or dumped. While some of the orders apply such classification to all skim milk and butterfat so disposed of, others limit the application to skim milk in fluid milk products, and several orders provide such classification for cottage cheese and cottage cheese curd dumped or disposed of for animal feed.

In the case of any fluid milk product or Class II product, as herein designated, the reasons for dumping or disposing of as animal feed are generally similar to those described previously. All such dispositions result in loss or only a low return to the handler. Therefore, Class III classification should be provided for all such products when disposed of in this manner.

Dumping, unlike other dispositions, involves no sales records that could aid in verification of a handler's records. Thus, advance notice to the market administrator and opportunity for verification should be required. Also, in the case of animal feed disposition, a plant operator should maintain sufficient records to establish in every instance the quantities of skim milk and butterfat involved, and show a written receipt for every disposition.

The several changes herein adopted with respect to the classification of shrinkage, dumpage and animal feed disposition will have relatively minor effect on producer returns or on handlers' costs. The quantities of milk classified in these categories are normally a very small percentage of an individual handler's total utilization. The uniform provisions are adopted are similar to existing provisions found practical from experience in the majority of markets here involved. The standardization of terminology in the provisions described should result in provisions more easily understood.

Whether there may be some merit in a more general revision of the provisions for classifying shrinkage, dumpage, and animal feed disposition than is set forth herein cannot be decided on this record. If more extensive changes are in any way desirable, such matters should be considered on the basis of a thorough exploration of the issue at another hearing.

A handler proposal for a single "loss" classification including shrinkage, animal feed, and dumped products is not adopted. The proposal was not explored by interested parties on the record as to how it would affect handler and producer equities. There is no substantial basis on which to judge its merit and the proposal therefore is denied.

(f) *Allocation of receipts to utilization.* In adopting a revised classification plan under each of the 33 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. Of the 33 orders, all but 7 provide for only two classes of utilization. Thus, changes in most of the orders are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes. Also, all orders must be changed with respect to the allocation of beginning inventories, as previously described.

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 adopted herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

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.

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.

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 indicated 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 nonfiat 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 this connection, it should be noted that under the revised classification plan each order would provide for the specific allocation to a handler's Class II and Class III utilization of any receipts of bulk fluid milk products from an other order plant or an unregulated supply plant for which the handler requests a Class II or Class III classification. Such receipts would be allocated to the extent possible first to the handler's Class III utilization and then to his Class II utilization. This would be the case even if a Class II classification were requested by the handler.

An additional proposal concerning the "down-allocation" of other source milk was offered at the hearing by a handler operating distributing plants in several of the markets under consideration. The company's spokesman indicated that in one market the milk supply being furnished to it by the local producer cooperative was withheld by the cooperative in a particular month when the company refused to enter into a "full-supply" contract. The spokesman claimed that because the cooperative controlled about 85 percent of the producer milk on the market, the company was forced to acquire a supply of milk for the remainder of the month from another market. The spokesman indicated that although having purchased the outside milk for Class I use some of the milk was down-allocated to the plant's lowest utilization. This was because of the order provisions that now result in local producers receiving in large part first priority on a handler's Class I utilization. The handler proposed that if local producers refuse to supply a pool plant with sufficient milk for its Class I needs during the month, any supplies acquired from outside the market for Class I use not be down-allocated relative to receipts of producer milk.

The proposal should not be adopted. Any order provision intended to accommodate a handler in this one particular circumstance would be difficult to administer in an equitable manner. Handlers are not required by an order to purchase milk from any particular source. Similarly, producers are not required to supply any particular handler. In negotiating for the purchase or sale of milk, either party may find the proposed terms unsatisfactory and thus may decide not to consummate the transaction. It would be difficult, if not impossible, for a market administrator to determine, however, which party actually decided not to enter into a purchase-sales agreement. Should a handler be able to acquire outside milk at a lesser cost than would be applicable to local producer milk, such handler would have an incentive to claim that local producers refused to supply him with milk when, in fact, this was not the case.

Such administrative difficulties could be overcome, of course, through the adoption of provisions that do not down-allocate receipts of outside milk from selected sources, or from any source, for Class I use. This would be a major departure, however, from the allocation procedure now used under the present orders. This procedure which was based on comprehensive hearings for all Federal order markets, resulted from the "compensatory payment" decisions concerning the integration of other source milk into the regulatory plan of an order.[4] Such a change would be much broader in scope than was contemplated under the handler's proposal described above and should not be adopted.

In keeping with the goal of classifying milk uniformly under the 33 orders, certain changes should be made in the orders to effect a uniform application of the allocation provisions to multiple-plant handlers. Presently, the 33 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 at each of his pool plants shall be considered separately. As is the case now, however, those receipts of other source milk from unregulated supply plants and other Federal order plants eligible to share with producer milk in a handler's Class I utilization should be allocated on the basis of the handler's total plant system.

This application of the allocation provisions to a multiple-plant handler is now used under seven of the 33 orders. Two other orders require that allocation be on an individual-plant basis unless there are receipts of other source milk at any one of the handler's pool plants to be allocated pro rata with producer milk to the plant's Class I utilization. In this case, all allocations of the handler's receipts to utilization are done on the basis of the handler's total system. The remaining orders provide that allocation be on a system basis in all cases.

Conditions in the individual markets do not require continuance of the several allocation methods now provided in the orders under consideration. Handlers are often subject at different times to the regulatory provisions of different orders. Applying the allocation provisfons uniformly among all orders will reduce unnecessary regulatory differences being experienced by these handlers. There would be little, if any, change in a handler's total obligation under the order, or in producer returns, from applying the adopted allocation procedure in those orders not now providing for allocation on an individual-plant basis.

All the orders now provide that certain receipts of milk from unregulated supply plants and other Federal order plants shall share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of his pool plants combined. This proce-

[4] Official notice is taken of the Assistant Secretary's decisions issued on June 19, 1964 (29 F.R. 9002, 9110, and 9213) with respect to all milk orders then in effect.

dure, which resulted from the 1964 "compensatory payment" decisions referred to earlier, should be continued. To implement this procedure in those orders being changed from system allocation to individual-plant allocation, several additional allocation steps must be provided in such orders. These involve essentially the same computations now required under the orders for the North Texas, Central West Texas, Lubbock-Plainview, Rio Grande Valley, Mississippi, Northern Louisiana, and Des Moines markets where individual-plant allocation is used. Such provisions are revised, however, to incorporate three classes of utilization rather than two classes.

The additional allocation steps establish a procedure whereby the milk from unregulated supply plants and other order plants will continue to be classified on the basis of the handler's total system, but will be assigned to classes at the pool plant of actual receipt. Under this procedure, the situation may arise where there is not enough utilization in a specific class at the plant of actual receipt to which such other source milk must be assigned (as determined from receipts and utilization of his entire system). In this case, an accounting technique is used for increasing the utilization in such class at the plant of actual receipts and utilization of his entire sysreduction in the same class at one or more of his other pool plants in his system. This technique does not result, however, in changing the amount of milk to be accounted for at each plant, or the classification of milk within the handler's entire system.

(g) *Obligations relative to other source milk.* Each of the orders under consideration that provide for marketwide pooling should be revised to the extent necessary to remove the possibility of a handler being charged under the order at the Class I price for milk that already has been classified and priced as Class I milk under some Federal order. Certain of these orders already have been revised to remove any "double charge" on Class I milk. The order language previously adopted for this purpose should be made uniform, however, and should be included in the remaining orders not now containing such provisions.

No changes in this respect are necessary under the Memphis, Fort Smith, Austin-Waco, and North Central Iowa orders. These orders employ individual-handler pooling and do not provide for any handler obligation on other source milk.

A "double charge" on Class I milk received at a pool plant from an unregulated nonpool plant could result in the following manner. Producer milk could be transferred in bulk from a pool plant under the Wichita order, for example, 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 Kansas City 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 Kansas City 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 Wichita market as Class I milk, the Class I other source milk received at the Kansas City 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 Kansas City 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 prescribing the obligation of a partially regulated distributing plant should be changed in each marketwide pool order. 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 marketwide pool 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 (or uniform price in the case of those orders that do not provide for any type of seasonal production incentive plan). 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 under most of the 33 orders to the Class I price adjustment.

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.

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.

In revising the reporting provisions of each order, such provisions should be made uniform to the extent possible. Essentially the same information is now required to be reported under each order, basically for the purposes of determining the classification of the milk and its classified value. There is considerable variation among these orders, however, in the manner in which the provisions on reports are expressed.

As proposed herein, the reporting provisions would be stated in some orders in slightly less detail than is now the case. The market administrator would have, nevertheless, no less authority than at present to obtain through handler reports, in the detail and on forms prescribed by the market administrator, any information the latter believes is necessary for administration of the order.

5. *Changing the butterfat differentials.* A single butterfat differential should apply under each order for adjusting prices to the actual butterfat content of the milk being priced. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest one-tenth cent.

All 33 orders provide butterfat differentials for adjusting class prices and uniform prices for butterfat content. With two exceptions, each order bases the class butterfat differentials on the Chicago butter price, which would be continued under the revised orders. The Chicago butter price is the simple average of the wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk butter at Chicago as reported for the month by the U.S. Department of Agriculture. Under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, the Class II butterfat differential is based on the price of Grade AA (93-score) butter at New York City.

The handler butterfat differentials for each class are now computed by multiplying the butter price by a specified factor. In the case of the Class I butterfat differential, the factor is 0.120 under 20 orders and 0.125 under 11 orders. One order uses a factor of 0.130 and another a factor of 0.135.

The factor most commonly used in computing the butterfat differentials applicable to the surplus prices is 0.115, as prescribed by 18 orders. Nine orders use 0.110, while the factors 0.120 and 0.108 are used under two other orders. Four orders use a factor of 0.110 during the heavy production months and 0.115 during the remainder of the year.

The butterfat differential used in adjusting the uniform price to producers under 23 of the orders is the average of the butterfat differentials for each class, weighted by the proportion of producer milk in each class. Under six other orders, the butterfat differential to producers is determined by multiplying the Chicago butter price by 0.120. Two other orders use a factor of 0.110 under a similar computation, while another provides that this differential be computed by adding 4 cents to the Chicago butter price and multiplying the sum by 0.1. Under the Memphis order, the producer butterfat differential 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.

Cooperative associations proposed that all class prices and uniform prices be subject to adjustment by a single butterfat differential based on the Chicago butter price times a factor of 0.115. One handler proposed that the Class II and Class III butterfat differentials be based on the Chicago butter price times 0.110. Handlers in general opposed any change in the present Class I butterfat differentials.

Lowering the Class I butterfat differential factor 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 1970, the average butterfat test for such products in 58 markets was 3.26 percent.

Comparable data for the 33 subject markets as they are presently constituted are not available. On the basis of information available for much of the area now regulated by these orders, however, there is every indication that the use of butterfat in Class I in these markets is following the national trend.[5]

The impact of this change on a handler's average cost of producer butterfat for Class I use is dependent, of course, upon the average butterfat test of his Class I products and the butterfat differential now applicable to him. Thus, handlers in the 33 markets will be affected differently from lowering the Class I butterfat differential. An analysis of 1970 data for 31 of the 33 markets will serve to illustrate the general change in handlers' costs under the revised classification plan. Data for the Ft. Smith and Austin-Waco markets are not available.

[5] Official notice is taken of the annual summaries for 1960 through 1971 of Federal Milk Order Market Statistics which were issued by the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C.

It is estimated that in 19 of the 20 markets now using a Class I butterfat differential factor of 0.120 the average butterfat test of Class I products distributed by handler (excluding cream and lowfat items) would have ranged in 1970 from 3.55 percent to 2.53 percent. Using the average test for these markets of 2.99 percent, the Class I price at test would have been increased 1.8 cents per hundredweight. For 10 of the 11 markets now using a Class I butterfat differential factor of 0.125, the average test of Class I milk would have ranged from 3.25 percent to 2.81 percent. Based on an average test of 3.01 percent, using a factor of 0.115 in these markets would have increased the Class I price at test by 3.4 cents. The price increases would have been slightly greater in the Duluth-Superior and Central Arizona markets, where factors of 0.130 and 0.135, respectively, are used. Based on estimated Class I butterfat tests of 2.73 percent and 3.10 percent, the Class I price at test would have been increased 8.0 cents per hundredweight in the Duluth-Superior market and 5.6 cents in the Central Arizona market.

Handlers opposed any change in the Class I butterfat differentials on the basis that the relationship of skim milk and butterfat values had already been altered by a change on April 1, 1971, in the purchase prices for dairy products under the Department's price support program. They pointed out that this change, as reflected in order prices, increased handlers' cost of skim milk about 10 cents per hundredweight. Handlers argued that in view of this any further increase in the value of skim milk should be delayed until there has been an opportunity to observe the market response to the effects of the price support change.

There is no evidence to suggest that Class I sales of skim milk and lowfat products were affected adversely by the price support action. Data for 58 Federal order markets indicate that average daily sales of these products in 1971 increased 2.1 million pounds over such sales in 1970. Monthly data show no drop in sales following the support price change in the early part of 1971. Adopting a lower Class I butterfat differential at this time gives recognition to the lower market value now associated with butterfat in Class I products.

Using a single factor of 0.115 for computing Class II and Class III butterfat differentials will result in a uniform adjustment of class prices for 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 33 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.

A handler proposed that the butterfat differential factor for adjusting surplus prices be 0.110 rather than 0.115 as pro-

posed by cooperatives. Proponent indicated that in disposing of surplus cream handlers usually are not able to recover their cost of such cream under the order. A Class II-Class III butterfat differential factor of 0.110, it was argued, would provide handlers with some price relief in this circumstance.

The record does not indicate that the adoption of 0.115 as the butterfat differential factor for pricing surplus milk will hinder the removal of surplus butterfat from the fluid market. Of the 33 orders, 22 now use a factor of 0.115, and one uses a factor of 0.120, for pricing surplus milk. The handler proposing the 0.110 factor was the only opponent of the 0.115 factor proposed by cooperatives. The great majority of residual butterfat is disposed of by the cooperatives rather than handlers. It must be concluded that the adoption of the handler's proposal under present marketing conditions would return to producers in most cases less than the obtainable market value for butterfat not needed for Class I purposes.

As indicated, the butterfat differential to producers under 23 of the 33 orders reflects the weighted value of butterfat in the class uses. Inasmuch as producers favor this method of reflecting skim milk and butterfat values in their pay prices, this pricing arrangement should be extended to the other 10 orders. Since the same butterfat differential would be used in adjusting each of the class prices, there is no actual need, of course, for any provision in the order for weighting the values of butterfat in the three classes in determining the producer butterfat differential.

With the use of a single butterfat differential for adjusting all prices under the order, it is necessary that each order provide only for a producer butterfat differential. No handler butterfat differentials need be set forth as such in the order, nor is there any need for pooling butterfat values in each class. All producer butterfat would be priced to all handlers at the same level regardless of the class in which used. The proposed revised orders attached hereto have been drafted accordingly.

Under the new pricing arrangement, the single butterfat differential for the current month should be based upon butter prices for such month and should be announced by the fifth day of the following month. This represents a change only for the pricing of Class I milk. The Class I butterfat differentials are now based on butter prices prevailing during the preceding month and are announced by the fifth day of the current month. With the use of a single butterfat differential factor in adjusting all milk prices, 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. 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.

It is recognized that the basic formula price of these 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 proposal by handlers to announce order prices for surplus milk at the beginning of the month rather than at the end of the month during which the prices apply should not be adopted.

Under the present orders, the prices for surplus milk are announced by the fifth day of each month. Such prices apply to producer milk delivered to handlers during the preceding month.

The national association of fluid milk and ice cream processors proposed that the class prices to be applicable in a particular month to surplus milk be announced by the fifth day of such month. Handlers stated that under the present announcement procedure they are often disadvantaged by not knowing the costs 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 resales prices on a timely basis. Proponents' interest in advance pricing related essentially to the prices that would be applicable to cottage cheese, cream products, yogurt, and frozen desserts, the principal Class II and Class III products processed by such handlers.

For the regulated handler processing producer milk into butter, nonfat dry milk and cheddar cheese, however, advance announcement of the applicable class price could place him at a competitive disadvantage on his sales of these manufactured products. As indicated earlier, the surplus prices under the revised classification plan would be based on the prices paid for manufacturing grade milk in Minnesota and Wisconsin. These prices are closely related to the market values of cheddar cheese, nonfat dry milk and butter, the principal uses for such milk in the month of delivery of the raw 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 product prices, which are published weekly, and can 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 and the same product price information is available to them.

In most of the markets under consideration, substantial quantities of milk are disposed of by regulated handlers in the form of butter, nonfat dry milk or cheese. In 1970 over 1 billion pounds of milk, or 88 percent of the market's total Class II use, were so disposed of by handlers in the Minneapolis-St. Paul market. In the Minnesota-North Dakota, Southeastern Minnesota-Northern Iowa, Duluth-Superior, Cedar Rapids-Iowa City, Eastern South Dakota, Oklahoma Metropolitan, and North Central Iowa markets, over 80 percent of each market's total Class II milk was used that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other markets, only in four markets (Memphis, Fort Smith, Central West Texas, and Rio Grande Valley) did such uses represent less than 20 percent of the total Class II use for each market. Thus, handlers in most of the 33 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 during the month of delivery for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products. 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 price for Class III milk.

In connection with the announcement of surplus prices, a comment should be made concerning the transition from the present pricing provisions to the new ones adopted herein. It is intended that the present surplus prices apply to producer milk delivered to handlers during the last month under the present classification and pricing scheme. Clarification of this point is pertinent since such prices would be announced following the effective date of the new pricing provisions.

7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.* The Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders should be changed to provide that the skim milk ingredient of "filled milk" shall be classified and priced as Class I milk.

The provisions provided herein are substantially those which were proposed

for consideration at the hearing by a cooperative association operating in these markets.

In 1968, proposals to classify and price the skim milk component of filled milk were considered for most orders at a hearing held in Memphis, Tennessee. The decision resulting from the hearing classified the skim milk component of filled milk in the same way as the skim milk component of natural milk. It provided a means of equating the cost of skim milk in filled milk if it originates from sources other than producer milk with the cost if derived from producer milk.

At the time of the 1968 hearing, the Southeastern Minnesota-Northern Iowa order had not been issued, and the Minneapolis-St. Paul order could not be amended in this respect because of a marketing area expansion to which the filled milk hearing did not apply. As a result, these orders do not contain the uniform provisions dealing with filled milk provided in all other Federal milk orders.

Filled milk is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milk fat in whole milk. Well over 90 percent of the product is skim milk. In most filled milk, the skim milk portion is fresh fluid skim milk separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk or any combination of the two, filled milk resembles whole milk in appearance.

Regulated handlers disposing of filled milk make a substantial savings in cost by substituting vegetable fat or oil for butterfat. This is the main incentive for the marketing of filled milk. While the difference in cost between vegetable fat and butterfat is not an issue at this hearing, it is relevant to the extent that it explains the profit motivation for marketing the product relative to the marketing of natural milk.

At the present time, no filled milk is distributed in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas. In those regulated markets where filled milk is distributed, it moves in the same channels as whole milk. It is distributed by the same handlers in the course of their regular business through the same outlets for natural milk and in the same types of containers.

Filled milk, if disposed of in either the Minneapolis-St. Paul or the Southeastern Minnesota-Northern Iowa marketing area, would directly burden, obstruct, or affect interstate commerce in milk and milk products. It previously has been determined (at the time of the promulgation of each of these orders) that all milk marketed in each marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and milk products.

Filled milk is in content substantially a product of milk and competes for the same sales outlets as milk. It follows, therefore, that the marketing of the milk ingredients in filled milk in either of the two markets would burden, obstruct, or affect interstate commerce in milk and milk products. This would be equally true whether the marketing of filled milk were by a fully regulated plant or by a plant not fully regulated because both would compete for similar outlets in the market.

Also, manufactured milk products are sometimes used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market, regardless of where the milk is produced. Therefore, manufactured milk products, if used in the production of filled milk for disposition in either the Minneapolis-St. Paul or Southeastern Minnesota-Northern Iowa market, likewise would burden, obstruct, or affect interstate commerce in milk and its products.

The sale of filled milk in interstate commerce is prohibited by the Federal Filled Milk Act. Nevertheless, intrastate commerce in filled milk would burden, obstruct, and affect interstate commerce in milk and milk products regulated by the two orders.

The classification of the dairy ingredients of filled milk is a proper consideration derived from the Agricultural Marketing Agreement Act. As stated in the decision resulting from the filled milk hearing in Memphis, Tenn., the

> Specific language of the Act with respect to classification is that each order shall contain terms "* * * classifying milk in accordance with the form in which or the purpose for which it is used * * *". In applying the language of the Act we here consider the form and purpose of use for both filled milk and the milk ingredient content of the filled milk.
>
> The form of filled milk and the purpose for which it is used are the same as the form and purpose of use of whole milk. Filled milk, just as whole milk, is disposed of in fluid form. It is marketed by handlers in the same types of packages and in the same trade channels as the whole milk they market, and is mainly intended as a beverage substitute for milk.
>
> Similarly, the fluid skim milk content of the filled milk is in the same form as skim milk in whole milk and serves the same purpose, providing in each case the main body of the product thereby making it a milk beverage. The addition of the nonmilk ingredients, principally vegetable fat or oil and stabilizers, does not alter the basis for Class I classification. The addition of nonmilk ingredients in fluid milk products is not a new development. The addition of vegetable fat does not involve an essentially different consideration from that for other Class I fluid milk products to which a flavoring ingredient, such as chocolate (which also contains nonmilk fat) has been added.
>
> For purpose of illustration, a product within the "fluid milk product" category containing a nonmilk additive is chocolate milk. The additive is not considered as changing the form of this product so that it is no longer a fluid milk product. For the purposes of classification, the flavoring material has never been regarded as significant in determining the form of the product or as a basis for altering its classification.
>
> The same reasoning applies in the case of filled milk—that the additives do not change significantly the form or the purpose of use and therefore do not constitute a basis for classification other than in Class I.
>
> The product "filled milk" therefore should be classified, for the purpose of pricing under the orders, in the same manner as whole milk. As in the case of other fluid milk products containing some nonmilk ingredients, the classification would apply only to the milk ingredients in the product.

No opposition to the filled milk proposal was expressed at the hearing or in briefs submitted by interested parties.

Based on the testimony of proponent, which related specifically to the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, it is found that the above findings from the Memphis decision are equally applicable to this proceeding. Accordingly, they serve as the basis for concluding that the milk ingredients of filled milk should be classified and priced under the two orders as Class I milk.

Proponent testified also that filled milk may be made by combining reconstituted skim milk with vegetable fat and other minor ingredients. Reconstituted skim milk commonly is made from nonfat dry milk to which water is added to return it essentially to a form and consistency similar to fresh skim milk. Its potential as a disruptive influence on the market for producer milk is substantial, however, since the disposition of any Class I product that has been priced at the surplus price level undermines the classified pricing system.

As was found in the filled milk decision referred to earlier, filled milk made from reconstituted skim milk is, from a marketing standpoint, essentially similar to filled milk made from fresh skim milk. It is a competitor of whole milk at the consumer level. Therefore, reconstituted skim milk in filled milk, as in other fluid milk products, should be classified and priced on the same basis as all other fluid milk products to achieve uniformity in the pricing of milk for similar uses.

Federal milk orders, including the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, have contained for some time specific provisions dealing with the disposition by a regulated handler of other fluid milk products reconstituted from nonfluid milk products. The issue of proper classification and charge for such use of nonfluid milk products to produce products for Class I disposition was dealt with for most orders in the compensatory payment decisions referred to earlier in this decision. The findings and conclusions that relate to the reconstitution of milk appeared at 29 F.R. 9010. The regulatory treatment of reconstituted products that is described in the compensatory payment decisions and reiterated in the later filled milk decision is appropriately applicable to any reconstituted skim milk used in filled milk that may be disposed of in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas.

It should be noted that these two orders now provide that a producer-handler would lose his status as such and become a fully regulated handler if he

disposes of fluid milk products made from reconstituted skim milk. Since the fluid milk products definition would include filled milk under the amendments adopted herein, loss of producer-handler status would result also from the sale of reconstituted filled milk.

