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Title 3—The President

PROCLAMATION 4156

Modifying Proclamation 3279, Relating to Imports of Petroleum and Petroleum Products

By the President of the United States of America

A Proclamation

Pursuant to paragraph (a) of section 6 of Proclamation 3279,[1] as amended, the Director of the Office of Emergency Preparedness maintains a constant surveillance of imports of petroleum and its primary derivatives and their effect on national security. The Director has found that changes in the supply of and demand for petroleum and its derivatives have been occurring rapidly and additional flexibility should be provided for the orderly administration of Proclamation 3279, as amended, during the remainder of 1972. Therefore, the Director has recommended, with the advice of the Oil Policy Committee, that additional imports of No. 2 fuel oil be permitted and that holders of certain allocations under said Proclamation should be permitted to import petroleum and its derivatives in advance of allocations to be made for 1973.

I agree with the above finding and recommendation of the Director and deem it necessary and consistent with the security objectives of Proclamation 3279, as amended, to adjust the imports of petroleum and petroleum products, and to improve the administration of the program, as hereinafter provided.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution and laws of the United States, including section 232 of the Trade Expansion Act of 1962, do hereby proclaim that, effective as of this date, Proclamation 3279, as amended, is further amended as follows:

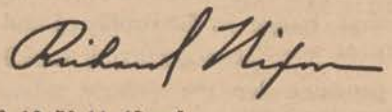
[1] 24 F.R. 1781; 3 CFR 1959–1963 Comp., p. 11.

1. In subparagraph (1) of paragraph (a) of section 2, add the following sentence after the third sentence, "In addition to the quantity of No. 2 fuel oil provided in the preceding sentence, the Secretary may allocate for the period January 1, 1972, through December 31, 1972, an additional 5,000 barrels per day of such fuel oil to persons who qualify for allocations under the preceding sentence."

2. Add the following subparagraph (3) in paragraph (a) of section 2:

"(3) For the allocation period January 1, 1972, through December 31, 1972, the Secretary may make allocations in excess of the levels provided in subparagraph (1) of this paragraph which excess allocations may be imported at any time through December 31, 1973. However, no allocation under this subparagraph shall be made to any person to whom an allocation was not made prior to September 1, 1972, and any such excess allocation shall not exceed 10% of the allocations made to any such allocation holder prior to September 1, 1972 for the allocation year commencing January 1, 1972. Any such excess allocation shall be deducted from any allocation which may be hereafter made to him for the period January 1, 1973, through December 31, 1973."

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth 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.72-16061 Filed 9-18-72;11:42 am]

Rules and Regulations

Title 7—AGRICULTURE

Chapter VIII—Agricultural Stabilization and Conservation Service (Sugar), Department of Agriculture

SUBCHAPTER B—SUGAR REQUIREMENTS AND QUOTAS

[Sugar Reg. 811, Amdt. 11]

PART 811—CONTINENTAL SUGAR REQUIREMENTS AND AREA QUOTAS

Requirements, Quotas, and Quota Deficits for 1972

Basis and purpose and bases and considerations. This amendment is issued pursuant to the authority vested in the Secretary of Agriculture by the Sugar Act of 1948, as amended (61 Stat. 922, as amended), hereinafter referred to as the "Act." The purpose of this amendment to Sugar Regulation 811, as amended, is to determine and prorate or allocate the deficits in quotas established pursuant to the Act.

Section 204(a) of the Sugar Act of 1948, as amended, provides in part that "The Secretary shall, at the time he makes his determination of requirements of consumers for each calendar year and on December 15 preceding each calendar year, and as often thereafter as the facts are ascertainable by him but in any event not less frequently than each 60 days after the beginning of each calendar year, determine whether, * * * any area or country will not market the quota for such area or country."

The Government of Haiti has informed the Department that they will be able to supply only 23,000 short tons, raw value, of sugar to the United States under its quota for the calendar year 1972. On the basis of this information a deficit of 6,812 short tons, raw value, is hereby declared for Haiti. Since the Haitian deficit represents a portion of its share of previous deficit declarations, the entire deficit is herein prorated to Western Hemisphere countries.

In amendment 10 of this part, the quota for Honduras was inadvertently increased to 17,827 short tons, raw value, which was 218 tons in excess of the quantity which Honduras had previously notified the Department it would be able to fill. Subsequent to the early notification, Honduras informed the Department that they would not be able to supply in 1972 any sugar in addition to its current quota charges of 17,495 short tons, raw value. Accordingly, a deficit of 332 tons is herein determined in the current quota for Honduras and this quantity is prorated to countries of the Central American Common Market.

On the basis of evidence submitted by Bolivia to the Department, it is hereby found, pursuant to section 202(d)(4) of the Act, that the deficit determined in the quota for Bolivia in amendment 9 of this Part 811 (37 F.R. 12217) was due to crop disaster and pursuant to section 204(b) its 1972 quota is reduced to 54 short tons, raw value, the quantity imported under bond in 1971 and charged to its 1972 quota.

It is hereby determined that deficits previously declared and those declared herein constitute all known deficits on which data are currently ascertainable by the Department.

By virtue of the authority vested in the Secretary of Agriculture by the Act, Part 811 of this chapter is hereby amended by amending §§ 811.12 and 811.13 as follows:

1. Section 811.12 is amended by amending paragraph (a) to read as follows:

§ 811.12 Proration and allocation of deficits in quotas.