A definition of filled milk should be provided in the two orders to meet the specific needs of order regulation, and for such purpose only. This definition, which would be identical to the filled milk definition in all other orders, should be as follows:

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

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

The regulatory treatment of filled milk adopted herein requires numerous conforming changes throughout the order. Accordingly, all the conforming changes found necessary on the basis of the Memphis hearing to implement the filled milk amendments are incorporated herein wherever applicable.

8. *A uniform "equivalent price" provision.* Each of the 33 orders included in this proceeding should be amended to the extent necessary to provide identical language for determining an equivalent price, or price constituent, when a price or price constituent is not available as prescribed by the order.

At present, all of the 33 orders except the Minnesota-North Dakota order provide for computing an equivalent price as needed. Such provisions are not identical, however, among the orders. A Dairy Division proposal for a uniform equivalent price provision under each order was supported by a witness for the National Milk Producers Federation.

An equivalent price provision is necessary in each of the orders to provide a price, or price constituent, in cases where published prices, indexes, quotations or other pricing constituents as prescribed by the order are not available. It insures that basic formula prices, class prices and butterfat differentials can be computed, as prescribed, in emergency situations without interruption.

All the orders now rely on butter price quotations for computing butterfat differentials. All rely on the Minnesota-Wisconsin price series for computing the basic formula price and Class I prices. As proposed herein, this price series would be used also in establishing Class II and Class III prices under each order.

Under unusual circumstances, these published prices and price constituents might not be available for use in computing order prices. If there were insufficient trading during the month in butter, for example, or if the specific butter price quotations were discontinued, the prescribed butterfat differentials could not be computed without an equivalent price provision. By providing for the determination of an equivalent price as needed, the Department is in a position to draw on comprehensive resource data to assure that the computation of the basic formula price, the class prices, or the butterfat differentials is not interrupted by the contingencies cited.

For these reasons, it is concluded that the Minnesota-North Dakota order should provide for the determination of an equivalent price in the same manner as the other orders included in this proceeding.

In providing for a determination of equivalent price, the same objective is sought for each order. It is appropriate, therefore, to provide for identical provisions in each order. Then, if a determination had to be made for more than one order simultaneously, there would be no question as to the applicability of the determination to each order.

Accordingly, the equivalent price provision in each order should be stated as follows:

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

A corollary change should be made in the Class I price provisions of the Neosho Valley order. This order provides that the Class I price shall be based in part on the Class I price "under Part 1067 of this chapter regulating the handling of milk in the Ozarks marketing area." At the time the Ozarks order was merged with the St. Louis order, a determination of equivalent price was issued for the Neosho Valley order (33 F.R. 15107) which stated in part that:

For the purpose of computing the Neosho Valley Class I price, the Class I price announced for Zone 1 under the St. Louis-Ozarks milk order (Part 1062) will be equivalent to the price specified in § 1071.51(a)(2) of the Neosho Valley order and should be used in lieu thereof in computation of the Class I price of the Neosho Valley order until such time as the Neosho Valley order may be amended.

This determination of equivalent price, which was issued in October 1968, is still in effect. This proceeding affords an opportunity to amend the Neosho Valley order as prescribed in the determination. Thus, the order language quoted earlier should be revised to read "under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area."

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.

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 the 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 tentative 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 1007—MILK IN GEORGIA MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1007.2 Georgia marketing area.

Definitions

1007.1 General provisions.

Sec.
1007.3 Route disposition.
1007.4 [Reserved]
1007.5 Distributing plant.
1007.6 Supply plant.
1007.7 Pool plant.
1007.8 Nonpool plant.
1007.9 Handler.
1007.10 Producer-handler.
1007.11 [Reserved]
1007.12 Producer.
1007.13 Producer milk.
1007.14 Other source milk.
1007.15 Fluid milk product.
1007.16 Fluid cream product.
1007.17 Filled milk.
1007.18 Cooperative association.
1007.19 Reload point.

HANDLER REPORTS

1007.30 Reports of receipts and utilization.
1007.31 Payroll reports.
1007.32 Other reports.

CLASSIFICATION OF MILK

1007.40 Classes of utilization.
1007.41 Shrinkage.
1007.42 Classification of transfers and diversions.
1007.43 General classification rules.
1007.44 Classification of producer milk.
1007.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1007.50 Class prices.
1007.51 Basic formula price.
1007.52 Plant location adjustments for handlers.
1007.53 Announcement of class prices.
1007.54 Equivalent price.

UNIFORM PRICES

1007.60 Handler's value of milk for computing uniform prices.
1007.61 Computation of uniform prices for base milk and excess milk.
1007.62 Announcement of uniform prices and butterfat differential.

PAYMENTS FOR MILK

1007.70 Producer-settlement fund.
1007.71 Payments to the producer-settlement fund.
1007.72 Payments from the producer-settlement fund.
1007.73 Payments to producers and to cooperative associations.
1007.74 Butterfat differential.
1007.75 Plant location adjustments for producers and on nonpool milk.
1007.76 Payments by handler operating a partially regulated distributing plant.
1007.77 Adjustment of accounts.
1007.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1007.85 Assessment for order administration.
1007.86 Deduction for marketing services.

CLASS I BASE PLAN

1007.90 Definition of terms relating to the Class I base plan.
1007.91 Computation of production history base.
1007.92 Updating of production history bases.
1007.93 New producers.
1007.94 Computation of Class I base or base milk for each producer.
1007.95 Transfer of bases.
1007.96 Miscellaneous base rules.
1007.97 Hardship provisions.

AUTHORITY: The provisions of this Part 1007 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1007.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1007.2 Georgia marketing area.

The "Georgia marketing area", hereinafter called the "marketing area", means all the territory, including all waterfront facilities connected therewith, geographically within the boundaries of the State of Georgia except the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Rabun, Walker, and Whitfield. The marketing area shall include all territory that is occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area.

§ 1007.3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1007.4 [Reserved]

§ 1007.5 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted health authority for fluid consumption or filled milk is processed or packaged and which has route disposition in the marketing area during the month.

§ 1007.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority for fluid consumption or filled milk is shipped during the month to a pool plant.

§ 1007.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section.

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of it total Class I disposition, except filled milk, during the month.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(c) For the purpose of qualifying a supply plant under paragraph (b) of this section, a cooperative association supplying pool distributing plants during the month at least two-thirds of the producer milk of its members (including both milk delivered directly from their farms and that transferred from the supply plant(s) of the cooperative) may count (irrespective of other requirements of § 1007.9(c)) as shipments from the plant to pool distributing plants the milk delivered to pool distributing plants under § 1007.9(c); in the event the cooperative operates more than one supply plant, all such deliveries shall be assigned, for this purpose, to the supply plant nearest Atlanta, Ga.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant; and

(3) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

§ 1007.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

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

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

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

(c) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1007.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1007.13 for the account of such cooperative association;

(c) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1007.10 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no Class I milk from sources other than his own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk;

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk; and

(e) If such person had been a producer to whom a Class I base had been assigned pursuant to § 1007.94, has forfeited such Class I base in accordance with the requirement of § 1007.96(c).

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is physically received at a pool plant or diverted pursuant to § 1007.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1007.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1007.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer or from a handler described in § 1007.9(c): *Provided,* That if the milk received at a pool plant from a handler described in § 1007.9(c) is purchased on a basis other than farm weights as determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the volume by which the farm weights and butterfat as determined from the farm bulk tank samples of such milk exceed the weights and butterfat on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1007.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;

(5) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided,* That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (4) and (5) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1007.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1007.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1007.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1007.40(b)(1)) for which the handler fails to establish a disposition.

§ 1007.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1007.40 (b) or (c)(1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1007.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1007.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted,

or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1007.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing milk or milk products for, its members.

§ 1007.19 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload point shall not be considered a plant except that a reload operation on the premises of a plant shall be considered a part of the plant operation.

HANDLER REPORTS

§ 1007.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1007.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

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

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) Each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator on or before the seventh day after the end of the month:

(1) The total pounds of base milk and the total pounds of excess milk; and

(2) The days for which milk was received from each producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1007.30 and 1007.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1007.40 Classes of utilization.

Except as provided in § 1007.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1007.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

(c) *Class III milk.* Class III milk shall be all skim milk and butterfat;

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated, or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included

within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1007.41(a) to the receipts specified in § 1007.41(a)(2) and in shrinkage specified in § 1007.41 (b) and (c).

§ 1007.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1007.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1007.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1007.9(c), except that if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph 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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(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 by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; 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 §1007.9 (b) or (c), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1007.42 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 another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, 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 § 1007.44(a)(12) and the corresponding step of § 1007.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(7) or the corresponding step of § 1007.44(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 § 1007.44(a) (11) or (12) or the corresponding steps of § 1007.44(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 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 utilization 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 § 1007.40.

(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 by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee'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 following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt distributing plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk

product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (a) and (b) of this subdivision 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 subdivisions (ii) through (viii) of this subparagraph:

(a) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1007.30 for the month within which such transaction occurred; and

(b) 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph.

§ 1007.43 General classification rules.

In determining the classification of producer milk pursuant to § 1007.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1007.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1007.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1007.40, 1007.41, and 1007.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1007.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1007.9(a) for each of his pool plants separately and of each handler described in § 1007.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1007.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim 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 (7) (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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1007.40(c)(6)), any product specified in § 1007.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1007.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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) 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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (*a*) through (*c*) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extend permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) 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 subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1007.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8)(i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraphs (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1007.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) 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 another pool plant according to the classification of such products pursuant to §1007.42 (a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1007.44(a)(14) and the corresponding step of § 1007.44(b).

§ 1007.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(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.

(b) 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 § 1007.44 on the basis of such report, and, thereafter any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30.

(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.

§ 1007.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1007.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Banks.
Bartow.
Catoosa.
Chattooga.
Cherokee.
Dade.
Dawson.
Elbert.
Fannin.
Floyd.
Forsyth.
Franklin.
Gilmer.
Gordon.
Habersham.
Hall.
Hart.
Jackson.
Lumpkin.
Madison.
Murray.
Pickens.
Rabun.
Stephens.
Towns.
Union.
Walker.
White.
Whitfield.

(2) "Southern Zone" means all the territory in the State of Georgia that is not within the Northern Zone.

(b) The Class I price for producer milk at a plant in the Northern Zone shall be reduced 15 cents and at a plant that is outside Georgia, north of an east-west line extending from the city hall in Atlanta and more than 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the nearer of the city halls in Atlanta and Augusta, Ga., shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Atlanta and Augusta: *Provided*, That the location adjustment pursuant to this paragraph applicable at a plant in Alabama or South Carolina shall not be more than 15 cents.

(c) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1007.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1007.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1007.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1007.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1007.44(a)(14) and the corresponding step of § 1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1007.74, that are 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 § 1007.44(a)(9) and the corresponding step of § 1007.44(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 § 1007.44(a)(7) (i) through (iv) and the corresponding step of § 1007.44(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 § 1007.44(a)(7) (v) and (vi) and the corresponding step of § 1007.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(11) and the corresponding step of § 1007.44(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 applicable at the location of the pool plant and the Class II price, both for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1007.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1007.61 Computation of uniform prices for base milk and excess milk.

(a) For each month, the market administrator shall compute a uniform price as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports pursuant to § 1007.30 for the month, except those in default of payments required pursuant to § 1007.71 for the preceding month;

(2) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

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

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60 (f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the uniform price.

(b) The market administrator shall compute uniform prices per hundredweight for base milk and excess milk each month, each of 3.5 percent butterfat content, as follows:

(1) Determine the aggregate amount of producer milk in each class included in the computation pursuant to paragraph (a) of this section and the hundredweight of such milk that is base milk and that is excess milk;

(2) Determine the value of the total hundredweight of milk of producers specified in § 1007.94 (c) and (d) to whom no base milk has been assigned by multiplying such volume by the Class III price;

(3) Determine the total value of excess milk by assigning such milk in series beginning with Class III to the hundredweight of milk in each class as determined pursuant to subparagraph (1) of this paragraph, multiplying the quantities so assigned by the respective class prices and adding together the resulting amounts;

(4) Divide the total value of excess milk in subparagraph (3) of this paragraph by the total hundredweight of such milk. The quotient, rounded to the nearest cent, shall be the uniform price for excess milk;

(5) Multiply the total hundredweight of excess milk by the uniform price for excess milk computed pursuant to subparagraph (4) of this paragraph;

(6) Multiply the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the uniform price for the month;

(7) Subtract the total values arrived at in subparagraphs (2), (5), and (6) of this paragraph from the amount resulting from the computations pursuant to paragraph (a) (1) through (4) of this section; and

(8) Divide the amount obtained in subparagraph (7) of this paragraph by the total hundredweight of base milk determined in subparagraph (1) of this paragraph and subtract not less than 4 nor more than 5 cents per hundredweight. The resulting figure rounded to the nearest cent, shall be the uniform price for base milk.

§ 1007.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform prices for such month.

PAYMENTS FOR MILK

§ 1007.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1007.71 and 1007.76 and out of which he shall make all payments from such fund pursuant to § 1007.72: *Provided,* That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1007.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1) The total value of milk of the handler for such month as determined pursuant to § 1007.60.

(2) The sum of:

(i) The value at the uniform prices pursuant to § 1007.61(b), as adjusted pursuant to § 1007.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price pursuant to § 1007.61(a) applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60 (f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a)(2) exceeds the amount computed pursuant to § 1007.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month less proper deductions authorized in writing by such producer;

(2) On or before the 15th day of each month at not less than the applicable uniform prices for the quantities of base milk and excess milk received adjusted by the butterfat differential computed pursuant to § 1007.74, and in the case of base milk by the location adjustment computed pursuant to § 1007.75, subject to the following:

(i) Less payments made pursuant to subparagraph (1) of this paragraph;

(ii) Less proper deductions authorized by such producer;

(iii) Less deductions for marketing services made pursuant to § 1007.86; and

(iv) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.72 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 after receipt of the balance due from the market administrator; and

(3) On or before the 15th day of the month at not less than the Class III price adjusted by the butterfat differential computed pursuant to § 1007.74 for the quantity of milk received from producers described in § 1007.94 (c) and (d) for whom no base milk has been computed.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the day prior to the date on which payments are due individual producers shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members, shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the market administrator at his discretion through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased, or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be reduced according to the location of the pool plant at the rates set forth in § 1007.52(b); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1007.52(b) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1007.76 Payments by 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 §§ 1007.30(b) and 1007.31(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 route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price pursuant to § 1007.61(a), 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 value that would have been computed pursuant to § 1007.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1007.60 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, the value of milk determined pursuant to § 1007.60 for such handler shall include, in lieu of the value of other source milk specified in § 1007.60(f) less the value of such other source milk specified in § 1007.71(a)(2)(ii), a value of milk determined pursuant to § 1007.60 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 § 1007.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1007.30 (b) and 1007.31(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 value of milk determined pursuant to § 1007.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1007.77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in moneys due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1007.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1007.71, 1007.77, 1007.85, and 1007.86 shall be increased one-half of 1 percent for each month or portion thereof that such obligation is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1007.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, 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) Producer milk (including such handler's own production);

(b) Oher source milk allocated to Class I pursuant to § 1007.44(a)(7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

§ 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) If the Secretary determines that a cooperative association is performing for its members the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such members and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

CLASS I BASE PLAN

§ 1007.90 Definition of terms relating to the Class I base plan.

For purposes of determination and assignment of the Class I base of each producer the following terms are defined:

(a) "Production history" means the average daily marketings of a producer during the production history period used for the determination of bases or the future updating of bases.

(b) "Production history base" means a quantity of milk in pounds per day as computed pursuant to § 1007.91.

(c) "Production history period" means the days or months to be used for the computation of the production history base of a producer.

(d) "Average daily producer milk deliveries" of any producer in any specified period used for computing a production history base means the total pounds of producer milk delivered by the producer divided by the number of days' production represented by such deliveries: *Provided,* That for any September–January period, the divisor shall be the actual days of production, or 145 whichever is greater.

(e) "Class I base" means a quantity of milk in pounds per day computed pursuant to § 1007.94 for which a producer may receive the base milk price.

(f) "Base milk" means:

(1) Milk received from a producer which is not in excess of his Class I base multiplied by the number of days of production of producer milk delivered during the month; and

(2) Milk received from a producer to whom no Class I base has been issued in the amount determined for such producer pursuant to § 1007.94 (c) and (d).

(g) "Excess milk" means milk received in excess of base milk from a producer who is delivering base milk during such month.

§ 1007.91 Computation of production history base.

A "production history base" shall be determined by the market administrator for each producer eligible for such base on the effective date of this provision and on March 1 of each year thereafter. The computation of production history base shall be subject to adjustments due to acquisition or disposition by transfer of Class I base or other modifications of Class I base due to hardship or loss of Class I base because of underdelivery of base. For purposes of computation of his production history base, a producer shall be considered as having been on the market during any specified period if: As a producer he delivered milk of his own production during the designated period without interruption sufficient to cause forfeiture of base pursuant to § 1007.96(a); and during such period (after the effective date of this provision) did not dispose of all his Class I base by transfer. The production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(a) The market administrator shall determine a production history base for each producer who delivered at least 100 days' production during the immediately preceding period of September–January by computing his average daily producer milk deliveries as defined in § 1007.90 (d) during such period.

(b) For producers who delivered milk on less than 100 days during the immediately preceding period of September–January, but at least 90 days prior to March 1, the market administrator shall determine a production history base by multiplying such producer's average daily producer milk deliveries during the months in which milk was delivered prior to March 1, by .80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September–January period by the average daily producer milk deliveries during the same months used for such producer.

(c) Producers who have delivered milk for less than 90 days prior to March 1 shall have no initial production history base but shall be assigned a history of production in accordance with the provisions applicable for new producers.

(d) For each producer not subject to § 1007.94(d) who became a producer for this market subsequent to September 1, 1971, because the plant to which he regularly delivered milk became a fully regulated plant pursuant to this order, a production history base shall be determined, if possible pursuant to paragraph (a) or (b) of this section based on his deliveries of milk as if the nonpool plant to which he delivered had been a pool plant during the representative period.

(e) A producer not described pursuant to paragraph (d) of this section who

delivered milk to a nonpool plant(s) prior to becoming a producer and who is not subject to the provisions of § 1007.94(c) shall have a production history base effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant if a production history base can be computed pursuant to paragraph (a) or (b) of this section based on deliveries of milk from the same farm on which he is now a producer as if the plant(s) to which he delivered had been a pool plant(s) during the preceding 12 months.

(f) For a producer who held producer-handler status at any time subsequent to September 1, 1971, a production history base shall be calculated as prescribed in paragraph (a) of this section as if the milk of his own production received at his producer-handler plant had been received at a pool plant.

(g) With respect to the computation of production history base pursuant to this section, the following rules shall apply:

(1) If a producer operated more than one farm at the same time, a separate computation shall be made with respect to the average daily producer milk deliveries from each farm except that only one computation shall be made with respect to milk production resources and facilities of a producer-handler.

(2) Only one production history base shall be allowed with respect to milk produced by one or more persons where the land, buildings, and equipment are jointly used, owned or operated.

§ 1007.92 Updating of production history bases.

The production history base for each producer who has neither disposed of his entire base by transfer nor forfeited his base pursuant to § 1007.96(a) or after having disposed of his entire base by transfer or forfeiture, has met the delivery requirements prescribed in § 1007.93 shall be determined by the market administrator on March 1 of each year as follows:

(a) Effective March 1, 1973, the market administrator shall update the production history base for each producer as follows:

(1) Subject to the provisions of subdivisions (i) and (ii) of this subparagraph for a producer who is assigned an initial history of production pursuant to § 1007.91 (a) or (b) on the effective date of this order, add the average daily milk deliveries of such producer during the period September 1972 through January 1973 to the production history bases computed for such producer on the effective date of this order and divide the result by 2. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his avarage daily deliveries during the immediately preceding September through January period but in no event, shall such producer's production history base be reduced by more than 25 percent.

(2) For producers who had not previously been assigned a production history base, a history of production shall be determined by calculating such producer's average daily producer milk deliveries during the period September 1972 through January 1973 and multiplying the result by 0.80.

(b) Effective March 1, 1974, the market administrator shall update the production history base for each producer as follows:

(1) Subject to the provisions of subdivisions (i) and (ii) of this subparagraph for a producer who had a production history base for the 2 most recent years, determine the average daily producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base determined for each of the 2 most recent years and divide the result by 3: (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) Subject to the provisions of subdivisions (i) and (ii) of this subparagraph for a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by 2: (i) If during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base, then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I based exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80.

(c) Effective March 1, 1975, and on March 1 of each year thereafter the market administrator shall update the history of production for each producer as follows:

(1) Subject to the provisions of subdivisions (i) and (ii) of this subparagraph for producers who have .. production history base covering 3 or more years, the market administrator shall compute the average daily producer milk deliveries for such producer during the immediately preceding period of September through January and shall add such fi ure to the average daily producer milk deliveries of the preceding two years and divide the result by 3. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding September through January period the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) Subject to the provisions of subdivisions (i) and (ii) of this subparagraph for a producer who had a production history base for the two most recent periods, determine the average producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base determined for each of the two most recent periods and divide the result by 3. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately

preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) Subject to the provisions of subdivisions (i) and (ii) of this subparagraph for a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by 2. (i) If during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(4) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80.

(5) On March 1 of each year of which this plan is in effect, the market administrator shall determine a production history base for producers who delivered milk for less than 100 days in the immediately preceding period of September through January but who delivered milk for at least 90 days prior to March 1 by determining such producers average daily producer milk deliveries during the first 3 months in which the producer delivered milk to the market, multiplying the result by 0.80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September–January period by the average daily deliveries per producer during the same months used for such producer.

§ 1007.93 New producers.

The market administrator shall determine a history of production for each producer for whom a production history base was not determined pursuant to § 1007.91 as follows:

(a) Any producer who during the immediately preceding September through January period delivered his milk to a nonpool plant which became a pool plant shall be assigned a history of production on the same basis as other producers under the order as though the deliveries to the nonpool plant had been deliveries to a pool plant.

(b) Effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant a producer who delivered milk to a nonpool plant prior to becoming a producer as defined in this order shall be assigned a production history base on the same basis as if he had been a producer under the order and his deliveries to the nonpool plant had been deliveries to a pool plant provided that in no event shall the production history base exceed the amount of milk actually delivered by such producer under this order.

(c) A producer who delivered no milk to a nonpool plant or who delivered milk to a pool plant for less than 90 days prior to March 1 of any year and who has not acquired a history of production by transfer shall be assigned Class I base milk pursuant to the provisions of § 1007.94(c).

§ 1007.94 Computation of Class I base or base milk for each producer.

On the effective date of this provision and on March 1 of each subsequent year the market administrator shall assign a Class I base to each producer who has a production history base. Class I bases shall be assigned to producers described in § 1007.93 when they are issued production history bases. Class I bases shall be computed as follows:

(a) Compute a "Class I base percentage" as follows:

(1) Determine the sum of Class I dispositions during the preceding period of September through January:

(i) Class I producer milk pursuant to § 1007.44(c);

(ii) The Class I disposition of plants during the period when they were nonpool plants, if such plants were pool plants in the preceding January; and

(iii) The Class I disposition of his own production of a person who was a producer-handler during a portion of the year and who held producer status in the preceding January.

Multiply the sum by 1.15 and divide the result by 153:

(2) Divide the quantity computed pursuant to subparagraph (1) of this paragraph by a quantity which is the total of production history bases computed pursuant to § 1007.91 or § 1007.92, whichever is applicable. The result shall be converted to a percentage by multiplying by 100 and rounding to the third decimal place. Such percentage shall be known as the "Class I base percentage."

(b) The Class I base of each producer with a production history base shall be determined by multiplying his production history base by the "Class I base percentage." For each of the months of June, July, and August the Class I base so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the preceding months of September through May.

(c) A producer, other than a producer pursuant to paragraph (d) of this section, who has no production history base shall be assigned base milk each month until the first March 1 on which he is eligible for a Class I base in an amount equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month (1) effective with his first delivery of producer milk if he begins deliveries in the months of September through January, and (2) effective on the first day of the second month following the month in which he began delivery if he begins deliveries in the months of February through August. For each of the months of June, July, and August the base milk so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the immediately preceding months of September through May.

(d)(1) A producer who, after having forfeited or disposed of all of his Class I base, either continues as a producer on the market or discontinues deliveries to the market and returns to the market as a producer, shall be assigned base milk equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month, such assignment to be effective on the later of the following dates: the first day of the third month following the month in which he recommences deliveries of producer milk on the market, or the first day of the twelfth month following the month in which a producer who forfeits his base ceases deliveries or a producer disposes of his Class I base. For each of the months of June, July, and August the base milk so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the immediately preceding months of September through May. The production history period of such producer shall begin on the later of the following dates: The date on which he first received payment for base milk or the first day of the first month eligible for use in a production history period pursuant to § 1007.93.

(2) In the application of this provision, use of the same production facilities by another person (or the same person under a different name) to produce milk after the above described forfeiture or transfer of base shall be considered as a continuation of the operation by the previous operator if the new operator is a member of the immediate family of the previous operator. It shall be applied also to any production facility to which a Class I base has not been assigned, wherever located, operated by a person

in which the producer who forfeited or transferred his base has a financial interest if such facility commences production on or after the effective date of the transfer or forfeiture, or such producer acquired his financial interest in such person later than 3 months prior to the effective date of the base transfer or forfeiture.

§ 1007.95 Transfer of bases.

Production history and Class I base may be transferred pursuant to the following rules and conditions:

(a) A transfer of base means the transfer of both the production history base and the Class I base associated with it at the time of transfer. The percentage of Class I base transferred shall be applied to the total production history base held at the time of transfer to determine the corresponding amount of production history transferred.

(b) The market administrator must be notified in writing by the holder of Class I base of the name of the person to whom the Class I base is to be transferred, the effective date of the transfer, and the amount of base to be transferred. Application for transfer must be made to the market administrator on forms approved by the market administrator and signed by the base holder(s), his heirs, executor, or trustees and by the person to whom such base is to be transferred.

(c) A transfer of an entire base may be made effective on any day of the month if application for such transfer is filed with the market administrator within 5 days thereafter. Otherwise, such transfer shall be effective on the first day of the month following that in which application is made.

(d) A transfer of a portion of a base shall be effective the first day of the month following that in which application for which such transfer is made to the market administrator, except that a portion of a base may be transferred to be effective on March 1 of any year if application for such transfer is filed with the market administrator no later than March 15.

(e) A producer who has received base by transfer on or after March 1 of any year may not transfer any portion of the base for 3 full months following the effective date of such transfer.

(f) A producer who has transferred base on or after March 1 of any year may not receive additional base by transfer for 3 full months from the effective date of such transfer.

(g) A base which is jointly held or in a partnership may be transferred in part or in its entirety only upon application signed by each joint holder or partner, his heirs, executors, or trustee and by the person to whom such base is to be transferred.

(h) A base which has been established by two or more persons operating a dairy farm jointly or as a partnership may be divided among the joint holders or partners if written notification of the agreed division of base signed by each joint holder or partner, his heirs, executor, or trustee, is received by the market administrator prior to the first day of the month on which such division is to be effective.

(i) It must be established to the satisfaction of the market administrator that the conveyance of such base is bona fide and not for the purpose of evading any provision of this order, and comes within the remaining provisions of this section.

(j) A transfer may be made only to a producer (a person who is currently a producer on the market or who will become a producer under the terms of the order by the last day of the month of transfer).

(k) In the case of an intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family) all restrictions on transferring base applicable to the transferor producer shall also apply to the transferee.

(l) A producer who receives a base pursuant to § 1007.91 (c) or (d) may not transfer such base, other than pursuant to paragraph (k) of this section, for 1 year from the date of receipt.

(m) A producer-handler who becomes a producer and receives a base may not transfer that base for a period of 1 year from the date of receipt, except to a member of the immediate family pursuant to paragraph (k) of this section.

(n) A base which has been computed from less than a full production history period may not be transferred, except as an intrafamily transfer pursuant to paragraph (k) of this section.

(o) If a base is held by a corporation, a change in ownership of the stock which transfers control to a new person or persons other than a member of the immediate family of the person transferring such stock will require a transfer of bases and compliance with all base rules therein.

§ 1007.96 Miscellaneous base rules.

The following base rules shall be observed in the determination of bases:

(a) A person who discontinues delivery of producer milk for a period of 90 consecutive days after a Class I base is issued to him shall forfeit his production history, together with any Class I base and production history base held pursuant to the provisions of this order, except that a person entering the military service may retain them until 1 year after being released from active military service.

(b) As soon as production history bases and Class I bases are computed by the market administrator, notice of the amount of each producer's production history base and Class I base shall be given by the market administrator to the producer, to the handler receiving such producer's milk, and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place in his plant a list or lists showing the Class I base of each producer whose milk is received at such plant.

(c) As a condition for designation as a producer-handler pursuant to § 1007.10, any person (including any member of the immediate family of such a person, any affiliate of such a person, or any business of which such a person is a part) who has held Class I base any time during the 12-month period prior to such designation shall forfeit the maximum amount of Class I and production history base held at any time during such 12-month period.

§ 1007.97 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1007.91 through 1007.96 will be subject to the following:

(a) After bases are first issued under this plan and after bases are issued on each succeeding March 1, a producer may request review of the following circumstances because of alleged hardship or inequity:

(1) He was not issued a Class I base;

(2) His production history base is not appropriate because of unusual conditions during the base-earning period such as loss of buildings, herds, or other facilities by fire, flood, or storms, official quarantine, disease, pesticide residue, condemnation of milk, or military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1007.96(a);

(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1007.92; and

(5) Inability to transfer base due to the provisions of § 1007.95 (l), (m), and (n).

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity not later than 45 days after notice pursuant to § 1007.96 with respect to requests pursuant to paragraph (a) (1) or (2) of this section, or not later than 45 days after the occurrence with respect to requests pursuant to paragraph (a) (3), (4), or (5) of this section, setting forth:

(1) Conditions that caused the alleged hardship or inequity;

(2) The extent of the relief or adjustment requested;

(3) The basis upon which the amount of adjustment requested was determined; and

(4) Reasons why the relief or adjustment should be granted.

(c) One or more Producer Base Committees shall be established and function as follows:

(1) Each Producer Base Committee shall consist of five producers appointed by the market administrator.

(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary and at which the applicant may appear in person if he so requests.

(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:

(i) With respect to requests pursuant to paragraph (a) (1), (3), (4), or (5) of this section, grant or adjust production history bases and average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of Class I base, restore forfeited base or reduced average daily producer milk deliveries where appropriate, and permit transfer of base not otherwise possible under the order provisions.

(ii) With respect to requests pursuant to paragraph (a) (2) of this section, either reject the request or provide adjustment in the form of additional production history base and average daily producer milk deliveries for prior years where it appears appropriate and the effective date thereof of such adjustment. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:

(*a*) Loss of milk due to mechanical failure of farm tank or other farm equipment; and

(*b*) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production.

(4) Recommendation of the Producer Base Committee shall:

(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director, Dairy Division, within 45 days after such notification; or

(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmitted.

(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1007.85 for their services at $30 per day or portion thereof, plus necessary travel and subsistence expenses incurred in the performance of their duties as committee members.

(d) The market administrator shall maintain files of all requests for alleviation of hardship and the disposition of such requests. These files shall be open to the inspection of any interested person during the regular office hours of the market administrator.

PART 1071—MILK IN NEOSHO VALLEY MARKETING AREA

Subpart—Order Regulating Handling

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Authority: The provisions of this Part 1071 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

General Provisions

§ 1071.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

Definitions

§ 1071.2 Neosho Valley marketing area.

"Neosho Valley marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Allen, Bourbon, Chautauqua, Cherokee, Crawford, Labette, Montgomery, Neosho, and Wilson, all in the State of Kansas, and the counties of Barton, Jasper, Newton, and Vernon, all in the State of Missouri.

§ 1071.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or sale from a plant or plant store) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1071.4 [Reserved]

§ 1071.5 [Reserved]

§ 1071.6 [Reserved]

§ 1071.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means any milk plant described in paragraph (a) or (b) of this section, which is approved by the appropriate health authority having jurisdiction in the marketing area.

(a) Any plant, hereinafter referred to as a "distributing pool plant," from which:

(1) During the current delivery period there is route disposition, except filled milk, in the marketing area equal to 10 percent or more of such plant's Grade A receipts from dairy farmers as specified in subparagraph (2) of this paragraph; and

(i) During the current delivery period there is disposed of as Class I milk, except filled milk, an amount not less than an applicable percentage of such plant's Grade A receipts as specified in subparagraph (2) of this paragraph as follows: (*a*) April through August, 30 percent; and (*b*) September through March, 45 percent; or

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

(2) The Grade A receipts from dairy farmers to be used in calculating the percentages specified in subparagraph (1) of this paragraph, for each plant shall include all receipts of Grade A milk from dairy farmers and handlers described in § 1071.9(c) subject to the following provisions:

(i) Milk diverted to another plant for the account of the operator of the plant from which the milk was diverted shall be included in the receipts of the plant from which diverted for the purposes of this section, if the milk is claimed as diverted on the report of the diverting handler filed for the month pursuant to § 1071.30 (if such claim is made by the diverting handler, milk so diverted shall be excluded from the receipts of the plant to which diverted); and

(ii) Milk received at a plant operated by a cooperative association from a handler described in § 1071.9(c) (2) shall be excluded from the cooperative association's plant receipts for the purposes of this section.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which

during the delivery period no less than 50 percent of the Grade A milk received from dairy farmers is shipped to a plant(s) described in paragraph (a) of this section: *Provided*, That if such plant is a pool plant during each of the months of September through March it shall be designated as a pool plant in the next succeeding months of April through August, unless the market administrator is requested by means of written application on or before the 7th day after the end of the month that the plant should not be a pool plant. All plants described in this paragraph which are operated by one handler may be considered as a unit, upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice, and the notice of any change in designation, shall be furnished on or before the 7th day following the month to which the notice applies. In any of the months of April through August a unit shall not contain plants which were not qualified as pool plants either individually or as members of another unit, during each of the previous months of September through March.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant that either the Secretary determines disposed of a greater portion of its milk as Class I milk, except filled milk, in another marketing area regulated by another milk marketing agreement or order issued pursuant to the Act or is otherwise determined pursuant to the provisions of another milk marketing agreement or order to be subject to the pricing and payment provisions of such agreement or order.

§ 1071.8 Nonpool plant.

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

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1071.7 and which is neither an other order plant nor a producer-handler plant.

§ 1071.9 Handler.

"Handler" means:

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

(b) Any cooperative association, with respect to milk of its member producers which it causes to be diverted pursuant to § 1071.13 for the account of such association;

(c) Any cooperative association, with respect to milk of its member producers:

(1) For which it elects to report as a handler and which is delivered to the pool plant(s) of another handler in a tank truck owned, operated, or controlled, by such association; or

(2) Delivered for its account to the pool plant of another cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1071.7(c).

§ 1071.10 Producer-handler.

"Producer-handler" means any person who, with the approval of any health authority having jurisdiction in the marketing area, processes milk from his own farm production and disposes of all or a portion of such milk as Class I milk within the marketing area, who receives no milk from producers, and who disposes of no fluid milk products in excess of those (a) received from a pool plant, (b) received from an other order plant that are classified and priced as Class I milk under the other order, and (c) from milk of his own production.

§ 1071.11 [Reserved]

§ 1071.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk under a dairy farm permit or rating issued by the appropriate health authority having jurisdiction in the marketing area over the production of milk disposed of for consumption as Grade A milk whose milk is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1071.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1071.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1071.13 Producer milk.

"Producer milk" shall be that skim milk and butterfat for each handler's account in milk received from producers pursuant to paragraphs (a) and (b) of this section as follows:

(a) For a handler operating a pool plant, producer milk shall include:

(1) Milk received directly from producers' farms (including such handler's own farm production) at such pool plant, except milk received from a handler described in § 1071.9(c); and

(2) Milk diverted by such pool plant operator pursuant to paragraph (c) of this section.

(b) For a handler described in § 1071.9 (b) or (c), producer milk shall include:

(1) Milk received directly from producers' farms for its account at pool plants (such milk shall be considered as having been received by the handler at the plant to which it is delivered and then transferred to the plant operator); and

(2) Milk diverted for its account pursuant to paragraph (c) of this section.

(c) Milk diverted for the account of a pool plant operator or the account of a cooperative association from producers' farms to a nonpool plant that is not a producer-handler plant shall be considered as diverted by the handler for whose account it was diverted, if the diverting handler claimed the diversion on his report for the month filed pursuant to § 1071.30. Milk diverted shall be considered as received at the pool plant from which it was diverted for the purpose of determining applicable location adjustments.

§ 1071.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1071.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1071.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1071.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1071.40(b)(1)) for which the handler fails to establish a disposition.

§ 1071.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1071.40 (b) or (c)(1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1071.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1071.17 Filled milk.

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

§ 1071.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and,

(b) Is authorized by its members to make collective sales or to market milk or its products for its members.

§ 1071.19 Delivery period.

"Delivery period" means a calendar month, or any portion thereof during which this part is in effect.

HANDLER REPORTS

§ 1071.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1071.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1071.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1071.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1071.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1071.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

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

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1071.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1071.32 Other reports.

(a) Each handler who causes milk to be diverted shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1071.30 and 1071.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1071.40 Classes of utilization.

Except as provided in § 1071.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1071.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce;

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1071.41(a) to the receipts specified in § 1071.41(a)(2) and in shrinkage specified in § 1071.41 (b) and (c).

§ 1071.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1071.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent (5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in milk received from a handler described in §1071.9(c), except that if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent (5 percent with respect to skim milk during the months of April, May, and June);

(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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer 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 (4.5 percent with respect to skim milk during the months of April, May, and June) 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 (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; 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 § 1071.9 (b) or (c), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1071.42 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 another pool plant or by a handler described in § 1071.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, 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 § 1071.44(a)(12) and the corresponding step of § 1071.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1071.44(a)(7) or the corresponding step of § 1071.44(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 § 1071.44(a) (11) or (12) or the corresponding steps of § 1071.44(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 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 utilization 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 § 1071.40.

(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 by the market administrator, 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 following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision 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 subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1071.30 for the month within which such transaction occurred; and

(*b*) 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph.

§ 1071.43 General classification rules.

In determining the classification of producer milk pursuant to § 1071.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1071.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1071.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1071.40, 1071.41, and 1071.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1071.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1071.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1071.9(a) for each of his pool plants separately and of each handler described in § 1071.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1071.41(b);

(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 (7) (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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1071.40(b) (1) that were received in packaged form

from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1071.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1071.40(c)(6)), any product specified in § 1071.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1071.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1071.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another 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 (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1071.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8)(i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1071.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in

such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) 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 another pool plant or a handler described in § 1071.9(c) according to the classification of such products pursuant to § 1071.42 (a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1071.44(a)(14) and the corresponding step of § 1071.44(b).

§ 1071.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1071.44(a)(12) and the corresponding step of § 1071.44 (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.

(b) 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 § 1071.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each delivery period, report to each cooperative association which so requests, the amount and class utilization of the milk caused to be delivered to each handler by such cooperative association, either directly or from producers who are members of such cooperative association. For purposes of this report, the milk so delivered by a cooperative association shall be prorated to each class in the proportion that the total quantity of producer milk received by such handler was to the quantity of milk in each class.

Class Prices

§ 1071.50 Class prices.

Subject to the provisions of §1071.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.54: *Provided,* That the price so determined shall be further adjusted by subtracting any amount by which such price exceeds the higher of, or adding any amount by which such price is less than, the lower of the following:

(1) The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period pursuant to Part 1106 of this chapter regulating the handling of milk in the Oklahoma Metropolitan marketing area less 33 cents; or

(2) The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period for Zone 1 under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area, plus 15 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.

§ 1071.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1071.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 50 miles by shortest highway distance as measured by the market administrator, from the nearest of the city halls in Joplin or Nevada, Mo., or Chanute or Independence, Kans., and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1071.50(a) shall be reduced by 10 cents if such plant is located more than 50 miles but not more than 60 miles from such city hall and by an additional 2 cents for each 15 miles or fraction thereof that such distance exceeds 60 miles;

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant in a volume not in excess of that by which 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1071.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply; and

(c) 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.

§ 1071.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1071.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1071.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1071.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1071.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1071.44(a)(14) and the corresponding step of § 1071.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1071.74, that are 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 § 1071.44(a)(9) and the corresponding step of § 1071.44(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 § 1071.44(a)(7) (i) through (iv) and the corresponding step of § 1071.44(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 § 1071.44(a)(7) (v) and (vi) and the corresponding step of § 1071.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(11) and the corresponding step of § 1071.44(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 applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1071.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1071.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1071.60 for all handlers who filed the reports prescribed by § 1071.30 for the month and who made the payments pursuant to §§ 1071.71 and 1071.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1071.75;

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

(d) 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 § 1071.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1071.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments For Milk

§ 1071.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit payments made by handlers pursuant to §§ 1071.71, 1071.76, and 1071.77 and out of which he shall make payments to handlers pursuant to §§ 1071.72 and 1071.77: *Provided,* That payments due to any handler shall be offset by payments due from such handler.

§ 1071.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1) The total value of milk of the handler for such month as determined pursuant to § 1071.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1071.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1071.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1071.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1071.71(a)(2) exceeds the amount computed pursuant to § 1071.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1071.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the last day of each delivery period to each producer for milk received from him during the first 15 days of such delivery period at not less than the Class III price for the preceding delivery period: *Provided,* That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payments for such milk, the handler shall, if the cooperative association so requests, pay such cooperative association at least 2 days before the end of the delivery period, an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph.

(b) On or before the 17th day after the end of each delivery period, for all milk received during such delivery period from such producer at not less than the uniform price for such delivery period computed pursuant to § 1071.61 subject to the following adjustments: (1) The butterfat and location differentials pursuant to §§ 1071.74 and 1071.75; (2) payment made pursuant to paragraph (a) of this section; (3) deductions for marketing services pursuant to § 1071.86, (4) deductions authorized by the producer; and

(5) any error in payments to such producer for past delivery periods: *Provided*, That if by such date such handler has not received full payment for milk for such delivery period pursuant to § 1071.72, he may reduce uniformly per hundredweight, for all producers his payments pursuant to this paragraph, by an amount not in excess of the per hundredweight reduction in payments from the market administrator: *Provided further*, That the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments, pursuant to this paragraph, next following that on which such balance of payment is received from the market administrator: *And provided further*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk, the handler shall, if the cooperative association so requests, pay such cooperative association, on or before the 15th day after the end of each delivery period an amount equal to the sum of the individual payments otherwise payable to such producer in accordance with this paragraph; and

(c) On or before the 17th day after the end of each delivery period, to each handler described in § 1071.9(c) for milk received from such handler, not less than the value of such milk as is classified pursuant to § 1071.42(a) at the class prices, as adjusted by the butterfat differential specified in § 1071.74, that are applicable at the location of the handler's pool plant.

§ 1071.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1-percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1071.75 Plant location adjustments for 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 § 1071.52.

(b) The uniform 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 uniform price shall not be less than the Class III price.

§ 1071.76 Payments by 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 §§ 1071.30(b) and 1071.31(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 route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds 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 value that would have been computed pursuant to § 1071.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1071.60 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, the value of milk determined pursuant to § 1071.60 for such handler shall include, in lieu of the value of other source milk specified in § 1071.60(f) less the value of such other source milk specified in § 1071.71(a)(2)(ii), a value of milk determined pursuant to § 1071.60 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 this month equivalent to the requirements of § 1071.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1071.30(b) and 1071.31(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 value of milk determined pursuant to § 1071.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1071.77 Adjustment of accounts.

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

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1071.85 Assessment for order 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 16th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk received by a pool plant operator (including such handler's own production);

(b) Milk received from a handler described in § 1071.9(c);

(c) Producer milk of a handler described in § 1071.9(b);

(d) Other source milk allocated to Class I pursuant to § 1071.44(a) (7) and (11) and the corresponding step of § 1071.44(b), except such other source milk that is excluded from the computations pursuant to § 1071.60 (d) and (f); and

(e) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1071.76(a)(2).

§ 1071.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1071.73 shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the delivery period, and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received from producers and to provide producers with market information.

(b) *Deductions with respect to members of a cooperative association.* In the case of producers who are members of a cooperative association, or who have given written authorization for the rendering of marketing services and the taking of deductions therefor by a cooperative association, and for whom the Secretary determines such a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by such producers and on or before the 15th day after the end of such delivery period pay over such deduction to the cooperative association rendering such services.

PART 1073—MILK IN WICHITA, KANS., MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1073.85 Assessment for order administration.
1073.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1073 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1073.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1073.2 Wichita, Kans., marketing area.

"Wichita, Kans., marketing area", hereinafter called the marketing area, means all the territory within the counties enumerated below, all within the State of Kansas, together with all territory within the boundaries so designated which is occupied by government (municipal, State or Federal) reservations or installations:

ZONE I

Barber.
Barton.
Butler.
Comanche.
Cowley.
Edwards.
Ellis.
Harper.
Harvey.
Kingman.
Kiowa.
Marion.
McPherson.
Pawnee.
Pratt.
Reno.
Rice.
Rush.
Russell.
Sedgwick.
Stafford.
Sumner.

ZONE II

Clark.
Finney.
Ford.
Gove.
Grant.
Gray.
Greeley.
Hamilton.
Haskell.
Hodgeman.
Kearny.
Lane.
Meade.
Morton.
Ness.
Scott.
Seward.
Stanton.
Stevens.
Trego.
Wichita.

§ 1073.3 Route disposition.

"Route disposition" means a delivery from a distributing plant (including a delivery by a vendor, from a plant store or through a vending machine) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1073.4 [Reserved]

§ 1073.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which during the month route disposition is made in the marketing area.

§ 1073.6 Supply plant.

"Supply plant" means a plant from which fluid milk products, acceptable to

an appropriate health authority for distribution under a Grade A label, are shipped during the month to and physically received at a distributing plant.

§ 1073.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b) or (c), of this section.

(a) Any distributing plant:

(1) From which route disposition, except filled milk, is an amount equal to 25 percent or more during the months of March through July and 35 percent during all other months of such plant's total receipts of Grade A milk direct from dairy farmers, supply plants, and handlers, described in § 1073.9(c) and route disposition in the marketing area is an amount equal to 10 percent or more of such receipts. In any case in which the entire quantity of fluid milk products, except filled milk, disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in subparagraph (1) of this paragraph;

(b) Any supply plant from which during the month 50 percent or more of the Grade A milk received from dairy farmers and handlers described in § 1073.9(c) is shipped to a plant(s) described in paragraph (a) of this section. Any supply plant which has shipped to a plant(s) described in paragraph (a) of this section the required percentages of its receipts during each of the months of August through November shall be designated a pool plant in each of the following months of December through July unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments; and

(c) Any plant which is operated by a cooperative association and 60 percent or more of the milk delivered during the current month by producers who are members of such association is delivered directly or is transferred by the association to pool plants as described in paragraphs (a) and (b) of this section, unless such a plant qualifies for the month as a "pool plant" under another order issued pursuant to the Act by delivering 50 percent or more of its Grade A receipts from dairy farmers to plants which qualified as "pool plants" under such other order.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of December through July, if such plant retains automatic pooling status under this part.

§ 1073.8 Nonpool plant.

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

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant which has route disposition in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped to a pool plant.

§ 1073.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of its member producers which is diverted pursuant to § 1073.13 for the account of such association;

(c) A cooperative association with respect to milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case, the milk is received from producers by the cooperative association at the location of the plant to which it is delivered;

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

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1073.7(d).

§ 1073.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets the qualifications specified in paragraphs (a) and (b) of this section:

(a) His disposition of fluid milk products does not exceed his own farm production, receipts of fluid milk products from pool plants and receipts of packaged fluid milk products from other order plants; and

(b) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

§ 1073.11 [Reserved]

§ 1073.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is:

(1) Received at a pool plant; or

(2) Diverted as producer milk pursuant to § 1073.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1073.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1073.13 Producer milk.

"Producer milk" shall be that skim milk and butterfat for each handler's account in the following milk from producers:

(a) With respect to the operations of a pool plant:

(1) Received directly from such producers;

(2) Diverted by the operator of such pool plant to a nonpool plant that is not

a producer-handler plant, subject to the condition of paragraph (c) of this section; and

(3) Which is received at such pool plant from a handler described in § 1073.9(c), for all purposes other than those specified in paragraph (b)(2)(i) of this section;

(b) With respect to receipts by a cooperative association in addition to those pursuant to paragraph (a) of this section:

(1) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant by a cooperative association acting as a handler as described in § 1073.9(b), subject to the condition of paragraph (c) of this section; and

(2) For which the cooperative association is the handler as described in § 1073.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1073.30(c) and 1073.31(a) and making payments to producers pursuant to § 1073.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler; and

(c) For the purposes of location adjustments pursuant to §§ 1073.52 and 1073.75, milk diverted shall be priced at the location of the pool plant from which diverted.

§ 1073.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1073.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1073.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1073.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1073.40(b)(1)) for which the handler fails to establish a disposition.

§ 1073.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1073.40 (b) or (c)(1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1073.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1073.17 Filled milk.

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

§ 1073.18 Cooperative association.

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

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

Handler Reports

§ 1073.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1073.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1073.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1073.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1073.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1073.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

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

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1073.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1073.32 Other reports.

In addition to the reports required pursuant to §§ 1073.30 and 1073.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1073.40 Classes of utilization.

Except as provided in § 1073.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1073.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1073.41(a) to the receipts specified in § 1073.41(a)(2) and in shrinkage specified in § 1073.41 (b) and (c).

§ 1073.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1073.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1073.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1073.9(c), except that if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph 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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(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 by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; 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 § 1073.9 (b) or (c), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1073.42 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 another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, 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 § 1073.44(a)(12) and the corresponding step of § 1073.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1073.44(a)(7) or the corresponding step of § 1073.44(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 § 1073.44(a)(11) or (12) or the corresponding steps of § 1073.44(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 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 utilization 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 § 1073.40.

(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 by the market administrator, 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 following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision 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 subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1073.30 for the month within which such transaction occurred; and

(*b*) 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph.

§ 1073.43 General classification rules.

In determining the classification of producer milk pursuant to § 1073.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1073.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1073.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1073.40, 1073.41, and 1073.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1073.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1073.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1073.9(a) for each of his pool

plants separately and of each handler described in § 1073.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1073.41(b);

(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 (7)(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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1073.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1073.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1073.40(c)(6)), any product specified in § 1073.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1073.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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;

(8) Substract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (*a*) through (*c*) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) 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 subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1073.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8) (i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1073.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) 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 another pool plant according to the classification of such products pursuant to § 1073.42 (a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1073.44(a)(14) and the corresponding step of § 1073.44(b).

§ 1073.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1073.44(a)(12) and the corresponding step of § 1073.44(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.

(b) 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 § 1073.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 13th day of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers or from a handler described in § 1073.9(c) in each class by each handler who in the previous month received milk from members of such cooperative association.

CLASS PRICES

§ 1073.50 Class prices.

Subject to the provisions of § 1073.52, the class prices for the month per hundredweight of milk containing 3.5-percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.80. Such price shall not be less than the Class I price established for the same month pursuant to Part 1064 (Greater Kansas City) of this chapter, nor more than the Greater Kansas City Class I price plus 60 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.

§ 1073.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1-percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1073.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1073.9(c) at a pool plant and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to subparagraph (4) of this paragraph, the price at such pool plant when located:

(1) In Zone I of the marketing area, shall be that computed pursuant to § 1073.50(a);

(2) In Zone II of the marketing area, shall be 5 cents more than the Zone I price;

(3) Outside the marketing area, shall be the Class I price applicable at the nearest of the city halls in Garden City, Hays, Pratt, or Wichita, Kan., subject to a reduction of 12 cents if the distance to such city hall is 70 miles or more, but less than 80 miles, plus an additional 1.5 cents for each 10 miles or fraction thereof in excess of 79 miles (all distances to be by shortest hard-surfaced highway, as determined by the market administrator); and

(4) For purposes of calculating such location adjustments, transfers of fluid milk products between pool plants shall be assigned Class I milk disposition at the receiving plant, in excess of the sum of receipts at such plant from producers (including receipts from a handler described in § 1073.9(c)) and the pounds assigned as Class I milk to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to shipping plants priced at the same zone price, next to plants priced at the other zone price, and then in sequence beginning with the plant at which the least location adjustment credit would apply.

(b) 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.

§ 1073.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1073.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes

is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1073.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1073.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1073.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1073.44(a)(14) and the corresponding step of § 1073.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1073.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) 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 for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(9) and the corresponding step of § 1073.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1073.44(a)(9) and the corresponding step of § 1073.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1073.44 (a)(12) and the corresponding step of § 1073.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in subparagraph (1) of this paragraph;

(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 § 1073.44(a)(7) (i) through (iv) and the corresponding step of § 1073.44(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 § 1073.44(a)(7) (v) and (vi) and the corresponding step of § 1073.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(11) and the corresponding step of § 1073.44(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 applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1073.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1073.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5-percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1073.60 for all handlers who filed the reports prescribed by § 1073.30 for the month and who made the payments pursuant to §§ 1073.71 and 1073.73 for the preceding month;

(b) Deduct the amount of the plus adjustments and add the amount of the minus adjustments, which are applicable pursuant to § 1073.75;

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

(d) 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 § 1073.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1073.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1073.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1073.71, 1073.76, and 1073.77, and out of which he shall make all payments to handlers pursuant to §§ 1073.72 and 1073.77.

§ 1073.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1) The total value of milk of the handler for such month as determined pursuant to § 1073.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1073.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1073.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1073.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any (for each pool plant, if applicable), by which the amount computed pursuant to § 1073.71(a)(2) exceeds the amount computed pursuant to § 1073.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1073.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the second working day following the 12th 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 uniform price computed pursuant to § 1073.61 for such producer's deliveries of milk, adjusted by the butterfat differential and location adjustments computed pursuant to §§ 1073.74 and 1073.75, 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 § 1073.72, 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) On or before the 27th day of each month, to each producer:

(1) To whom payment is not made pursuant to paragraph (c) of this section; and

(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 110 percent of the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling;

(c) On or before the 14th day after the end of each month and on or before the 24th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which it caused to be delivered to such handler from producers, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payments due on or before the 14th day after the end of the month shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1073.31, and payments due on or before the 24th day of the month shall be accompanied by a statement of the amount of money for each producer; and

(d) Each handler who receives milk from a handler described in § 1073.9(c), shall, on or before the second day prior to the date payments are due individual producers, pay such handler for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the amount prescribed in paragraph (b)(2) of this section; and

(2) In making final settlement, the value of such milk at the uniform price, adjusted pursuant to §§ 1073.74 and 1073.75, less payment made pursuant to subparagraph (1) of this paragraph.

§ 1073.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1073.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located outside Zone 1, 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 § 1073.52(a).

(b) For purposes of computations pursuant to §§ 1073.71(a)(2)(ii) and 1073.72, the uniform price shall be adjusted at the rates set forth in § 1073.52, applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1073.76 Payments by 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 §§ 1073.30(b) and 1073.31(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 route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds 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 value that would have been computed pursuant to § 1073.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1073.60 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, the value of milk determined pursuant to § 1073.60 for such handler shall include, in lieu of the value of other source milk specified in § 1073.60(f) less the value of such other source milk specified in § 1073.71(a)(2)(ii), a value of milk determined pursuant to § 1073.60 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 § 1073.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1073.30 (b) and 1073.31(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 value of milk determined pursuant to § 1073.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1073.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 1073.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed;

(b) Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1073.72, the market administrator shall, within 5 days, make payment to such handler;

(c) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure; and

(d) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation, payment to such producer was in an amount more than was required to be paid pursuant to § 1073.73, no handler shall be deemed to be in violation of § 1073.73 if he reduces his next payment to such producer following discovery of such error by not more than such overpayment.

§ 1073.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1073.71, § 1073.77(a), or § 1073.85 shall be increased one-half of 1 percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1073.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1073.13(a)(3)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1073.44(a) (7) and (11) and the corresponding steps of § 1073.44(b), except such other source milk that is excluded from the computations pursuant to § 1073.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1073.76(a)(2).

§ 1073.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 1073.73(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 14th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services; and

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 1073.73(a) as are authorized by such producers, and on or before the 14th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

PART 1090—MILK IN THE CHATTANOOGA, TENN., MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1090 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1090.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1090.2 Chattanooga, Tenn., marketing area.

The Chattanooga, Tenn., marketing area, hereinafter called the "marketing area", means all the territory within the boundaries of the following counties:

IN TENNESSEE

Bradley.
Hamilton.
Marion.
McMinn.
Meigs.
Monroe.
Polk.
Rhea.
Sequatchie.

IN GEORGIA

Catoosa.
Chattooga.
Dade.
Fannin.
Murray.
Walker.
Whitfield.

§ 1090.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk other than a delivery to any milk or filled milk processing plant.

§ 1090.4 [Reserved]

§ 1090.5 [Reserved]

§ 1090.6 [Reserved]

§ 1090.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section.

(a) A distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk which during the month has route disposition, except filled milk, equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers and which has route disposition within the marketing area equal to at least 15 percent of its total Class I disposition.

(b) A supply plant which, during the month, ships fluid milk products, except filled milk, approved or recognized by a duly constituted health authority as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided,* That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July unless the operator of such plant files with the market administrator prior to the first day of any of the months of March–July a written request for withdrawal.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk delivered to other pool plants by approved dairy farmers who are members of such cooperative association plus the milk which is transferred thereto from the plant operated by the cooperative association is equal to not less than 50 percent of the total volume of milk delivered to all plants by approved dairy farmers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; or

(2) Upon application to the market administrator for nonpool status and a subsequent determination by the Secretary, a plant specified in subdivision (i) or (ii) of this subparagraph:

(i) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless a greater volume of Class I milk, except filled milk, is disposed of from such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Chattanooga, Tenn., marketing area than in the marketing area regulated pursuant to such order; or

(ii) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant for each of the preceding months of August through February.

§ 1090.8 Nonpool plant.

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

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1090.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to milk of producers diverted for the account of such association pursuant to § 1090.13;

(c) [Reserved]

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

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1090.7(d).

§ 1090.10 Producer-handler.

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which there is route disposition in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1090.11 Approved dairy farmer.

"Approved dairy farmer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority.

§ 1090.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any approved dairy farmer whose milk is physically received at a pool plant or diverted pursuant to § 1090.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1090.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1090.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) Received at a pool plant directly from a producer; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-

handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant from which diverted;

(2) In any month of September through November that less than 4 days' production of a producer is delivered to pool plants, the quantity of milk of the producer diverted during the month that exceeds that delivered to pool plants shall not be deemed to have been received at a pool plant and shall not be producer milk;

(3) A cooperative association may divert for its account the milk of any member-producer: *Provided,* That in any month of September through November the total quantity of milk so diverted that exceeds 35 percent of the milk physically received from member-producers at all pool plants during the month shall not be deemed to have been received at a pool plant and shall not be producer milk;

(4) The operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association: *Provided,* That in any month of September through November the total quantity of milk so diverted that exceeds 35 percent of the milk physically received at such pool plant during the month from producers who are not members of a cooperative association shall not be deemed to have been received at a pool plant and shall not be producer milk; and

(5) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (3) and (4) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1090.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1090.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1090.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1090.40(b)(1)) for which the handler fails to establish a disposition.

§ 1090.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1090.40(b) or (c)(1)(i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1090.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1090.17 Filled milk.

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

§ 1090.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

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

HANDLER REPORTS

§ 1090.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1090.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1090.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1090.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1090.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

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

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1090.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1090.32 Other reports.

(a) Each handler who receives milk from producers shall report to the market administrator:

(1) On or before the date prior to diverting producer milk pursuant to § 1090.13 his intention to divert such milk, the date or dates of such diversions, and the nonpool plant to which such milk is to be diverted.

(2) On or before the sixth day after the end of each of the months of March

through July, the aggregate quantity of base milk received during the month at each of his pool plants, and on or before the 20th day after the end of each of the months of March through July the pounds of base milk received during the month from each producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1090.30 and 1090.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1090.40 Classes of utilization.

Except as provided in § 1090.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1090.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section that are dumped by a handler if the market administrator is notified of such dumping in advance and is given the opportunity to vertify such disposition;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1090.41(a) to the receipts specified in § 1090.41(a)(2) and in shrinkage specified in §1090.41 (b) and (c).

§ 1090.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1090.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(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 by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (4), (5), and (6) of this paragraph; 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 § 1090.9(b), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests, determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1090.42 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 another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, 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 § 1090.44(a)(12) and the corresponding step of § 1090.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1090.44(a)(7) or the corresponding step of § 1090.44(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 §1090.44(a)(11)

or (12) or the corresponding steps of § 1090.44(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 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 utilization 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 § 1090.40.

(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 by the market administrator, 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 following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision 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 subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1090.30 for the month within which such transaction occurred; and

(*b*) 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph.

§ 1090.43 General classification rules.

In determining the classification of producer milk pursuant to § 1090.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1090.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1090.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1090.40, 1090.41, and 1090.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1090.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1090.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1090.9(a) for each of his pool plants separately and of each handler described in § 1090.9(b) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1090.41(b);

(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 (7)(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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1090.40(c)(6)), any product specified in § 1090.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1090.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i), of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) 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 subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1090.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8)(i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation

step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1090.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) 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 another pool plant according to the classification of such products pursuant to § 1090.42(a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1090.44(a)(14) and the corresponding step of § 1090.44(b).

§ 1090.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1090.44(a)(12) and the corresponding step of § 1090.44(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.

(b) 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 § 1090.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1090.50 Class prices.

Subject to the provisions of § 1090.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.15.

(b) *Class II price.* The Class II price shall be the basic formula price for the months plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1090.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1090.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk (for which a location adjustment is applicable) at a plant that is north of either the southern boundary of the State of Tennessee or the northern boundary of the State of South Carolina and more than 65 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the city hall in Chattanooga shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 75 miles (by the shortest hard-surface highway distance as determined by the market administrator) that such plant is from the city hall in Chattanooga.

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

(c) The 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.

§ 1090.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1090.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1090.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1090.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1090.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1090.44(a)(14) and the corresponding step of § 1090.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1090.74, that are 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 § 1090.44(a)(9) and the corresponding step of § 1090.44(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 § 1090.44(a)(7) (i) through (iv) and the corresponding step of § 1090.44 (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 § 1090.44(a)(7) (v) and (vi) and the corresponding step of § 1090.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(11) and the corresponding step of § 1090.44(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.

§ 1090.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February, the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1090.60 for all handlers who filed the reports prescribed by § 1090.30 for the month and who made the payments pursuant to §§ 1090.71 and 1090.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1090.75;

(3) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

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

(i) The total hundredweight of producer milk included in subparagraph (1) of this paragraph; and

(ii) The total hundredweight for which a value is computed pursuant to § 1090.60(f); and

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

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk assigned to Class III milk in the pool plants of such handlers by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk which does not exceed the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in subparagraph (1) of this paragraph by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations pursuant to paragraph (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in subparagraph (2) of this paragraph times the hundredweight of excess milk from the amount computed pursuant to subparagraph (3) of this paragraph;

(5) Divide the amount calculated pursuant to subparagraph (4) of this paragraph by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to subparagraph (5) of this paragraph. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1090.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1090.61 for such month.

PAYMENTS FOR MILK

§ 1090.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1090.71, 1090.76, and 1090.77, and out of which he shall make all payments pursuant to §§ 1090.72 and 1090.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1090.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1) The total value of milk of the handler for such month as determined pursuant to § 1090.60.

(2) The sum of:

(i) The value of the uniform prices, as adjusted pursuant to § 1090.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1090.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1090.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1090.71(a)(2) exceeds the amount computed pursuant to § 1090.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1090.73 Payments to producers and to cooperative associations.

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

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class 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 paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s), as adjusted pursuant to §§ 1090.74 and 1090.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

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

(ii) Less deductions for marketing services made pursuant to § 1090.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: *Provided,* That if by such date such handler has not received full payment from the market administrator pursuant to § 1090.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section; and

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

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

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of March through July the total pounds of base milk received, (iii) the amount or rate and nature of any deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1090.77.

§ 1090.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1090.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices computed pursuant to § 1090.61 to be paid for producer milk received at a pool plant shall be reduced according to the location of the pool plant where such milk was received each at the rates set forth in § 1090.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1090.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1090.76 Payments by 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 §§ 1090.30(b) and 1090.31(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 route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds 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 value that would have been computed pursuant to § 1090.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1090.60 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, the value of milk determined pursuant to § 1090.60 for such handler shall include, in lieu of the value of other source milk specified in § 1090.60(f) less the value of such other source milk specified in § 1090.71(a)(2)(ii), a value of milk determined pursuant to § 1090.60 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 § 1090.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1090.30 (b) and 1090.31(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 value of milk determined pursuant to § 1090.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1090.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1090.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1090.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1090.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

Administrative Assessment and Marketing Service Deduction

§ 1090.85 Assessment for order administration.

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

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1090.44(a) (7) and (11) and the corresponding steps of § 1090.44(b), except such other source milk that is excluded from the computations pursuant to § 1090.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1090.76(a)(2).

§ 1090.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1090.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

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

Base-Excess Plan

§ 1090.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months of March through July which is not in excess of such producer's daily average base computed pursuant to § 1090.92, multiplied by the number of days in such month.

§ 1090.91 Excess milk.

"Excess milk" means milk received at pool plants from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 1090.92.

§ 1090.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1090.93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk received from such producer at all pool plants during the months of September through January immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of January, inclusive, or by 120, whichever is more: *Provided*, That any producer who, during the preceding months of September

through January, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base in the same manner as if he had been a producer during such period, calculated from his deliveries during such September–January period to such plant.

§ 1090.93 Base rules.

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

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base calculated pursuant to § 1090.92 to each person for whose account producer milk was delivered to pool plants during the months of September through January;

(b) A base which is assigned pursuant to the proviso of § 1090.92 shall be nontransferable. An entire base which is otherwise assigned shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to transferred: *Provided,* That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred; and

(c) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month on which such division is to be effective.

§ 1090.94 Announcement of established bases.

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

PART 1094—MILK IN NEW ORLEANS MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

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

GENERAL PROVISIONS

§ 1094.1 General provisions.

The terms, definitions, and provisions, in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1094.2 New Orleans marketing area.

New Orleans marketing area, hereinafter referred to as the marketing area, means all territory, including incorporated municipalities, within Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, and Terrebonne Parishes, all in the State of Louisiana.

§ 1094.3 Route disposition.

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

§ 1094.4 [Reserved]

§ 1094.5 Distributing plant.

Distributing plant means any plant at which fluid milk products, eligible for distribution in the marketing area under a Grade A label, are processed and packaged and from which there is route disposition of fluid milk products in the marketing area.

§ 1094.6 Supply plant.

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

§ 1094.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c), of this section.

(a) A distributing plant from which during the month:

(1) Route disposition in the marketing area of fluid milk products, except filled milk, is at least the lesser of a daily average of 1,500 pounds or 20 percent of receipts from dairy farmers, handlers described in § 1094.9(c), and supply plants; and

(2) Total route disposition of fluid milk products, except filled milk, is 50 percent or more of receipts from dairy farmers, handlers described in § 1094.9 (c), and supply plants.

(b) A supply plant from which not less than 45 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to and received at plants qualifying for the month pursuant to paragraph (a) of this section. Any supply plant meeting such shipping standard for each of the months of August through November shall continue to be a pool plant the following months of December through July unless the operator notifies the market administrator in writing before the first day of any such month of his intent to withdraw such plant as a plant qualified under this paragraph, in which case such plant thereafter shall be a nonpool plant except in any month it meets the above 45 percent shipping standard.

(c) For the purpose of meeting the minimum 45 percent shipping standard of paragraph (b) of this section by a supply plant operated by a cooperative association, all member-dairy farmer milk delivered directly from farms pursuant to § 1094.9(c), to distributing plant(s) qualified under paragraph (a) of this section will be considered to have

been first received at that supply plant of the cooperative located nearest New Orleans, La., and then shipped therefrom to such distributing plant(s). The cooperative association may withdraw such supply plant from qualification under this section:

(1) If the cooperative notifies the market administrator in writing prior to or during the month of its intention not to qualify the plant under this section during that month; and

(2) The milk actually shipped during the month from such plant to plant(s) qualified under paragraph (a) of this section is less than 45 percent of the Grade A milk actually received from dairy farmers at such supply plant during the month.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless there is greater route disposition, except filled milk, during the month in the New Orleans marketing area than in the marketing area defined in such other order; and

(3) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to paragraph (b) of this section.

§ 1094.8 Nonpool plant.

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

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

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

§ 1094.9 Handler.

"Handler" means:

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

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with § 1094.13;

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

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

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1094.7(d).

§ 1094.10 Producer-handler.

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

§ 1094.11 [Reserved]

§ 1094.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which is received at a pool plant or by a handler described in § 1094.9(c) or is diverted pursuant to § 1094.13(d).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1094.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1094.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer;

(b) Received at a pool plant from a handler described in § 1094.9(c);

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; and

(d) Diverted by the operator of a pool plant or a cooperative association to a nonpool plant, that is not a producer-handler plant, subject to the following conditions:

(1) During December through July such diversions may be made without limit;

(2) During August through November such diversions shall be limited to the amounts specified in subdivisions (i), (ii), and (iii) of this subparagraph:

(i) A cooperative association may divert the milk of any eligible member-dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of the cooperative's total member producer milk during that month;

(ii) The operator of a pool plant may divert from such plant the milk of any eligible nonmember dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of his nonmember producer milk during that month; and

(iii) If the 35 percent limitation described in subdivisions (i) and (ii) of this subparagraph is exceeded, the diversion of any eligible dairy farmer's milk shall be limited to 15 days' production during any such month. If this 15-day limitation is exceeded for any such dairy farmer, he shall be eligible for pooling only with respect to that milk physically received at pool plants during the month; and

(3) Diverted milk shall be deemed to have been received at the location of the plant to which diverted.

§ 1094.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1094.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1094.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1094.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1094.40(b)(1)) for which the handler fails to establish a disposition.

§ 1094.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1094.40 (b) or (c) (1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5-percent nonfat milk solids, and whey; 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.

§ 1094.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1094.17 Filled milk.

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

§ 1094.18 Cooperative association.

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

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

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

HANDLER REPORTS

§ 1094.30 Reports of receipts and utilization.

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

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1094.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1094.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1094.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1094.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1094.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

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

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1094.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1094.32 Other reports.

(a) Each handler who operates an other order plant with route disposition in the marketing area shall report such disposition to the market administrator on or before the seventh day after the end of each month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1094.30 and 1094.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1094.40 Classes of utilization.

Except as provided in § 1094.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1094.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids; frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this

section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1094.41(a) to the receipts specified in § 1094.41(a)(2) and in shrinkage specified in § 1094.41 (b) and (c).

§ 1094.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1094.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1094.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph 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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(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 by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; 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 § 1094.9 (b) or (c), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1094.42 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 another pool plant or by a handler described in § 1094.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, 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-plant or divertee-plant after the computations pursuant to § 1094.44 (a)(12) and the corresponding step of § 1094.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1094.44(a)(7) or the corresponding step of § 1094.44(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-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1094.44(a) (11) or (12) or the corresponding steps of § 1094.44(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-plant or divertee-plant; and

(4) Unless a different utilization is claimed by both handlers, skim milk or butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as the operator of a pool plant or as a handler described in § 1094.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1094.44(a)(13)(i) and the corresponding step of § 1094.44(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 utilization 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 § 1094.40.

(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 by the market administrator, 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 following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision 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 subdivisions (ii) through (ix) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1094.30 for the month within which such transaction occurred; and

(*b*) 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Except as provided in subdivision (ix) of this subparagraph, transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant;

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph; and

(ix) Transfers of bulk fluid milk products from a nonpool plant to a pool plant that are not in excess of bulk receipts during the month at such nonpool plant from pool plants shall be classified pursuant to paragraph (a) of this section as if moved directly from the first pool plant to the second pool plant with Class II or Class III utilization indicated. If the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers unless at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

§ 1094.43 General classification rules.

In determining the classification of producer milk pursuant to § 1094.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1094.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1094.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1094.40, 1094.41, and 1094.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1094.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1094.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1094.9(a) for each of his pool plants separately and of each handler described in § 1094.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1094.41(b);

(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 by handlers fully regulated under 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 (7) (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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1094.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1094.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1094.40(c)(6)), any product specified in § 1094.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1094.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1094.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) 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 subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1094.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8) (i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk in Class I and 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1094.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the

computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract in the following order 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:

(i) Another pool plant or a handler described in § 1094.9(c) according to the classification of such products pursuant to § 1094.42(a); and

(ii) A handler described in § 1094.9 (c) according to the classification of such products pursuant to § 1094.42(a)(4); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1094.44(a)(14) and the corresponding step of § 1094.44(b).

§ 1094.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1094.44(a)(12) and the corresponding step of § 1094.44(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.

(b) 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 § 1094.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

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

CLASS PRICES

§ 1094.50 Class prices.

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

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85.

(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.

§ 1094.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1094.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers or from a handler described in § 1094.9(c) at a pool plant more than 50 miles by shortest toll-free highway distance, as determined by the market administrator, from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, La., and utilized as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1094.50 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

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

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

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

(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.

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1094.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1094.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1094.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursu-

ant to § 1094.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1094.44(a)(14) and the corresponding step of § 1094.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1094.74, that are 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 § 1094.44 (a)(9) and the corresponding step of § 1094.44(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 § 1094.44(a)(7) (i) through (iv) and the corresponding step of § 1094.44 (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 § 1094.44(a)(7) (v) and (vi) and the corresponding step of § 1094.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1094.44 (a)(11) and the corresponding step of § 1094.44(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.

§ 1094.61 Computation of uniform price.

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

(a) Combine into one total the individual values of milk of all handlers computed pursuant to § 1094.60 except those of handlers who failed to make payments required pursuant to §§ 1094.71 and 1094.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1094.75;

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

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

(1) The total hundredweight of producer milk included pursuant to paragraph (a) of this section; and

(2) The total hundredweight for which a value is computed pursuant to § 1094.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers.

§ 1094.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1094.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1094.71, 1094.76, and 1094.77, and out of which he shall make all payments pursuant to §§ 1094.72 and 1094.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1094.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1) The total value of milk of the handler for such month as determined pursuant to § 1094.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1094.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1094.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1094.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1094.71(a)(2) exceeds the amount computed pursuant to § 1094.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1094.73 Payments to producers and to cooperative associations.

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

(1) On or before the last day of each month to each producer, who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class 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 paragraph;

(2) On or before the 15th day of the following month, each handler shall make payment to each producer for milk which was received from him during the month at not less than the uniform price, as adjusted pursuant to §§ 1094.74 and 1094.75, subject to the following adjustments:

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

(ii) Less deductions for marketing services made pursuant to § 1094.86;

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

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

(v) If by such date such handler has not received full payment from the market administrator pursuant to § 1094.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

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

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

(2) On or before the 15th day of the following month (i) the pounds of milk received from the producer each day and the total for the month, together with the butterfat content of such milk, (ii) the amount (or rate) and nature of deductions made from payments, and (iii) the amount and nature of payments due pursuant to § 1094.77.

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

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

(2) Report to the cooperative association on or before the 25th day of the month, the pounds of milk received from each member of the cooperative association during the first 15 days of such month and on or before the 7th day of the following month to the cooperative association for its individual members the following information: (i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount (or rate) and nature of deductions made from payments and (iii) the amount and nature of payments due pursuant to § 1094.77. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

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

(d) Each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler pursuant to § 1094.9(a) and § 1094.9(c) as follows:

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

(2) On or before the 12th day after the end of each month in which it was received at not less than the class prices, as adjusted by the butterfat differential specified in § 1094.74, that are applicable at the location of the receiving handler's pool plant, plus the amount due the market administrator from the cooperative association on such milk pursuant to § 1094.85, less amounts paid pursuant to subparagraph (1) of this paragraph.

§ 1094.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1094.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, each at the rates set forth in § 1094.52(a); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1094.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1094.76 Payments by 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 §§ 1094.30(b) and 1094.31(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 route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds 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 value that would have been computed pursuant to § 1094.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1094.60 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, the value of milk determined pursuant to § 1094.60 for such handler shall include, in lieu of the value of other source milk specified in § 1094.60(f) less the value of such other source milk specified

in § 1094.71(a)(2)(ii), a value of milk determined pursuant to § 1094.60 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 § 1094.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1094.30(b) and 1094.31(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 value of milk determined pursuant to § 1094.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1094.77 Adjustment of accounts.

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

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1094.85 Assessment for order administration.

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

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

(b) Other source milk allocated to Class I pursuant to § 1094.44(a) (7) and (11) and the corresponding steps of § 1094.44(b), except such other source milk that is excluded from the computations pursuant to § 1094.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1094.76(a)(2).

§ 1094.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1094.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

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

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1096 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1096.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1096.2 Northern Louisiana marketing area.

"Northern Louisiana marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the Parishes of Bossier, Caddo, Claiborne, De Soto, Lincoln, Morehouse,

Ouachita, Red River, Union, and Webster, all in the State of Louisiana.

§ 1096.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product(s) classified as Class I milk from a plant to wholesale or retail outlets (including any disposition by a vendor, from a plant store, or through a vending machine) other than a delivery to another plant.

§ 1096.4 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and/or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distributing depot for fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1096.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of Grade A fluid milk products during the month in the marketing area.

§ 1096.6 Supply plant.

"Supply plant" means a plant from which fluid milk products eligible for distribution in the marketing area under a Grade A label are moved to a distributing plant during the month.

§ 1096.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraphs (a), (b), or (c) of this section.

(a) A distributing plant from which during the month there is route disposition, except filled milk, of not less than 50 percent of the Grade A milk received at such plant from dairy farmers and a handler described in § 1096.9(c) unless the volume so disposed of in the marketing area is less than 10 percent of such receipts or less than 1,500 pounds on a daily average;

(b) A supply plant from which a volume of fluid milk products not less than 50 percent of its Grade A receipts from dairy farmers and from a handler described in § 1096.9(c) is transferred during the month of a distributing plant(s) from which there is route disposition, except filled milk, of not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants during the month and the volume so disposed of in the marketing area is at least 10 percent of such receipts or a daily average of 1,500 pounds whichever is less: *Provided*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through January shall be a pool plant in each of the following months of February through August in which it does not meet the shipping requirements, unless written request is filed with the market administrator prior to the beginning of any such month for nonpool status for the remaining months through August; and

(c) A nondistributing plant, which is operated by a cooperative association and which did not meet the shipping requirements of paragraph (b) of this section, shall be a pool plant in any month in which the volume of milk received at pool distributing plants directly from member producers or a handler described in § 1096.9(c) is not less than 60 percent of the total pounds of member producer milk pooled during the month, except that on written request for nonpool status for any month, made to the market administrator prior to the beginning of such month, the plant shall be a nonpool plant for the month and for each of the succeeding 11 months in which it does not qualify as a pool plant pursuant to paragraph (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant operated by a governmental agency;

(3) A distributing plant meeting the requirements of § 1096.7(a) which also meets the pooling requirements of another Federal order and from which the Secretary determines route disposition, except filled milk, during the month in such other Federal order marketing area was greater than route disposition in this marketing area, and which was fully subject to the classification and pooling provisions of such other order; and

(4) A distributing plant meeting the requirements of § 1096.7(a) which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

§ 1096.8 Nonpool plant.

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

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is not an other order plant, a producer-handler plant, or an exempt plant.

(e) "Exempt plant" means a plant operated by a governmental agency.

§ 1096.9 Handler.

"Handler" means:

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

(b) A cooperative association with respect to the milk of any member producer which it causes to be diverted pursuant to § 1096.12 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of any member producer which it causes to be delivered to a pool plant in a tank truck owned and operated by or under contract to such cooperative association for the account of such cooperative association, if the cooperative association, prior to delivery, furnishes written notice to the market administrator and to the handler to whose plant the milk is delivered that it will be the handler for such milk. The milk so delivered shall be considered to have been received by such cooperative association at a pool plant at the location of the pool plant to which it is delivered;

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

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1096.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1096.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided*, That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of Class I milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risk of such person.

§ 1096.11 [Reserved]

§ 1096.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received at a pool plant or by a handler described in § 1096.9(c), or is diverted from a pool plant to a nonpool plant that is not a producer-handler plant during any month(s) of February through August or in accordance with the provisions of subparagraph (1), (2), or (3) of this paragraph during any month of September through January: *Provided*, That the milk so diverted shall be deemed to have been received at the location of the pool plant from which diverted: *Provided further*, That if a handler diverting milk pursuant to subparagraph (2) or (3) of this paragraph diverts in excess of the limits prescribed, all diversions by such handler during the month shall be pursuant to subpara-

graph (1) of this paragraph: *And provided further*, That if a handler diverting milk pursuant to subparagraph (1) of this paragraph diverts milk of any dairy farmer in excess of the limits prescribed, such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant:

(1) Not more than 10 days' production during the month unless (i) in the case of a cooperative association, all of the diversions of milk of member producers by the cooperative association during the month fall within the limits prescribed in subparagraph (2) of this paragraph, or (ii) in the case of a pool handler (other than a cooperative association) diverting milk of nonmember producers, all of such diversions from such plant fall within the limits prescribed in subparagraph (3) of this paragraph.

(2) The diversion is the milk of a member of a cooperative association diverted for the account of such association and the amount of member milk so diverted does not exceed 15 percent of the volume of milk from all producer members of such cooperative association received at pool plants during such month.

(3) The diversion is the milk of a producer not a member of a cooperative association, diverted by a handler in his capacity as the operator of a pool plant from which the quantity of nonmember milk so diverted does not exceed 15 percent of the total nonmember producer milk delivered to such handler during the month.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1096.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1096.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in (a) milk received at a pool plant directly from producers, (b) milk from producers diverted in accordance with the conditions set forth in § 1096.12, or (c) milk received by a handler described in § 1096.9(c).

§ 1096.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1096.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1096.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1096.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1096.40(b)(1)) for which the handler fails to establish a disposition.

§ 1096.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1096.40 (b) or (c)(1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1096.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1096.17 Filled milk.

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

§ 1096.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

Handler Reports

§ 1096.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1096.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1096.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1096.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products, in such manner as the market administrator may prescribe.

§ 1096.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1096.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;
(2) The total pounds of milk received from such producer;
(3) The average butterfat content of such milk; and
(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1096.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1096.32 Other reports.

(a) Each handler, who causes milk to be diverted for his account directly from a producer's farm to a nonpool plant, shall prior to such diversion report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the name of the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1096.30 and 1096.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1096.40 Classes of utilization.

Except as provided in § 1096.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1096.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilkfat (or oil) except those products specified in paragraph (b) (1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b) (1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b) (1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1096.41(a) to the receipts specified in § 1096.41(a)(2) and in shrinkage specified in § 1096.41 (b) and (c).

§ 1096.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1096.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1096.9(c), except that if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph 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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(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 by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; and

(c) The quality of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1096.9 (b) or (c), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1096.42 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 another pool plant or by a handler described in § 1096.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classificaiton in another class. In either case, 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 § 1096.44(a)(12) and the corresponding step of § 1096.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1096.44(a)(7) or the corresponding step of § 1096.44(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 § 1096.44(a)(11) or (12) or the corresponding steps of § 1096.44(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 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 utilization 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 § 1096.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt 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 plant shall be classified:

(1) As Class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee'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 following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision 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 subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1096.30 for the month within which such transaction occurred; and

(*b*) 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Except as provided in subdivision (ix) of this subparagraph, transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and

then to Class I utilization at such nonpool plant;

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph; and

(ix) Transfers of bulk fluid milk products from a nonpool plant to a pool plant shall be classified as if they were a direct transfer pursuant to paragraph (a) of this section from one pool plant to another pool plant with Class II or Class III utilization indicated: *Provided,* That if the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat covered by this subdivision being classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers according to the respective quantities of fluid milk products each handler transferred to the nonpool plant unless, at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

§ 1096.43 General classification rules.

In determining the classification of producer milk pursuant to § 1096.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1096.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1096.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1096.40, 1096.41, and 1096.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1096.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1096.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1096.9(a) for each of his pool plants separately and of each handler described in § 1096.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1096.41 (b);

(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 (7) (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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1096.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1096.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1096.40(c) (6)), any product specified in § 1096.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1096.40(b) (1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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 plant;

(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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7) (v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7) (v), and (8) (i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (*a*) through (*c*) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, milk from a handler described in § 1096.9(c), and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7) (vi) of this paragraph; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) 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 subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1096.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8) (i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1096.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) 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 another pool plant or a handler described in § 1096.9(c) according to the classification of such products pursuant to § 1096.42(a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1096.44(a)(14) and the corresponding step of § 1096.44(b).

§ 1096.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1096.44(a)(12) and the corresponding step of § 1096.44(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.

(b) 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 § 1096.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 11th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1096.50 Class prices.

Subject to the provisions of § 1096.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.47.

(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.

§ 1096.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the

midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1096.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 50 but not more than 60 miles by shortest hard-surfaced highway distance as determined by the market administrator, from the nearer of the city halls in Minden or Monroe, La., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1096.50(a) shall be reduced by 12 cents, plus 1 cent for each 10 miles or fraction thereof that such distance exceeds 60 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1096.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The 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.

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1096.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1096.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1096.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1096.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1096.44(a)(14) and the corresponding step of § 1096.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1096.74, that are 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 § 1096.44(a)(9) and the corresponding step of § 1096.44(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 § 1096.44(a)(7) (i) through (iv) and the corresponding step of § 1096.44 (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 § 1096.44(a)(7) (v) and (vi) and the corresponding step of § 1096.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(11) and the corresponding step of § 1096.44(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 applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1096.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1096.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1096.60 for all pool handlers who made reports prescribed in § 1096.30 for such month and who have made payments for the previous month pursuant to § 1096.71 and § 1096.73;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1096.75;

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

(d) 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 § 1096.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for producer milk.

§ 1096.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1096.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1096.71, 1096.76, and 1096.77 and out of which he shall make payments to handlers pursuant to §§ 1096.72 and 1096.77: *Provided,* That payments due to any handler shall be offset by any payment due from such handler.

§ 1096.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1) The total value of milk of the handler for such month as determined pursuant to § 1096.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1096.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1096.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1096.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1096.71(a)(2) exceeds the amount computed pursuant to § 1096.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1096.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month;

(b) On or before the 15th day after the end of each month for milk received during the month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1096.61, subject to the butterfat differentials and location adjustments computed pursuant to §§ 1096.74 and 1096.75, respectively; and

(1) Less payment made pursuant to paragraph (a) of this section;

(2) Less deductions for marketing services pursuant to § 1096.86;

(3) Plus or minus adjustments pursuant to § 1096.77 for errors in previous payments made to such producers; and

(4) Less proper deductions authorized by such producer;

(c) On or before the 25th and 13th days of each month, in lieu of the payment pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association which so requests, with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers;

(d) In making the payments to producers pursuant to paragraph (b) or (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer; and

(f) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association in its capacity as a handler as follows:

(1) On or before the 25th day of each month for 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 13th day after the end of each month an amount equal to not less than the applicable class prices adjusted pursuant to § 1096.74, (i) less the amounts paid pursuant to subparagraph (1) of this paragraph, and (ii) plus or minus adjustments pursuant to § 1096.77 for errors in previous payments made to such cooperative association.

§ 1096.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1096.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at or diverted from a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1096.52.

(b) For purposes of computations pursuant to §§ 1096.71 and 1096.72 the uniform price shall be adjusted at the rates set forth in § 1096.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1096.76 Payments by 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 §§ 1096.30(b) and 1096.31(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 route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 an order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds 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 value that would have been computed pursuant to § 1096.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1096.60 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, the value of milk determined pursuant to § 1096.60 for such handler shall include, in lieu of the value of other source milk specified in § 1096.60(f) less the value of such other source milk specified in § 1096.71(a)(2)(ii), a value of milk determined pursuant to § 1096.60 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 § 1096.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1096.30 (b) and 1096.31(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 value of milk determined pursuant to § 1096.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1096.77 Adjustment of accounts.

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

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1096.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part each handler, except a producer-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 amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, as follows:

(a) Each pool handler with respect to (1) all receipts of producer milk including such handler's own production, and (2) other source milk allocated to Class I pursuant to § 1096.44(a) (7) and (11) and the corresponding steps of § 1096.44 (b), except such other source milk that is excluded from the computations pursuant to § 1096.60 (d) and (f);

(b) Each cooperative association on producer milk diverted to a nonpool plant for the account of such association or received by such association as a handler described in § 1096.9(c); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1096.76(a)(2).

§ 1096.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1096.73 shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the service set forth in paragraph (a) of this section and for whom a cooperative association is authorized to receive payment for marketing services as set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payment to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and shall pay such deductions to the cooperative association entitled to receive it, on or before the 15th day after the end of the month during which such milk was received. Such deductions shall be accompanied by a statement showing the quantity of milk for which such deduction was computed for each producer. In lieu of such statement, the handler may request the market administrator to furnish such cooperative association the information reported for such producers pursuant to § 1096.31.

PART 1097—MILK IN MEMPHIS, TENNESSEE, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1097 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–67.

GENERAL PROVISIONS

§ 1097.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1097.2 Memphis, Tennessee, marketing area.

"Memphis, Tennessee, marketing area" means all the territory, including incorporated municipalities and military reservations, within the Tennessee counties of Fayette, Hardeman (except Civil Districts 5 and 6), Haywood, Lauderdale, Madison (except Civil Districts 4 and 9), Shelby and Tipton; the Mississippi counties of De Soto, Tate, Panola (except the village of Crowder), Tunica, Lafayette, and Marshall (exclusive of Beat 5); and the townships of Mississippi and Proctor in Crittenden County, Arkansas.

§ 1097.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a delivery to a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets, without intermediate movement to another milk or filled milk plant.

§ 1097.4 [Reserved]

§ 1097.5 [Reserved]

§ 1097.6 [Reserved]

§ 1097.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, "fluid milk plant" means any plant specified in paragraph (a) or (b) of this section.

(a) Any milk processing or packaging plant from which a volume of Class I milk, except filled milk, equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk, except filled milk, of such plant, is disposed of during the month as route disposition in the marketing area.

(b) Any plant from which during the month fluid milk products (bulk or packaged), except filled milk, in excess of 70,000 pounds are moved to and received at a plant(s) described pursuant to paragraph (a) of this section.

(c) The term "fluid milk plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) or (b) of this section which would be fully regulated pursuant to the provisions of another order issued pursuant to the Act and from which the market administrator determines that a greater volume of fluid milk products, except filled milk, was disposed of during the month from such plant as route disposition in the marketing area regulated by the other order and as fluid milk products transferred as Class I milk to plants fully regulated by such other order than as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants: *Provided,* That a plant which was a fluid milk plant pursuant to paragraph (a) or (b) of this section in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of fluid milk products, except filled milk, is disposed of as route disposition in such other marketing area or to plants fully subject to such other order, unless the other order requires regulation of the plant without regard to its qualifying as a fluid milk plant for regulation under this order subject to the proviso of this subparagraph; and

(3) A plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements for fully regulated plants under another Federal order and from which the market administrator determines a greater volume of fluid milk products, except filled milk, is disposed of during the month as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants than as route disposition in the other marketing area and fluid milk products transferred as Class I milk to plants fully regulated by such other order, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation under the particular circumstances described herein of having greater route disposition under the Memphis, Tenn., order.

§ 1097.8 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk manufacturing, processing, or packaging plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant from which fluid milk products are moved during the month to a fluid milk plant and which is not an other order plant nor a producer-handler plant.

§ 1097.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more fluid milk plants;

(b) Any cooperative association with respect to milk of its member producers diverted by it pursuant to § 1097.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its member-producers which it causes to be delivered directly from the farm to the fluid milk plant(s) of another handler in a bulk tank truck owned and operated by, or under contract to, or under control of such cooperative, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and shall account for the actual receipts from each producer as determined at the farm at prices applicable to receipts from producers at plants to which the cooperative association delivers the milk. The cooperative association, once it becomes the handler for such bulk tank milk, shall remain the handler for such bulk tank milk from month to month until the cooperative association notifies the market administrator and handler that such status is to be discontinued, effective the first day of the month following receipt of such notice;

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

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1097.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1097.10 Producer-handler.

"Producer-handler" means any person who operates an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers.

§ 1097.11 [Reserved]

§ 1097.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is:

(1) Received at a fluid milk plant; or

(2) Diverted from a fluid milk plant to a nonfluid milk plant that is not a producer-handler plant for the account of the handler. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant from which it was diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1097.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a fluid milk plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1097.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is:

(a) Received directly from producers at a fluid milk plant;

(b) Diverted pursuant to § 1097.12; or

(c) Received by a handler described in § 1097.9(c).

§ 1097.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1097.9(c), fluid milk plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1097.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1097.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1097.40(b)(1)) for which the handler fails to establish a disposition.

§ 1097.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1097.40 (b) or (c)(1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1097.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1097.17 Filled milk.

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

§ 1097.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1097.30 Reports of receipts and utilization.

By mailing on or before the sixth day after the end of each month or by delivery not later than the eighth day after the end of such month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1097.9(c);

(3) Receipts of fluid milk products and fluid cream products from other fluid milk plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1097.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler described in § 1097.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1097.31 Payroll reports.

(a) By mailing on or before the sixth day after the end of the month, or by delivery not later than the eighth day after the end of such month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer:

(1) His name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producer;

(4) The average butterfat content of such milk;

(5) The location at which such milk was received; and

(6) The amount of any deductions authorized in writing by the producer to be made in making payments to such producer.

(b) On or before the 21st day of each month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in detail and on forms prescribed by him, the name and address or appropriate iden-

tification of each producer from whom milk was received during the first 15 days of such month, the total pounds of milk received from each producer, the location at which such milk was received, the amount of any deductions authorized in writing by producers from whom such handler received milk, the total pounds of milk received from each handler described in § 1097.9(c), and the name and address of each such cooperative association.

§ 1097.32 Other reports.

(a) Each handler operating a partially regulated distributing plant shall report on or before the seventh day after the end of the month, the respective amounts of skim milk and butterfat in route disposition in the marketing area.

(c) In addition to the reports required pursuant to §§ 1097.30 and 1097.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1097.40 Classes of utilization.

Except as provided in § 1097.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1097.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1097.41(a) to the receipts specified in § 1097.41(a)(2) and in shrinkage specified in § 1097.41 (b) and (c).

§ 1097.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1097.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1097.9(c), except that if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph 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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other fluid milk plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; 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 § 1097.9 (b) or (c), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1097.42 Classification of transfers and diversions.

(a) *Transfers to fluid milk plants.* Skim milk or butterfat transferred in

the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the conditions set forth in subparagraphs (1), (2), and (3) of this paragraph. For purposes of this paragraph, skim milk and butterfat transferred as bulk milk to the fluid milk plant of another handler by a handler described in § 1097.9(c) shall be considered a receipt of producer milk in the transferee plant.

(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 § 1097.44(a)(12) and the corresponding step of § 1097.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1097.44(a)(7) or the corresponding step of § 1097.44(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 § 1097.44(a) (11) or (12) or the corresponding steps of § 1097.44(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 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 fluid milk 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 fluid milk 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 utilization 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 § 1097.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a fluid milk 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 by the market administrator, 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 nonfluid milk plants.* Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if tranferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonfluid milk plant's utilization to its receipts as set forth in subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1097.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant; and

(*b*) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonfluid milk plant;

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and

then to Class I utilization at such nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonfluid milk 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 subparagraph.

§ 1097.43 General classification rules.

In determining the classification of producer milk pursuant to § 1097.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1097.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1097.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1097.40, 1097.41, and 1097.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1097.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1097.9(a) for each of his fluid milk plants separately and of each handler described in § 1097.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1097.41(b);

(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 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, 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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a fluid milk plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1097.40(c)(6)), any product specified in § 1097.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1097.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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

(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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i), of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other fluid milk plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other fluid milk plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all fluid milk plants of the handler;

(b) Substract from the above result the sum of the pounds of skim milk in receipts at all fluid milk plants of the handler of producer milk, milk from a handler described in § 1097.9(c), fluid milk products from fluid milk plants of other handlers, and bulk fluid milk products from other order plants; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) 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, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1097.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and

Class III combined at this allocation step at all fluid milk plants of the handler, 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), (7)(v), and (8) (i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other fluid milk plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler, 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 other order plant that were not subtracted pursuant to subparagraph (8)(iii) of this paragraph that are in excess of bulk fluid milk products transferred or diverted to such plant:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other fluid milk plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(18) 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 another fluid milk plant according to the classification of such products pursuant to § 1097.42(a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1097.44(a)(14) and the corresponding step of § 1097.44(b).

§ 1097.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) 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 § 1097.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each andler operating a fluid milk 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of milk delivered by such association or by its members which was allocated to each class by each handler receiving such milk.

Class Prices

§ 1097.50 Class prices.

Subject to the provisions of § 1097.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.94.

(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.

§ 1097.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1-percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1097.52 Plant location adjustments for handlers.

For that milk which is received at a fluid milk plant (from producers or from a handler described in § 1097.9(c)), located 50 miles or more from the city hall in Memphis, Tenn., by shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred in the form of products designated as Class I milk in § 1097.40(a) to another fluid milk plant and assigned to Class I pursuant to the calculation provided in this section, or otherwise classified as Class I milk, the price specified in § 1097.50(a) shall be adjusted at the rate set forth in the following schedule according to the location of the fluid milk plant where such milk is received:

Location of plant	*Rate per hundredweight*
In the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Add 9 cents.
For each additional 10 miles in excess of 50 miles	Add an additional 1.5 cents.
Outside the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Subtract 9 cents.
For each additional 10 miles in excess of 50 miles	Subtract an additional 1.5 cents.

For purposes of calculating such location adjustment, fluid milk products transferred in bulk between fluid milk plants shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment or a plus location adjustment is applicable and then in sequence beginning with the plant at which the smallest minus location adjustment would apply.

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1097.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in

this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1097.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1097.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1097.44(a)(14) and the corresponding step of § 1097.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1097.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) 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 fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1097.44(a)(11) and the corresponding step of § 1097.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in subparagraph (1) of this paragraph;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months; and

(e) In computing, for the purposes of § 1097.61, the value of milk of a handler described in § 1097.9(c), the value of milk received by fluid milk plants of other handlers shall be the sum of the amounts assigned pursuant to § 1097.61(a)(2) with respect to such milk as adjusted pursuant to § 1097.75 for the location of the fluid milk plant to which delivered.

§ 1097.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

(a) For each of the months of August through February the market administrator shall compute for each handler a uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1097.60 by adding or subtracting, as the case may be, the total of the location adjustments applicable pursuant to § 1097.75;

(2) For each handler operating a fluid milk plant receiving milk from a handler described in § 1097.9(c), prorate the resulting amount between such milk and producer milk;

(3) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform prices for the preceding month; and

(4) Divide the resulting amount by the total hundredweight of producer milk received by the handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content f.o.b. market.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to producer milk, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a)(1) and (3) of this section;

(2) Compute the value of excess milk received by such handler as producer milk and bulk milk from a handler described in § 1097.9(c) as follows:

(i) Multiply the quantity of such milk, not in excess of the total Class III milk included in this computation, by the Class III price;

(ii) Multiply the remaining quantity of such milk, not in excess of the total Class II milk included in this computation, by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in subparagraph (2) of this paragraph by the total hundredweight of such excess milk and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for all excess milk of 3.5 percent butterfat content;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in subparagraph (3) of this paragraph from the value of all milk obtained for such handler pursuant to subparagraph (1) of this paragraph; and

(5) Divide the amount obtained in subparagraph (4) of this paragraph by the total hundredweight of base milk received by such handler. The result, less any fraction of a cent per hundredweight, shall be the uniform price for such handler for base milk of 3.5 percent butterfat content.

§ 1097.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the applicable uniform prices for each handler pursuant to § 1097.61 for such month.

PAYMENTS FOR MILK

§ 1097.71 Payments to market administrator.

(a) On or before the 25th day of each month each handler operating a fluid milk plant shall pay to the market administrator a sum of money calculated by multiplying the hundredweight of milk received from producers and from a handler described in § 1097.9(c) during the first 15 days of such month by the Class III price for the preceding month, less proper deductions authorized in writing by producers from whom such handler received milk.

(b) On or before the 12th day after the end of each month, each handler operating a fluid milk plant shall pay to the market administrator an amount of money equal to such handler's value of milk for such month as determined pursuant to § 1097.60, as adjusted pursuant to § 1097.74, less payments made pursuant to paragraph (a) of this section for such month and less proper deductions authorized in writing by producers from whom such handler received milk.

§ 1097.72 [Reserved]

§ 1097.73 Payments to producers and to cooperative associations.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments pursuant to § 1097.71(a) have been received at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer or cooperative association during the month by each handler from whom the appropriate payments have been received pursuant to § 1097.71(b), such payments by the market administrator to be at not less than the uniform price(s) computed pursuant to § 1097.61(a) or (b), as applicable, subject to the following:

(1) Adjustment pursuant to §§ 1097.74 and 1097.75;

(2) Less payments made pursuant to paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1097.86;

(4) Less proper deductions authorized in writing by the producer;

(5) Adjusted for any error in calculating payment to such individual producer for past months; and

(6) If the market administrator has not received full payment from any handler for such month, pursuant to § 1097.71, he shall reduce uniformly per hundredweight his payments due for milk received by such handler by a total amount not in excess of the amount due

from such handler. The market administrator shall make such balance of payment to such producers on or before the next date (for making payments pursuant to this paragraph) following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section the market administrator shall, on or before the second day prior to the date payments are due to individual producers, make payment to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payment has been received, and to a handler described in § 1097.9(c), a total amount equal to, but not less than, the sum of the individual payments otherwise payable to such producers pursuant to this section; and

(d) In making the payments pursuant to paragraphs (b) and (c) of this section, the market administrator shall furnish each producer or cooperative association with a statement, in such form that it may be retained by the producer or cooperative association which shall show:

(1) The delivery period and the identity of the handler and the producer;

(2) The total pounds of milk received from the producer, including for the months of March through July, such producer's deliveries of base and excess milk;

(3) The average butterfat content of the total pounds of milk received from the producer during the month;

(4) The minimum rates at which payment to the producer or cooperative association is required;

(5) The amount or rates per hundredweight of each deduction, together with a description of the respective deductions; and

(6) The net amount of payment to the producer or cooperative association.

§ 1097.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1097.75 Plant location adjustments for producers.

In making payment pursuant to § 1097.73, the applicable uniform prices for all milk received shall be adjusted according to the location of the fluid milk plant where such milk was received at the rate provided pursuant to § 1097.52.

§ 1097.76 [Reserved]

§ 1097.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1097.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to (a) receipts of milk at fluid milk plants from producers (including receipts from a handler described in § 1097.9(c) and such handler's own production), (b) other source milk allocated to Class I pursuant to § 1097.44 (a) (7) and (11) and the corresponding steps of § 1097.44(b), (c) receipts of milk by a handler described in § 1097.9(c) in excess of that specified in paragraph (a) of this section, and (d) receipts of milk by a handler described in § 1097.9(b).

§ 1097.86 Deduction for marketing services.

(a) The market administrator in making payments to producers pursuant to § 1097.73 shall:

(1) Deduct 7 cents per hundredweight or such amount not exceeding 7 cents per hundredweight as may be prescribed by the Secretary, with respect to milk (other than milk of a handler's own production) of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association; or

(2) If so requested in writing by a cooperative association, deduct such amount as may be authorized by the member producers of such association from the payment to be made to such producers for whom the cooperative is performing the services specified in paragraph (b) of this section and pay such amounts to the cooperative association on or before the date for making payment to producers.

(b) The monies received by the market administrator pursuant to paragraph (a)(1) of this section shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

BASE-EXCESS PLAN

§ 1097.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1097.93.

§ 1097.91 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July, which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1097.93.

§ 1097.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (this Part 1097 and Parts 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January, by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a fluid milk plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a fluid milk plant during such period.

§ 1097.93 Determination of monthly base of each producer.

Subject to the rules set forth in § 1097.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Central Arkansas (Part 1108 of this chapter) or Fort Smith, Ark. (Part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1097.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1097.94 Base rules.

The following rules shall apply in connection with the establishment of bases for each producer computed pursuant to § 1097.92:

(a) An entire base or share of a joint holder shall be transferred from a person holding such base to other persons as of the end of the month during which an application for the transfer of such base is received by the market administrator, such application to be on forms approved by the market administrator

and signed by the base holder(s) or by the heirs and by the person to whom such base is to be transferred subject to the following conditions:

(1) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders;

(2) The share of a joint base holder may be transferred to a person other than a joint holder of the base only if all shares of the entire base are at the same time transferred to the same or other persons; and

(3) If one or more bases are transferred to a producer already holding a base, a new base shall be computed by adding together the total eligible deliveries during the period of September through January of all persons in whose names such bases were earned and dividing the total by the total number of days in such period beginning with the first day on which milk was received during the months of September through January from any of such persons but not less than 120 days.

§ 1097.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer, or shall notify the cooperative association of which such producer is a member of such daily average base.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1098 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1098.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1098.2 Nashville, Tennessee, marketing area.

"Nashville, Tennessee, marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the following:

(a) Tennessee counties of:

Bedford.
Cannon.
Cheatham.
Clay.
Coffee.
Davidson.
DeKalb.
Dickson.
Fentress.
Giles.
Hickman.
Houston.
Humphreys.
Jackson.
Lawrence.
Lewis.
Macon.
Marshall.
Maury.
Montgomery.
Overton.
Perry.
Pickett.
Putnam.
Robertson.
Rutherford.
Smith.
Stewart.
Sumner.
Trousdale.
Warren.
Wayne.
White.
Williamson.
Wilson.

(b) Kentucky counties of:

Allen.
Barren.
Metcalf.
Monroe.
Simpson.
Warren.

(c) Fort Campbell military reservation.

§ 1098.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant store) of any fluid milk product classified as Class I milk other than a delivery to a milk or filled milk processing plant.

§ 1098.4 [Reserved]

§ 1098.5 Approved plant.

"Approved plant" means the premises, buildings and facilities of any milk processing or packaging plant from which during the month Grade A milk is shipped to a pool plant, or from which there is route disposition in the marketing area.

§ 1098.6 [Reserved]

§ 1098.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means any plant specified in paragraph (a), (b), or (c) of this section.

(a) Any approved plant at which during the month fluid milk products are processed or packaged and from which (1) route disposition of fluid milk products, except filled milk, is at least 50 percent of total receipts of Grade A milk and (2) route disposition of fluid milk products, except filled milk, in the marketing area is at least 15 percent of its total route disposition of fluid milk products, except filled milk.

(b) Any approved plant from which during the month there has been delivered to plants described in paragraph (a) of this section fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk from approved dairy farmers: *Provided,* That any plant which qualified as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July, unless the operator of such plant files with the market administrator a written request for withdrawal prior to the first day of the month for which nonpool status is requested, in which case the plant shall remain a nonpool plant until it again qualifies for pool status.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk received at other pool plants from producers who are members of such cooperative association, plus the milk which was transferred thereto from the plant operated by the cooperative association, is not less than two-thirds of the total volume of milk delivered to all plants by producers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the

provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tenn., marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order, subject to the proviso of this paragraph: *And provided further,* On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Nashville, Tenn., marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Nashville, Tenn., order; and

(4) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of paragraph (b) of this section during the preceding August through January period:

§ 1098.8 Nonpool plant.

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

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1098.9 Handler.

"Handler" means:

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

(b) A cooperative association with respect to milk of its producer members diverted pursuant to § 1098.13 for the account of such association;

(c) A cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant(s) of another handler in a tank truck owned, operated by or under contract to, such cooperative association for the account of the cooperative association if the cooperative association has notified in writing, prior to delivery, both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received at the location of the plant to which it was delivered;

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

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1098.7(d).

§ 1098.10 Producer-handler.

"Producer-handler" means a person who:

(a) Produces milk and operates an approved plant;

(b) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(c) Receives no fluid milk products during the month except milk of his own production and transfers from pool plants.

§ 1098.11 [Reserved]

§ 1098.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority or produces milk acceptable for fluid consumption at Federal, State, or municipal establishments within the marketing area, which milk is received at a pool plant or diverted pursuant to § 1098.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1098.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1098.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk of a producer which is:

(a) Received at a pool plant directly from a dairy farmer or a handler described in § 1098.9(c): *Provided,* That if the milk received at a pool plant from a handler described in § 1098.9(c) is purchased on a basis other than weights determined by farm bulk tank calibrations and butterfat tests determined by farm bulk tank samples the amount by which the total of such farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1098.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant.

§ 1098.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1098.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1098.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1098.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1098.40(b)(1)) for which the handler fails to establish a disposition.

§ 1098.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1098.40 (b) or (c)(1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened),

formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1098.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1098.17 Filled milk.

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

§ 1098.18 Cooperative Association.

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

(a) To be qualified pursuant to the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be authorized by its members to make collective sales of or to market milk or its products for its members.

HANDLER REPORTS

§ 1098.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1098.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1098.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1098.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1098.31 Payroll reports.

(a) On or before the sixth day after the end of each month, each handler described in § 1098.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information for each producer for such month:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The total pounds of base milk and excess milk;

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

(5) The amount of any deductions authorized in writing by such producer to be made from payments due for milk delivered.

(b) On or before the 21st day of each month, each handler described in § 1098.9 (a), (b), and (c) shall report to the market administrator, in the detail and on forms prescribed by him, the name and address of each producer from whom milk was received during the first 15 days of such month, and the pounds of milk so received during said period from such producer.

(c) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1098.76(b) shall report on or before the 15th day after the end of the month for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section plus the amount paid each dairy farmer.

§ 1098.32 Other reports.

(a) On or before the third day after the end of the month:

(1) Each handler described in § 1098.9(c) shall report to each pool plant operator purchasing producer milk from such handler, on a basis of weights determined by farm bulk tank calibrations and butterfat tests determined from farm bulk tank samples, the total pounds and butterfat content of such milk delivered to each pool plant operator during the month; and

(2) The operator of each pool plant purchasing producer milk from a handler described in § 1098.9(c), on a basis other than weights determined by farm bulk tank calibrations and butterfat tests determined from farm bulk tank samples, shall report to such handler the total pounds and butterfat content of such milk received by the pool plant during the month.

(b) On or before the 21st day of each month each handler described in § 1098.9(c) shall report to the market administrator the quantities of producer milk delivered to each pool plant for the first 15 days of such month.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1098.30 and 1098.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1098.40 Classes of utilization.

Except as provided in § 1098.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1098.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1098.41(a) to the receipts specified in § 1098.41(a)(2) and in shrinkage specified in § 1098.41 (b) and (c).

§ 1098.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1098.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1098.9 (c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1098.9(c), except that, if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determine from farm bulk tank samples, the applicable percentage under this subparagraph 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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(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 by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; 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 § 1098.9 (b) or (c), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1098.42 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 another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, 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 § 1098.44(a)(12) and the corresponding step of § 1098.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1098.44(a)(7) or the corresponding step of § 1098.44 (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 § 1098.44(a) (11) or (12) or the corresponding steps of § 1098.44(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 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 utilization 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 adminstrator 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 § 1098.40.

(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 by the market administrator, 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 following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision 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 subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1098.30 for the month within which such transaction occurred; and

(*b*) 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph.

§ 1098.43 General classification rules.

In determining the classification of producer milk pursuant to § 1098.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1098.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1098.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1098.40, 1098.41, and 1098.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1098.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1098.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1098.9(a) for each of his pool plants separately and of each handler described in § 1098.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1098.41(b);

(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 (7) (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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1098.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1098.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1098.40(c)(6)), any product specified in §1098.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1098.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (*a*) through (*c*) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) 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 subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1098.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8)(i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1098.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which

such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) 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 an other pool plant according to the classification of such products pursuant to § 1098.42 (a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1098.44(a)(14) and the corresponding step of § 1098.44(b).

§ 1098.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1098.44(a)(12) and the corresponding step of § 1098.44(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.

(b) 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 § 1098.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 15th day after the end of each delivery period, the market administator shall report to each cooperative association, upon request by such association, the percentage of milk caused to be delivered by such association or by its members which was used in each class by each handler receiving any such milk. For the purpose of this report, any milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler are allocated to such class.

CLASS PRICES

§ 1098.50 Class prices.

Subject to the provisions of § 1098.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.58.

(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.

§ 1098.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1098.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside the State of Tennessee and 50 miles or more by shortest hard-surfaced highway distance as determined by the market administrator, from the State Capitol at Nashville, Tennessee, and classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the price computed pursuant to § 1098.50(a) shall be reduced by 10.0 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 70 miles; and

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant which is in excess of the sum of receipts at such plant from producers and handlers described in § 1098.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rate set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1098.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1098.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1098.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1098.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1098.44(a)(14) and the corresponding step of § 1098.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1098.74, that are 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 § 1098.44(a)(9) and the corresponding step of § 1098.44(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 § 1098.44(a)(7)(i) through (iv) and the corresponding step of § 1098.44(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 § 1098.44(a)(7)(v) and (vi) and the corresponding step of § 1098.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(11) and the corresponding step of § 1098.44(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.

§ 1098.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February the uniform price per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1098.60 for all handlers who filed the reports prescribed by § 1098.30 for the month and who are not in default of payments pursuant to § 1098.71;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1098.75;

(3) Add an amount equal to the unobligated balance on hand in the producer-settlement fund;

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

(i) The total hundredweight of producer milk included in paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to §1098.60(f); and

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

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class III milk by the Class III price;

(ii) Multiply the remaining quantity of excess milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in subparagraph (1) of this paragraph by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations in paragraph (a)(1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract from the value determined pursuant to subparagraph (3) of this paragraph, the total value of excess milk determined by multiplying the uniform price obtained in subparagraph (2) of this paragraph by the hundredweight of excess milk;

(5) Divide the amount calculated pursuant to subparagraph (4) of this paragraph by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to subparagraph (5) of this paragraph. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1098.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1098.61 for such month.

PAYMENTS FOR MILK

§ 1098.70 Producer-settlement fund.

The market administrator shall maintain a producer-settlement fund into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1098.71, 1098.76, and 1098.77, and out of which he shall make appropriate payments required pursuant to §§ 1098.73 and 1098.77.

§ 1098.71 Payments to the producer-settlement fund.

(a) On or before the 25th day of each month each handler receiving milk from producers or from a handler described in § 1098.9(c) (except for producers having made deliveries for less than 20 days during the month) shall pay to the market administrator for deposit into the producer-settlement fund an amount of money calculated by multiplying the hundredweight of producer milk received by him during the first 15 days of such month by the Class III price for the preceding month.

(b) On or before the 12th day after the end of each month, each person shall pay to the market administrator for deposit into the producer-settlement fund an amount of money equal to such handler's value of milk for such month as determined pursuant to § 1098.60(a), adjusted by the butterfat differential specified in § 1098.74, and § 1098.60 (b) through (f), less:

(1) Payments made pursuant to paragraph (a) of this section for such month;

(2) An amount computed by multiplying the quantities of receipts of other source milk for which a value is computed pursuant to § 1098.60(f) by the weighted average price computed pursuant to § 1098.61(a) as adjusted pursuant to § 1098.75; and

(3) Proper deductions authorized in writing by producers from whom such handler received milk.

(c) On or before the 25th day after the end of the month each handler who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1098.72 [Reserved]

§ 1098.73 Payments to producers and to cooperative associations.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the

first 15 days of such month by handlers from whom the appropriate payments have been received pursuant to § 1098.71 (a) at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer during the month by handlers from whom the appropriate payments have been received pursuant to § 1098.71 (b), such payments by the market administrator to be at not less than the uniform price computed pursuant to § 1098.61(a) for the months for which such uniform prices are computed, and such payments to be for base and excess milk at not less than the uniform prices for base and excess milk, respectively, computed pursuant to § 1098.61(b) for the months for which such uniform prices for base and excess milk are computed subject to the following: (1) adjustments pursuant to §§ 1098.74 and 1098.75, (2) less payments made pursuant to paragraph (a) of this section, (3) less deductions for marketing services pursuant to § 1098.86, (4) less proper deductions authorized in writing by the producer, and (5) adjusted for any error in calculating payment to such individual producer for past months: *Provided*, That if the market administrator has not received full payment from any handler for such month, pursuant to § 1098.71, he shall reduce uniformly per hundredweight his payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler: *And provided further*, That the market administrator shall make such balance of payment to producers on or before the next date for making payments pursuant to this paragraph following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the second day prior to the date payments are due to individual producers, to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payments has been received, a total amount equal to the sum of the individual payments otherwise payable to such producers pursuant to this section; and

(d) In making the payments required by paragraph (b) of this section, the market administrator shall furnish each producer or cooperative association with a supporting statement in such form that it may be retained by the producer or cooperative association which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk delivered by the producer, including for the months in which base and excess prices apply, the pounds of base and excess milk;

(3) The minimum rate or rates at which payment to the producer or cooperative association is required;

(4) The amount or the rate per hundredweight of each deduction claimed by the handler including any deductions made pursuant to § 1098.86, together with a description of the respective deductions; and

(5) The net amount of payment to the producer or cooperative association.

§ 1098.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1098.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1098.73(b), the uniform price and the uniform price for base milk pursuant to § 1098.61 for producer milk received at a pool plant shall be reduced according to the location of the pool plant, each at the rates set forth in § 1098.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1098.52 (a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1098.76 Payments by 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 §§ 1098.30(b) and 1098.31(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 route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds 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 value that would have been computed pursuant to § 1098.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1098.60 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, the value of milk determined pursuant

to § 1098.60 for such handler shall include, in lieu of the value of other source milk specified in § 1098.60(f) less the value of such other source milk specified in § 1098.71(a)(2)(ii), a value of milk determined pursuant to § 1098.60 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 § 1098.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1098.30(b) and 1098.31(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 value of milk determined pursuant to § 1098.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1098.77 Adjustment of accounts.

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

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1098.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to receipts during the month of:

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

(b) Other source milk allocated to Class I pursuant to § 1098.44(a) (7) and (11) and the corresponding steps of § 1098.44(b), except such other source milk that is excluded from the computations pursuant to § 1098.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1098.76(a)(2).

§ 1098.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1098.73, shall deduct an amount not exceeding 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk received by a handler(s) from producers during the month. Such moneys shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary determines is performing the services specified in paragraph (a) of this section for its members, the market administrator shall, in lieu of the deductions provided in paragraph (a) of this section, make such deductions as are authorized by such producers, and on or before the 15th day after the end of each month, pay the money so deducted to such cooperative association.

BASE-EXCESS PLAN

§ 1098.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months specified in § 1098.61 for the computation of uniform base and excess prices, which is not in excess of such producer's daily average base computed pursuant to § 1098.92, multiplied by the number of days in such month.

§ 1098.91 Excess milk.

"Excess milk" means milk received at pool plant from a producer during any of the months specified in § 1098.61 for the computation of uniform base and excess prices, which is in excess of the base milk of such producer for such month, and shall include all milk received during such month from a producer for whom no daily average base can be computed pursuant to § 1098.92.

§ 1098.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1098.93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of producer milk received from such producer at all pool plants during the months of September through January immediately preceding by 153: *Provided*, That the base of a producer, who delivers milk during August and whose deliveries are temporarily discontinued during the base-forming period, shall be determined by dividing by the number of days for which deliveries are made or by 138, whichever is higher: *And provided further*, That in the case of producers delivering milk to a pool plant which was not a pool plant during all of the preceding months of September through January a daily average base for each such producer shall be computed pursuant to this paragraph on the basis of his verifiable deliveries of milk to such plant during the period September through January preceding the month in which the plant became a pool plant.

§ 1098.93 Base rules.

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

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the market administrator shall assign a base as calculated pursuant to § 1098.92 to each person for whose account producer milk was delivered to pool plants during the months specified in § 1098.92 for computation of base;

(b) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective; and

(c) An entire base shall be transferred from a person holding such base to any other person, effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That an entire base or any portion thereof may be transferred from a producer to any other person upon adequate proof that such producer has discontinued marketing milk: *And provided further*, That if a base is held jointly, it shall be transferable only upon

the receipt of such application signed by all joint holders or their heirs.

§ 1098.94 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer of the daily average base established by such producer.

PART 1102—MILK IN FORT SMITH, ARKANSAS, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1102 issued under Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1102.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1102.2 Fort Smith, Ark., marketing area.

"Fort Smith, Ark., Marketing Area," called the marketing area in this part, means all territory within the corporate limits of Fort Smith, Ark. and Van Buren, Ark. and within the boundaries of the Camp Chaffee military reservation.

§ 1102.3 [Reserved]

§ 1102.4 [Reserved]

§ 1102.5 [Reserved]

§ 1102.6 [Reserved]

§ 1102.7 Approved plant.

Except as provided in paragraph (b) of this section, "approved plant" means a plant specified in paragraph (a) of this section.

(a) Any milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores).

(b) The term "approved plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) Any plant operated by a handler who the Secretary determines disposes of a greater portion of his fluid milk products, except filled milk, as Class I milk in another marketing area regulated by a milk marketing agreement or order issued pursuant to the Act.

§ 1102.8 Unapproved plant.

"Unapproved plant" means any milk or filled milk receiving, manufacturing, or processing plant other than an approved plant. The following categories of unapproved plants are further defined as follows:

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means and unapproved plant which is not an other order plant nor a producer-handler plant and from which fluid milk products eligible for distribution in the marketing area for fluid consumption are moved during the month to an approved plant.

§ 1102.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores); and

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted pursuant to § 1102.12 for the account of such cooperative association.

§ 1102.10 Producer-handler.

"Producer-handler" means any person who (a) produces milk, and (b) operates a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products for fluid consumption are disposed of in the marketing area on wholesale or retail routes (including plant stores), and (c) receives no milk from producers.

§ 1102.11 [Reserved]

§ 1102.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk which is received at an approved plant: *Provided*, That such milk is produced under a dairy farm inspection permit or inspection rating issued by any health authority having jurisdiction in the marketing area for the production of milk to be disposed of for consumption as fluid milk. "Producer" shall include any such person whose milk is caused to be diverted by a handler to an unapproved plant, and milk so diverted shall be deemed to have been received at an approved plant by the handler who causes it to be diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to an approved plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1102.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from an approved plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1102.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer which is received by a handler directly from producers.

§ 1102.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, approved

plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1102.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1102.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1102.40(b)(1)) for which the handler fails to establish a dispositon.

§ 1102.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1102.40(b) or (c)(1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quality 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.

§ 1102.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1102.17 Filled milk.

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

§ 1102.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines (a) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," (b) to have full authority in the sale of milk of its members and (c) to be engaged in making collective sales or marketing milk or its products for its members.

Handler Reports

§ 1102.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his approved plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk; including producer milk diverted by the handler from the approved plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and fluid cream products from other approved plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1102.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler described in § 1102.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1102.31 Payroll reports.

On or before the 20th day after the end of each month, each handler who operates an approved plant and each handler described in § 1102.9(b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(a) His name and address;

(b) The total pounds of milk received from such producer;

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

(d) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

§ 1102.32 Other reports.

(a) Each handler who operates an approved plant and each handler described in § 1102.9(b) shall report to the market administrator in the detail and on forms prescribed by the market administrator on or before the seventh day of each month of April through August, for each producer for the preceding month:

(1) His name and address or other appropriate identification;

(2) The total pounds of milk and butterfat received from such producer;

(3) The location at which such milk was received; and

(4) The number of days on which milk was received from each producer.

(b) In addition to the reports required pursuant to §§ 1102.30 and 1102.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1102.40 Classes of utilization.

Except as provided in § 1102.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1102.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancakes mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1102.41(a) to the receipts specified in § 1102.41(a)(2) and in shrinkage specified in § 1102.41 (b) and (c).

§ 1102.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1102.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each approved plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other approved plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (4), (5), and (6), of this paragraph; 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 § 1102.9(b), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1102.42 Classification of transfers and diversions.

(a) *Transfers to approved plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from an approved plant to another approved plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, 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 § 1102.44(a)(12) and the corresponding step of § 1102.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1102.44(a)(7) or the corresponding step of § 1102.44(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 §1102.44(a)(11) or (12) or the corresponding steps of § 1102.44(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 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 an approved 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 approved 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 utilization 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, classi-

fication under this paragraph shall be in accordance with the provisions of § 1102.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from an approved plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, 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 unapproved plants.* Skim milk or butterfat transferred or diverted in the following forms from an approved plant to an unapproved plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the unapproved plant's utilization to its receipts as set forth in subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1102.30 for the month within which such transaction occurred; and

(*b*) The unapproved 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;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the unapproved plant and transfers of packaged fluid milk products from such unapproved plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such unapproved plant from approved plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such unapproved plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such unapproved plant from approved plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such unapproved plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the unapproved plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such unapproved plant from approved plants and other order plants;

(iv) Transfers of bulk fluid milk products from the unapproved plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such unapproved plant from approved plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such unapproved plant from other order plants;

(v) Any remaining unassigned Class I disposition from the unapproved plant shall be assigned to the extent possible in the following sequence:

(*a*) To such unapproved plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such unapproved plant; and

(*b*) To such unapproved plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such unapproved plant;

(vi) Any remaining unassigned receipts of fluid milk products at the unapproved plant from approved plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such unapproved plant;

(vii) Receipts of bulk fluid cream products at the unapproved plant from approved plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such unapproved plant; and

(viii) In determining the unapproved plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such unapproved 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 subparagraph.

§ 1102.43 General classification rules.

In determining the classification of producer milk pursuant to § 1102.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1102.30 and shall compute separately for each approved plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1102.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1102.40, 1102.41, and 1102.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1102.9(b) shall be determined separately from the operations of any approved plant operated by such cooperative association.

§ 1102.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1102.9(a) for each of his approved plants separately and of each handler described in § 1102.9(b) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1102.41(b);

(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 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 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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1102.40(b)(1) that were received in packaged form from other plans, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that an approved plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the

pounds of skim milk in products specified in § 1102.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1102.40(c)(6)), any product specified in § 1102.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1102.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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

(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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other approved plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other approved plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all approved plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all approved plants of the handler of producer milk, fluid milk products from approved plants of other handlers, and bulk fluid milk products from other order plants; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this approved plant is of all such receipts remaining at this allocation step at all approved plants of the handler; and

(iii) 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 if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1102.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all approved plants of the handler, 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), (7)(v), and (8)(i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other approved plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all approved plants of the handler, 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 other order plant that were not subtracted pursuant to subparagraph (8)(iii) of this paragraph that are in excess of bulk fluid milk products transferred or diverted to such plant:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other approved plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) 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 another approved plant according to the classification of such products pursuant to § 1102.42(a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1102.44(a)(14) and the corresponding step of § 1102.44(b).

§ 1102.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) 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 § 1102.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating an approved 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

CLASS PRICES

§ 1102.50 Class prices.

Subject to the provisions of § 1102.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.95.

(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 price shall be the basic formula price for the month.

§ 1102.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1102.52 Plant location adjustments for handlers.

(a) For milk received from producers at an approved plant located more than 50 miles by the shortest highway distance, as determined by the market administrator, from the county courthouse in Fort Smith, Ark., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1102.50(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is distant from the county courthouse in Fort Smith, Ark.; and

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

§ 1102.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1102.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1102.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1102.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1102.44(a)(14) and the corresponding step of § 1102.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1102.74, that are applicable at the location of the approved plant; and

(c) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 1102.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

(a) For each of the months of August through February, the market administrator shall compute for each handler a uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1102.60 by adding the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(2) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1102.75; and

(3) Divide the resulting amount by the total hundredweight of milk received from producers by such handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to milk received from producers, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a) (1) and (2) of this section;

(2) Compute the value of excess milk received by such handler from producers as follows:

(i) Multiply the quantity of such milk that is not in excess of the total Class III milk included in this computation by the Class III price;

(ii) Multiply the remaining quantity of such milk that is not in excess of the total Class II milk included in this computation by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in subparagraph (2) of this paragraph by the total hundredweight of such milk, and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in subparagraph (3) of this paragraph from the value of all milk obtained for such handler pursuant to subparagraphs (1), (2), and (3), of this paragraph and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent; and

(5) Divide the amount obtained in subparagraph (4) of this paragraph by the total hundredweight of such handler's base milk included in this computation. The result shall be such han-

dler's uniform price for base milk of 3.5 percent content.

§ 1102.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the applicable uniform prices for each handler pursuant to § 1102.61 for such month.

PAYMENTS FOR MILK

§ 1102.73 Payments to producers and to cooperative associations.

Each handler shall make payment to producers as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer except as provided in paragraph (c) of this section, at not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1102.74 and 1102.75, for all milk received from such producer during the preceding month less the amount of payment made pursuant to paragraph (b) of this section.

(b) On or before the last day of each month, each handler shall make payment for milk received from producers during the first 15 days of the month to each producer, except as provided in paragraph (c) of this section, at not less than the Class III price for the preceding month.

(c) On or before the 13th and the third from the last day of each month, in lieu of payments pursuant to paragraphs (a) and (b) respectively of this section, each handler shall make payment to a cooperative association which so requests, with respect to producers for which such cooperative association is authorized to collect payment, in an amount equal to the sum of the individual payments otherwise payable to such producers.

§ 1102.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1102.75 Plant location adjustments for producers.

The uniform price for producer milk received at an approved plant shall be reduced according to the location of the approved plant at the rates set forth in § 1102.52.

§ 1102.76 [Reserved]

§ 1102.77 Adjustment of accounts.

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

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1102.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month four cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk (including such handler's own production), and (b) other source milk allocated to Class I pursuant to § 1102.44(a) (7) and (11) and the corresponding steps of § 1102.44 (b).

§ 1102.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1102.73, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 15th day after the end of each month and pay such deduction to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions, and the amount and average butterfat test of milk for which such deduction was computed for each producer. In lieu of such statement a handler may authorize the market administrator to furnish such cooperative association the information with respect to such producers reported pursuant to § 1102.31.

BASE-EXCESS PLAN

§ 1102.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1102.93.

§ 1102.91 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1102.93.

§ 1102.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (Parts 1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became an approved plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been an approved plant during such period.

§ 1102.93 Determination of monthly base for each producer.

Subject to the rules set forth in § 1102.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1102.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Memphis, Tenn. (Part 1097 of this chapter), or Central Arkansas (Part 1108 of this chapter) orders during the month, multiply such producer's daily average base computed pursuant to § 1102.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1102.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1102.94 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1102.92.

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base-holder, or his heirs, and by the person to whom such base is to be transferred.

(b) If a base is held jointly, the entire base shall be transferred only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1102.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer.

PART 1103—MILK IN THE MISSISSIPPI MARKETING AREA

Subpart—Order Regulating Handling

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1103.85 Assessment for order administration.
1103.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1103 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1103.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1103.2 Mississippi marketing area.

The "Mississippi marketing area", hereinafter called the "marketing area", means all of the territory geographically within the places listed below, all waterfront facilities connected therewith, and all territory wholly or partially therein occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments, all in the State of Mississippi:

COUNTIES

Adams.
Attala.
Bolivar.
Calhoun (Beats 1 and 4 only).
Carroll.
Choctaw.
Claiborne.
Clarke.
Coahoma (Beats 4 and 5 only).
Copiah.
Covington.
Forrest.
Franklin.
George.
Greene.
Grenada.
Hancock.
Harrison.
Hinds.
Holmes.
Humphreys.
Jackson.
Jasper.
Jefferson.
Jefferson Davis.
Jones.
Lamar.
Lauderdale.
Lawrence.
Leake.
Leflore.
Lincoln.
Lowndes.
Madison.
Marion.
Montgomery.
Neshoba.
Newton.
Noxubee.
Oktibbeha.
Pearl River.
Perry.
Quitman (Beats 2, 3, 4, and 5 and the village of Crowder including that portion in Panola County).
Rankin.
Scott.
Sharkey.
Simpson.
Smith.
Stone.
Sunflower.
Tallahatchie.
Walthall.
Warren.
Washington.
Wayne.
Webster (except Beat 5).
Winston.
Yazoo.
Yalobusha (Beats 1, 4, and 5 only).

§ 1103.3 Route disposition.

"Route disposition" means any delivery of any fluid milk product classified as Class I milk from a plant to wholesale or retail outlets (including any delivery by a vendor, from a plant store or through a vending machine) other than a delivery to a plant.

§ 1103.4 Plant.

"Plant" means the land and buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and/or processed or packaged: *Provided*, That a separate establishment or facility used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distributing depot for fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1103.5 Distributing plant.

"Distributing plant" means a plant from which fluid milk products, eligible for distribution under a Grade A label, are disposed of during the month as route disposition in the marketing area.

§ 1103.6 Supply plant.

"Supply plant" means a plant from which fluid milk products, eligible for distribution under a Grade A label, are moved during the month to a distributing plant.

§ 1103.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section.

(a) A distributing plant from which during the month route disposition of fluid milk products, except filled milk, is not less than 50 percent of its total receipts of Grade A milk and the volume so disposed of in the marketing area is at least 20 percent of the total route disposition of fluid milk products, except filled milk;

(b) A supply plant from which a volume of fluid milk products, except filled milk, not less than 50 percent of the Grade A milk received at such plant from dairy farmers is transferred during the month to a distributing plant(s) from which a volume of Class I milk, except filled milk, not less than 50 percent of its receipts of Grade A milk from dairy farmers and from other plants is disposed of as route disposition during the month and the volume so disposed of in the marketing area is at least 20 percent of its total route disposition (not including filled milk): *Provided*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through January shall be a pool plant in each of the following months of February through August in which it does not meet the shipping requirements unless written request is filed with the market administrator prior to the beginning of any such month

for nonpool status for the remaining months through August;

(c) A nondistributing plant, which is operated by a cooperative association and which does not meet the shipping requirements of paragraph (b) of this section, in any month in which the volume of milk received at pool distributing plants directly from member producers of such cooperative association is not less than 60 percent of the total pounds of such association's member producer milk (including that received at such nondistributing plant), except that on written request for nonpool status for any month, made to the market administrator prior to the beginning of such month, the plant shall be a nonpool plant for the month and for each of the succeeding 11 months in which it does not qualify as a pool plant pursuant to paragraph (b) of this section; and

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order, and from which the Secretary determines a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in such other Federal order marketing area than is disposed of as route disposition in this marketing area; except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in this marketing area than is so disposed of in such other marketing area but which plant is nevertheless, fully regulated under such other Federal order; and

(4) A plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part except during the months of February through August if such plant retains automatic pooling status under this part.

§ 1103.8 Nonpool plant.

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

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

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

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

§ 1103.9 Handler.

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

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with § 1103.12;

(c) A cooperative association with respect to the milk of any member producer which it causes to be delivered to a pool plant in a tank truck owned and operated by or under contract to such cooperative association for the account of such cooperative association, if the cooperative association, prior to delivery, furnishes written notice to the market administrator and to the handler to whose plant the milk is delivered that it will be the handler for such milk. The milk so delivered shall be considered to have been received by such cooperative association at a pool plant at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1103.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1103.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant at which no milk or other fluid milk products are received during the month except his own production and which has no receipts of nonfluid milk products which are used to reconstitute fluid milk products: *Provided*, That such person establishes that the maintenance, care, and management of all resources necessary to produce the entire volume of fluid milk products handled and all facilities necessary for operations as a handler are each the personal enterprise and risk of such person.

§ 1103.11 [Reserved]

§ 1103.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received during the month at a pool plant, or by a handler described in § 1103.9(c), or is diverted pursuant to subparagraphs (1) through (5) of this paragraph: *Provided*, That milk diverted in accordance with the provisions of said subparagraphs shall be deemed to have been received by the diverting handler at the location of the pool plant from which it was diverted and: *Provided further*, That if a handler, diverting milk pursuant to subparagraph (4) or (5) of this paragraph, diverts in excess of the limits prescribed all diversions by such handler during the month shall be pursuant to subparagraph (3) and: *Provided also*, That if a handler diverting milk pursuant to subparagraph (3) of this paragraph diverts milk of any dairy farmer in excess of the limits prescribed, such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant:

(1) Diverted by the operator of a pool plant to another pool plant;

(2) Diverted to a nonpool plant that is not a producer-handler plant by the operator of a pool plant or by a handler described in § 1103.9(b) during any of the months of December through August pursuant to subdivisions (i) through (iv) of this subparagraph:

(i) Diverted as milk of a dairy farmer whose milk is received for at least 10 days of production at pool plants during the month unless diverted pursuant to subdivision (ii) or (iii) of this subparagraph;

(ii) Diverted as milk of a member of a cooperative association not diverting pursuant to subdivision (i) of this subparagraph, for the account of such cooperative association, if milk of the dairy farmer is delivered to a pool plant for at least 1 day's production during the month and the total quantity so diverted by the cooperative for all producer members does not exceed 50 percent of the volume of Grade A milk from all producer members of such cooperative received at pool plants during the month;

(iii) Diverted as milk of a dairy farmer not a member of a cooperative association for the account of a handler as the operator of a pool plant(s) not diverting pursuant to subdivision (i) of this subparagraph if milk of the dairy farmer is delivered to the handler's pool plant(s) for at least 1 day's production during the month and the total quantity so diverted by the handler from his pool plant(s) for nonmember producers does not exceed 50 percent of the total Grade A receipts of milk at his pool plant(s) from nonmember producers during the month; and

(iv) A dairy farmer shall be a producer with respect to only his milk received at a pool plant if delivery of milk of his production to nonpool plants does not comply with the limitations of subdivisions (i), (ii), and (iii), of this subparagraph. In the case of a handler diverting pursuant to subdivisions (ii) and (iii) of this subparagraph, if milk of the dairy farmers is moved to nonpool plants in a total quantity exceeding the per-

centages specified, the diverting handler shall designate the dairy farmers whose milk is not to be producer milk diverted pursuant to such subdivision (ii) or (iii) of this subparagraph and the quantities excluded for each dairy farmer. If the handler fails to make such designation the dairy farmers shall be producers only with respect to their milk delivered to pool plants;

(3) Diverted to a nonpool plant that is not a producer-handler plant for not more than 10 days' production during any month of September through November except that this subparagraph shall not be applicable if:

(i) In the case of a cooperative association all of the diversions of milk of member producers by such cooperative association during the month fall within the limits prescribed in subparagraph (4) of this paragraph; or

(ii) In the case of a pool handler (other than a cooperative association) diverting milk of nonmember producers, all of such diversions from such plant fall within the limits prescribed in subparagraph (5) of this paragraph;

(4) Diverted during any month of September through November to a nonpool plant that is not a producer-handler plant as milk of a member of a cooperative association for the account of such association if the amount of milk so diverted does not exceed 30 percent of the volume of Grade A milk from all producer members of such cooperative association received at pool plants during such month; or

(5) Diverted during any month of September through November to a nonpool plant that is not a producer-handler plant as milk of a producer who is not a member of a cooperative association, for the account of a handler in his capacity as the operator of a pool plant from which the quantity of milk of nonmember producers so diverted does not exceed 30 percent of the total Grade A receipts of milk at such plant from nonmember producers.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1103.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1103.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk received from a producer which is:

(a) Received at a pool plant(s) directly from a producer;

(b) Diverted in accordance with the provisions of § 1103.12; or

(c) Received by a handler described in § 1103.9(c).

§ 1103.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1103.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1103.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1103.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1103.40(b)(1)) for which the handler fails to establish a disposition.

§ 1103.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1103.40(b) or (c)(1) (i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1103.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1103.17 Filled milk.

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

§ 1103.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

Handler Reports

§ 1103.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1103.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1103.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1103.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1103.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler

described in § 1103.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

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

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1103.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1103.32 Other reports.

(a) Each pool handler, with respect to fluid milk products disposed of for animal feed, shall report to the market administrator such information and at such time as the market administrator may require.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1103.30 and 1103.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

Classification of Milk

§ 1103.40 Classes of utilization.

Except as provided in § 1103.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1103.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, lowfat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1103.41(a) to the receipts specified in § 1103.41(a)(2) and in shrinkage specified in § 1103.41 (b) and (c).

§ 1103.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1103.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1103.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph 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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(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 by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; 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 § 1103.9 (b) or (c), but not in excess of 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 weights determined by farm bulk

tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1103.42 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 another pool plant or by a handler described in § 1103.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, 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-plant or divertee-plant after the computations pursuant to § 1103.44(a)(12) and the corresponding step of § 1103.44(b);

(2) If the tranferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1103.44(a)(7) or the corresponding step of § 1103.44(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-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1103.44(a) (11) or (12) or the corresponding steps of § 1103.44(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-plant or divertee-plant; and

(4) If a specified utilization of skim milk and butterfat transferred by a handler described in § 1103.9(c) to a pool plant of another handler is not claimed by both handlers, such skim milk and butterfat shall be classified pro rata to the respective amounts of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1103.44(a)(12) and the corresponding step of § 1103.44(b) and after the allocation of skim milk and butterfat for which a specified classification has been claimed by handlers 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 utilization 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 § 1103.40.

(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 to a producer-handler under another order in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, 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 following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision 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 subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1103.30 for the month within which such transaction occurred; and

(*b*) 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;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market ad-

ministrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph.

§ 1103.43 General classification rules.

In determining the classification of producer milk pursuant to § 1103.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1103.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1103.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1103.40, 1103.41, and 1103.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1103.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1103.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1103.9(a) for each of his pool plants separately and of each handler described in § 1103.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in §1103.41 (b);

(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 (7)(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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1103.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1103.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1103.40(c)(6)), any product specified in § 1103.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1103.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1103.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) 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 subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1103.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8) (i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1103.45(a); or

(*b*) The total pounds of skim milk remaining in each class of this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) 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 an other pool plant or a handler described in § 1103.9(c) according to the classification of such products pursuant to § 1103.42(a); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1103.44(a)(14) and the corresponding step of § 1103.44(b).

§ 1103.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1103.44(a)(12) and the corresponding step of § 1103.44(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.

(b) 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 § 1103.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by each handler.

Class Prices

§ 1103.50 Class prices.

Subject to the provisions of §1103.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.47.

(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.

§ 1103.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For

such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1 percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1103.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers at a pool plant or at such plant from a handler described in § 1103.9(c) and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1103.50 (a) shall be reduced at the following rates (where mileage determinations are applicable these distances shall be determined by the market administrator by applying the shortest hard-surfaced highway distance open to commercial truck traffic):

Location:	*Rate per hundredweight (cents)*
(1) For milk received at a pool plant located in the Mississippi marketing area except that part in George, Greene, Hancock, Harrison, Jackson, Pearl River, and Stone Counties	16.0
(2) For milk received at a pool plant located outside the marketing area, and:	
(i) More than 60 but not more than 160 miles from the courthouse in Gulfport, or Pascagoula, Miss., whichever is nearer	10.0
(ii) For each additional 10 miles or fraction thereof, an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of receipts at such plant from producers and receipts from a handler described in § 1103.9(c) and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The 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.

§ 1103.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1103.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1103.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1103.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1103.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1103.44(a)(14) and the corresponding step of § 1103.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1103.74, that are 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 § 1103.44(a)(9) and the corresponding step of § 1103.44(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 § 1103.44(a)(7)(i) through (iv) and the corresponding step of § 1103.44(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 § 1103.44(a)(1)(v) and (vi) and the corresponding step of § 1103.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1103.44(a)(11) and the corresponding step of § 1103.44(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 applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1103.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1103.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1103.60 for all handlers specified in § 1103.9 (a), (b), and (c) who filed reports prescribed by § 1103.30, and who made payments pursuant to § 1103.71 and § 1103.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1103.75;

(c) Add not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(d) 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 § 1103.60 (f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for milk received from producers.

§ 1103.62 Announcement of uniform price and butterfat differential.

The market administrator shall announced publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1103.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all applicable payments made by handlers pursuant to §§ 1103.71, 1103.76, and 1103.77 and out of which he shall make all applicable payments pursuant to §§ 1103.72 and 1103.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1103.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each htandler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified

in subparagraph (2) of this paragraph:

(1) The total value of milk of the handler for such month as determined pursuant to § 1103.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1103.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1103.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1103.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1103.71(a)(2) exceeds the amount computed pursuant to § 1103.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1103.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each 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 uniform price pursuant to § 1103.61 as adjusted pursuant to §§ 1103.74 and 1103.75 and less the following amounts:

(1) The payments made pursuant to paragraph (b) of this section;

(2) Deductions for marketing services pursuant to § 1103.86; and

(3) Any proper deductions authorized in writing by the producer: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 1103.72 he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator;

(b) On or before the last day of each month to each producer (1) for whom payment is not received from the handler by a cooperative association pursuant to paragraph (c) of this section, and (2) who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment equal to the Class III price for the preceding month for milk testing 3.5 percent butterfat multiplied by the hundredweight of milk received from such producer during the first 15 days of the current month;

(c) To a cooperative association which has filed request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 26th day of the month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section; and

(2) On or before the 13th day after the end of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association;

(d) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the date, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1103.86, together with a description of the respective deduction; and

(6) The net amount of payment to the producer;

(e) To a cooperative association for milk received from such association in its capacity as a handler as follows:

(1) On or before the 26th day of each month an amount equal to not less than the Class III price for 3.5 percent milk for the preceding month multiplied by the hundredweight of milk received from such association during the first 15 days of the current month; and

(2) On or before the 13th day after the end of each month during which the milk was received an amount equal to not less than the utilization value of such milk computed at the class prices, as adjusted by the butterfat differential specified in § 1103.74, that are applicable at the location of the receiving handler's pool plant, less amounts paid pursuant to subparagraph (1) of this paragraph; and

(f) Each handler who received producer milk for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report to such cooperative association with respect to each such producer as follows:

(1) On or before the 20th day of each month, the total pounds of milk received during the first 15 days of the month;

(2) On or before the 10th day after the end of each month:

(i) The daily and total pounds of milk received during the month and the average butterfat test thereof; and

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

§ 1103.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1103.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1103.73, the uniform price pursuant to § 1103.61 to be paid for milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1103.52(a); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1103.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1103.76 Payments by 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 §§ 1103.30(b) and 1103.31(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 route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds 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 value that would have been computed pursuant to § 1103.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1103.60 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, the value of milk determined pursuant to § 1103.60 for such handler shall include, in lieu of the value of other source milk specified in § 1103.60(f) less the value of such other source milk specified in § 1103.71(a)(2)(ii), a value of milk determined pursuant to § 1103.60 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 § 1103.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1103.30(b) and 1103.31(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 value of milk determined pursuant to § 1103.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagraph (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1103.77 Adjustment of accounts.

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

§ 1103.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1103.71, 1103.76, 1103.77(a), 1103.85, or 1103.86(a), shall be increased one-half of 1 percent each month or fraction thereof starting the third day after the date such obligation is due until such obligation is paid. Any remittance received by the market administrator postmarked not later than the date such obligation is due shall be considered to have been received when due.

Administrative Assessment and Marketing Service Deduction

§ 1103.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, excluding a handler described in § 1103.9(c), 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) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1103.44(a)(7) and (11) and the corresponding steps of § 1103.44(b), except such other source milk that is excluded from the computations pursuant to § 1103.60 (d) and (f);

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1103.76(a)(2); and

(d) Milk received from a handler described in § 1103.9(c).

§ 1103.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of his own production) pursuant to § 1103.73(a), shall deduct 7 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the month, and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of the milk for producers who are not receiving such services from a cooperative association. Such services shall be performed in whole

or in part by the market administrator or by an agent engaged by and responsible to him; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 15th day after the end of each month, and pay such deductions to such cooperative association.

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1108 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1108.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1108.2 Central Arkansas marketing area.

"Central Arkansas marketing area", called the "marketing area" in this part, means all the territory included within the boundaries of the counties of Clark, Conway, Craighead, Cross, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lee, Lonoke, Monroe, Phillips, Poinsett, Pope, Prairie. Pulaski, Saline, St. Francis, White, and Woodruff, all in the State of Arkansas.

§ 1108.3 [Reserved]

§ 1108.4 [Reserved]

§ 1108.5 Distributing plant.

"Distributing plant" means an approved plant from which Class I milk, except filled milk, equal to not less than 50 percent of its receipts of producer milk, milk from a handler described in § 1108.9(c), and fluid milk products, except filled milk, from other pool plants is disposed of during the month, on routes or through plant stores, to wholesale or retail outlets (except pool plants) and from which Class I milk, except filled milk, equal to not less than 10 percent of such receipts is disposed of during the month on routes or through plant stores, to wholesale or retail outlets (except pool plants) located in the marketing area.

§ 1108.6 Supply plant.

"Supply plant" means:

(a) An approved plant from which fluid milk products, except filled milk, in an amount not less than 50 percent of its receipts of producer milk and milk received from a handler described in § 1108.9(c) is moved during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months during the period October through January shall upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September; or

(b) An approved plant which is operated by a cooperative association having member producers which delivers 50 percent or more of its member milk to the pool plants of other handlers and from which fluid milk products in an amount not less than 25 percent of its receipts of producer milk during the month at such plant are shipped during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months October through January shall, upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September.

§ 1108.7 Pool plant.

(a) Except as provided in paragraph (b) of this section, "pool plant" means a distributing plant or a supply plant.

(b) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless a greater volume of Class I milk, except filled milk, was disposed of from such plant during the 6-month period immediately preceding to retail or wholesale outlets (except pool plants or nonpool plants) in the Central Arkansas marketing area than in the marketing area regulated pursuant to such other order; and

(3) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant for each of the preceding months of August through January.

§ 1108.7a Approved plant.

"Approved plant" means all of the buildings, premises and facilities of a plant (a) in which milk or skim milk is processed or packaged and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors and sales through plant stores) to wholesale or retail outlets (except pool plants) located in the marketing area, or (b) from which milk or skim milk is shipped during the month to a distributing plant.

§ 1108.8 Nonpool plant.

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

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

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

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

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are shipped during the month to a pool plant qualified pursuant to § 1108.7, and which is not an other order plant nor a producer-handler plant.

§ 1108.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants.

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with the provisions of § 1108.12.

(c) Any cooperative association with respect to the milk of its producer members which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it will be the handler for such milk for the month, such cooperative handler status to be effective the first day of the month following receipt by the market administrator of such notice and to continue until the first day of the month following receipt of a request to discontinue such cooperative handler status. Milk so delivered shall be considered to have been received by the cooperative association at the plant to which delivered and then transferred to the handler operating the plant.

(d) Any person who operates a partially regulated distributing plant.

§ 1108.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant which during the month has no other source milk, producer milk or milk received from a handler described in § 1108.9(c).

§ 1108.11 [Reserved]

§ 1108.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is received during the month at a pool plant: *Provided*, That if such milk is diverted by a handler for his account from a pool plant to a nonpool plant that is not a producer-handler plant any day during the months of February through August, or on not more than 10 days during any other month, the milk so diverted shall be deemed to have been received at a pool plant at the location of the plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated pursuant to § 1108.44 to Class II or Class III utilization; and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1108.13 Producer milk.

"Producer milk" shall be that skim milk or butterfat for each handler's account in milk (in an amount determined by weights and measurements for individual producer's deliveries, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is received pursuant to paragraphs (a) and (b) of this section and diverted pursuant to § 1108.12 as follows:

(a) Received directly from producers' farms at a pool plant by the operator of the pool plant (except that received from a handler described in § 1108.9(c)) or diverted by the pool plant operator pursuant to § 1108.12.

(b) Received directly from producers' farms for his account by a handler described in § 1108.9(c) or diverted for his account pursuant to § 1108.12.

§ 1108.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1108.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1108.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1108.40(b)(1)) 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

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1108.40(b)(1)) for which the handler fails to establish a disposition.

§ 1108.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in subparagraph (1) of this paragraph or in § 1108.40(b) or (c)(1)(i) through (viii) 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 (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; 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.

§ 1108.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1108.17 Filled milk.

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

§ 1108.18 Cooperative association.

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

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

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

HANDLER REPORTS

§ 1108.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1108.9(c);

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1108.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

(c) Each handler described in § 1108.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1108.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1108.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

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

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1108.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1108.32 Other reports.

(a) Each handler, except a producer-handler and a handler making payments pursuant to § 1108.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the seventh day of each month of April through August, for each producer or the preceding month:

(i) His name and address or other appropriate identification;

(ii) The total pounds of milk and butterfat received from such producer, including, for the months of March through July, the pounds of base milk;

(iii) The location at which such milk was received; and

(iv) The number of days on which milk was received from such producer;

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1108.12 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1108.30 and 1108.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1108.40 Classes of utilization.

Except as provided in § 1108.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1108.30 shall be classified as follows:

(a) *Class I milk.* Except as provided in paragraph (c) of this section, Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Except as provided in paragraph (c) of this section, Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, or any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt. Any product specified in this subparagraph that is modified by the addition of nonfat milk solids shall be Class II milk in an amount equal only to the weight of an equal volume of an unmodified product of the same nature and butterfat content;

(2) In packaged inventory at the end of the month of the products specified in subparagraph (1) of this paragraph; and

(3) Used to produce cottage cheese, low-fat cottage cheese, and dry curd cottage cheese.

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

(1) Used to produce:

(i) Cheese (other than cottage cheese, lowfat cottage cheese, and dry curd cottage cheese);

(ii) Butter, plastic cream, frozen cream, and anhydrous milkfat;

(iii) Any milk product in dry form;

(iv) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(v) Custards, puddings, and pancake mixes;

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers;

(vii) Evaporated or condensed milk (plain or sweetened) in a consumer-type package, evaporated or condensed skim milk (plain or sweetened) in a consumer-type package, and any concentrated milk product in bulk, fluid form;

(viii) Any product containing 6 percent or more nonmilk fat (or oil) except those products specified in paragraph (b)(1) of this section; and

(ix) Any product that is not a fluid milk product and that is not specified in subdivisions (i) through (viii) of this subparagraph or in paragraph (b) of this section;

(2) 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 from which there is no disposition of fluid milk products or fluid cream products other than those received in consumer-type packages;

(3) In inventory at the end of the month of fluid milk products in bulk or packaged form and products specified in paragraph (b)(1) of this section in bulk form;

(4) In fluid milk products and products specified in paragraph (b) of this section that are disposed of by a handler for animal feed;

(5) In fluid milk products and products specified in paragraph (b) of this section 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;

(6) In skim milk in any modified fluid milk product or modified product specified in paragraph (b)(1) of this section that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition or classified as Class II milk, as the case may be; and

(7) In shrinkage assigned pursuant to § 1108.41(a) to the receipts specified in § 1108.41(a)(2) and in shrinkage specified in § 1108.41 (b) and (c).

§ 1108.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1108.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of

this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1108.9(c), except that if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph 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 plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(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 by transfer 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 milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6) of this paragraph; 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 § 1108.9 (b) or (c), but not in excess of 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 weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1108.42 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 another pool plant or by a handler described in § 1108.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, 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 § 1108.44(a)(12) and the corresponding step of § 1108.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1108.44(a)(7) or the corresponding step of § 1108.44(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;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1108.44 (a) (11) or (12) or the corresponding steps of § 1108.44(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; and

(4) If a specified utilization of skim milk and butterfat transferred by a handler described in § 1108.9(c) to a pool plant of another handler is not claimed by both handlers, such skim milk and butterfat shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1108.44(a)(13)(i) and the corresponding step of § 1108.44(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 utilization 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 § 1108.40.

(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 by the market administrator, 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 following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision 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 subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1108.30 for the month within which such transaction occurred; and

(b) 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;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, 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 subparagraph.

§ 1108.43 General classification rules.

In determining the classification of producer milk pursuant to § 1108.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1108.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1108.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1108.40, 1108.41, and 1108.42;

(b) 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; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1108.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1108.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1108.9(a) for each of his pool plants separately and of each handler described in § 1108.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat 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 in shrinkage specified in § 1108.41(b);

(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 (7) (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) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1108.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that a pool plant is subject to this subparagraph, subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1108.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II;

(6) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in other source milk (except that received in the form of a fluid milk product or a fluid cream product) that is used to produce, or added to (excluding the quantity of such skim milk that was classified as Class III milk pursuant to § 1108.40(c)(6)), any product specified in § 1108.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) 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) and packaged inventory at the beginning of the month of products specified in § 1108.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A 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;

(8) 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:

(i) The pounds of skim milk in receipts of fluid milk products from an

unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(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), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1108.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(iii) 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 subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1108.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to subparagraph (5) of this paragraph;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to subparagraph (1) of this paragraph;

(11) Subject to the provisions of subdivision (i) of this subparagraph, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all pool plants of the handler, 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), (7)(v), and (8) (i) and (ii) of this paragraph and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner 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 (7)(vi) and (8)(iii) of this paragraph:

(i) Subject to the provisions of subdivisions (ii) and (iii) of this subparagraph, such subtraction shall be pro rata to the pounds of skim milk 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, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1108.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to subdivision (i) of this subparagraph result in the total pounds of skim milk at all pool plants of the handler that are to be subtracted at this allocation step from Class II and Class III combined exceeding the pounds of skim milk remaining in Class II and Class III at all such plants, the pounds of such excess shall be subtracted from the pounds of skim milk remaining in Class I after such proration at the pool plants at which such other source milk was received; and

(iii) Except as provided in subdivision (ii) of this subparagraph, should the computations pursuant to either subdivision (i) or (ii) of this subparagraph result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract in the following order 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:

(i) Another pool plant or a handler described in § 1108.9(c) according to the classification of such products pursuant to § 1108.42(a); and

(ii) A handler described in § 1108.9(c) according to the classification of such products pursuant to § 1108.42(a)(4); and

(14) 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";

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

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1108.44(a)(14) and the corresponding step of § 1108.44(b).

§ 1108.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1108.44(a)(12) and the corresponding step of § 1108.44(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.

(b) 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 § 1108.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) 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 by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1108.50 Class prices.

Subject to the provisions of § 1108.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.94.

(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.

§ 1108.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 60 miles by shortest highway distance as measured by the market administrator, from the nearer of the County Courthouse in Arkadelphia, Arkansas, or the State Capitol in Little Rock, Arkansas, which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1108.50(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is from the respective buildings designated above.

(b) For purposes of calculating such adjustment, transfers of fluid milk products between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1108.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The 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.

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1108.54 Equivalent price.

If for any reason a price or pricing constitutent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constitutent that is required.

UNIFORM PRICES

§ 1108.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1108.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1108.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1108.44(a)(14) and the corresponding step of § 1108.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1108.74, that are 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 § 1108.44(a)(9) and the corresponding step of § 1108.44(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 § 1108.44(a)(7) (i) through (iv) and the corresponding step of § 1108.44(b), excluding receipts of bulk fluid cream products from another 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 § 1108.44(a)(7) (v) and (vi) and the corresponding step of § 1108.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(11) and the corresponding step of § 1108.44(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.

§ 1108.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) For each month the market administrator shall compute the uniform price (or weighted average price) per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1108.60 for all handlers who filed the reports prescribed by § 1108.30 for the month and who made the payments pursuant to §§ 1108.71 and 1108.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to §1108.75;

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

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

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1108.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

The result shall be the "weighted average price," and, except for the months of March through July, shall be the "uniform price" for milk of 3.5 percent butterfat content received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a) (1) through (3) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (a) (4) (ii) of this section by the weighted average price;

(2) Compute the aggregate value of excess milk by assigning such milk, in series beginning with Class III, to the hundredweight of producer milk in each class, multiplying the quantities of milk so assigned to each class by the respective class prices and adding together the resulting amounts;

(3) Divide the aggregate value of excess milk obtained in subparagraph (2) of this paragraph by the total hundredweight of such milk, adjust to the nearest cent and subtract 4 cents. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract an amount determined by multiplying the uniform price obtained in subparagraph (3) of this paragraph, plus 4 cents, times the hundredweight of excess milk from the aggregate value of milk obtained in subparagraph (1) of this paragraph;

(5) Divide the result obtained in subparagraph (4) of this paragraph by the total hundredweight of base milk of handlers included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to subparagraph (5) of this paragraph. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1108.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform prices for such month.

Payments for Milk

§ 1108.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1108.71, 1108.76 and 1108.77, and out of which he shall make all payments pursuant to §§ 1108.72 and 1108.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1108.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in subparagraph (1) of this paragraph exceeds the amount specified in subparagraph (2) of this paragraph:

(1) The total value of milk of the handler for such month as determined pursuant to § 1108.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1108.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1108.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

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

(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.

§ 1108.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1108.71(a)(2) exceeds the amount computed pursuant to § 1108.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1108.73 Payments to producers and to cooperative associations.

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

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class 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 paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

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

(ii) Less deductions for marketing services made pursuant to § 1108.86;

(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 from the market administrator pursuant to § 1108.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section.

(c) Each handler shall furnish the person to whom payment is to be made pursuant to this section with the following information:

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

(2) On or before the 7th day of the following month to a cooperative association for its individual members, or on or before the 15th day of the following month to producers:

(i) The pounds of milk received each day and the total for the month, to-

gether with the butterfat content of such milk;

(ii) For the months of March through July, the pounds of base milk received;

(iii) The amount or rate and nature of deductions made from payments; and

(iv) The amount and nature of payments due pursuant to § 1108.77.

(d) To a cooperative association with respect to receipts of milk for which it is the handler described in § 1108.9(c):

(1) On or before the 2d day prior to the last day of the delivery period, an amount equal to the rate specified in paragraph (a)(1) of this section times the volume received during the first 15 days of the delivery period; and

(2) On or before the 13th day after the end of each delivery period, an amount equal to not less than the value of such milk at applicable class price(s) adjusted by the butterfat differential pursuant to § 1108.74 less payment made pursuant to paragraph (d)(1) of this section.

§ 1108.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1108.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices to be paid for producer milk received at a pool plant located 60 miles or more from the County Courthouse in Arkadelphia, Ark., or the State Capital in Little Rock, Ark., whichever is nearer by the shortest highway distance, as determined by the market administrator, shall be reduced according to the distance of the plant from the respective buildings designated above at the rate of 1.5 cents for each 10 miles or residual fraction thereof.

(b) For purposes of computations pursuant to §§ 1108.71 and 1108.72 the weighted average price shall be adjusted at the rates set forth in § 1108.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1108.76. Payments by 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 §§ 1108.30(b) and 1108.31(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 route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products 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 fluid milk products 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 route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds 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 value that would have been computed pursuant to § 1108.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1108.60 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, the value of milk determined pursuant to § 1108.60 for such handler shall include, in lieu of the value of other source milk specified in § 1108.60(f) less the value of such other source milk specified in § 1108.71(a)(2)(ii), a value of milk determined pursuant to § 1108.60 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 § 1108.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1108.30(b) and 1108.31(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 value of milk determined pursuant to § 1108.60 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 partially regulated distributing plant's value of milk computed pursuant to subparagragh (1) of this paragraph, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

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

(iii) The payments by the operator of the 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.

§ 1108.77 Adjustment of accounts.

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

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1108.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk received by a handler described in § 1108.9(c), except that transferred to another handler operating a pool plant;

(b) Producer milk of a handler operating a pool plant (including such handler's own production), plus milk received from a handler described in § 1108.9(c);

(c) Other source milk allocated to Class I pursuant to § 1108.44(a) (7) and (11) and the corresponding steps of § 1108.44(b), except such other source milk that is excluded from the computations pursuant to § 1108.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1108.76(a)(2).

§ 1108.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1108.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

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

BASE-EXCESS PLAN

§ 1108.90 Base milk.

"Base milk" means milk received by handlers from a producer during any of the months of March through July which is not in excess of such producer's base computed pursuant to § 1108.93.

§ 1108.91 Excess milk.

"Excess milk" means milk received by handlers from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1108.93.

§ 1108.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became a pool plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been a pool plant during such period.

§ 1108.93 Determination of monthly base of each producer.

Subject to the rules set forth in § 1108.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by handlers as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1108.92 by the number of days in such month;

(b) If milk is received as producer milk from the same farm by handlers regulated under this part and by handlers fully regulated under the terms of the Memphis, Tennessee (Part 1097 of this chapter), or Fort Smith, Arkansas (Part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1108.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1108.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1108.94 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1108.92:

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred; and

(b) If a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1108.95 Announcement of established bases.

On or before February 25 of each year the market administrator shall notify each producer of the daily average base established by such producer.

§ 1108.96 Monthly announcement of base milk and excess milk for each producer.

On or before the 11th day after the end of each of the months March through July, the market administrator shall notify each handler of the amount of base milk and excess milk received from each producer.

Signed at Washington, D.C., on August 28, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.72-14989 Filed 9-15-72;8:45 am]

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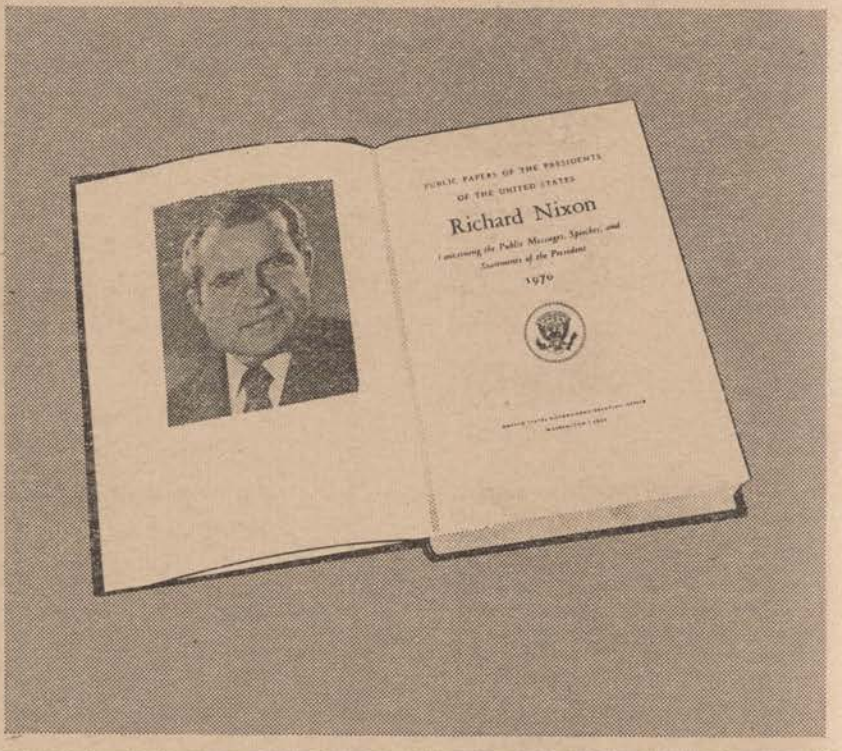

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