(a) The total deficits determined in quotas established under section 202 of the Act in short tons, raw values, are as follows: Domestic Beet Sugar Area 292,000; Puerto Rico 680,000; Bahamas 23,667; Bolivia 5,659; Haiti 4,243; and Uganda 15,252. The deficits for the domestic areas and Western Hemisphere countries totaling 1,005,569 tons are reallocated by allocating 275,741 tons to the Republic of the Philippines (the maximum quantity which it can supply in 1972), providing a special allocation of 21,507, 17,950, and 4,415 tons to Costa Rica, Guatemala and Honduras, respectively, and prorating the remainder to Western Hemisphere quota countries on the basis of quotas, determined under section 202 of the Act, except such prorations to the West Indies, Panama, Honduras, Bahamas, and Bolivia are limited so that total quotas for each country will not exceed 206,788, 43,500, 17,495, 61, and 54 tons, respectively. The deficit in the quota for Uganda of 15,252 tons is reallocated by allocating 30.08 percent to the Republic of the Philippines and prorating the remainder on the basis of quotas determined under section 202 of the Act to Eastern Hemisphere quota countries, except Ireland.

* * * * *

2. Section 811.13 is amended by amending paragraph (c) to read as follows:

§ 811.13 Quotas for foreign countries.

* * * * *

(c) For the calendar year 1972, the prorations to individual foreign countries other than the Republic of the Philippines, pursuant to section 202 of the Act, are shown in columns (1) and (2) of the following table. Deficit prorations previously established in this Sugar Regulation 811 are shown in column (3). New deficit prorations established herein are shown in column (4). Total quotas and prorations are shown in column (5).

Countries	Basic quotas	Temporary quotas and prorations pursuant to Sec. 202(d) [1]	Previous deficits and deficit prorations	New deficit prorations	Total quotas and prorations
	(1)	(2)	(3)	(4)	(5)
	Short tons, raw value				
Dominican Republic	420,738	141,713	152,824	1,598	716,873
Mexico	372,090	125,328	135,154	1,413	633,985
Brazil	362,887	122,228	131,811	1,378	618,304
Peru	259,674	87,463	94,321	986	442,444
West Indies	135,425	45,614	25,749	0	206,788
Ecuador	53,578	18,046	19,461	204	91,289
Argentina	50,291	16,940	18,267	191	85,689
Costa Rica	45,361	15,278	38,283	278	99,200
Colombia	44,703	15,057	16,238	170	76,168
Panama	27,940	9,411	6,149	0	43,500
Nicaragua	42,403	14,281	15,402	260	72,346
Venezuela	40,430	13,617	14,686	154	68,887
Guatemala	38,787	13,064	32,039	238	84,128
El Salvador	28,268	9,522	10,268	173	48,231
British Honduras	22,352	7,529	8,119	85	38,085
Haiti	20,379	6,864	2,569	−6,812	23,000
Bahamas	17,750	5,978	−23,667	0	61
Honduras	7,889	2,657	7,281	−332	17,495
Bolivia	4,273	1,440	−5,659	0	54
Paraguay	4,273	1,440	1,552	16	7,281
Australia	165,008	41,932	3,857	0	210,797
Republic of China	68,699	17,458	1,606	0	87,763
India	66,099	16,790	1,544	0	84,403
South Africa	46,676	11,861	1,091	0	59,628
Fiji Islands	36,157	9,188	845	0	46,190
Mauritius	24,324	6,181	569	0	31,074
Swaziland	24,324	6,181	569	0	31,074
Thailand	15,120	3,843	353	0	19,316
Uganda	12,162	3,090	−15,252	0	0
Malagasy Republic	9,861	2,506	230	0	12,597
Ireland	5,351	0	0	0	5,351
Total	2,473,242	792,500	696,259	0	3,962,001

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

(Secs. 204 and 403; 61 Stat. 925, as amended, and 932; and 7 U.S.C. 1114 and 1153)

Effective date. In order to promote orderly marketing, it is essential that this amendment be effective immediately so that all persons selling and purchasing sugar for consumption in the continental United States can promptly plan and market under the changed marketing opportunities. Therefore, it is hereby determined and found that compliance with the notice, procedure, and effective date requirements of 5 U.S.C. 553 is unnecessary, impracticable, and contrary to the public interest and this amendment shall be effective when filed for public inspection in the Office of the Federal Register.

Signed at Washington, D.C., on September 12, 1972.

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

[FR Doc.72-15856 Filed 9-14-72;8:53 am]

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

[Valencia Orange Reg. 408, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, 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 and information submitted by the Valencia Orange 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 Valencia oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Valencia oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1) (i) and (ii) of § 908.708 (Valencia Orange Regulation 408, 37 F.R. 18071) during the period September 8 through September 14, 1972, are hereby amended to read as follows:

§ 908.708 Valencia Orange Regulation 408.

* * * * *

(b) *Order.* (1) * * *

(i) District 1: 404,000 cartons.

(ii) District 2: 421,000 cartons.

* * * * *

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

Dated: September 13, 1972.

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

[FR Doc.72-15877 Filed 9-18-72;8:46 am]

PART 932—OLIVES GROWN IN CALIFORNIA

Expenses and Rate of Assessment

On August 24, 1972, notice of rule making was published in the FEDERAL REGISTER (37 F.R. 17057), regarding proposed expenses and the related rate of assessment for the fiscal year ending August 31, 1973, pursuant to the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932), regulating the handling of olives grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). After consideration of all relevant matter presented, including the proposals set forth in such notice which were submitted by the Olive Administrative Committee (established pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 932.209 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and likely to be incurred by the Olive Administrative Committee during the period September 1, 1972, through August 31, 1973, will amount to $267,095.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each first handler in accordance with § 932.39, is fixed at $13 per ton of olives.

Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) the relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal year shall be applicable to all assessable olives from the beginning of such year; and (2) such year began on September 1, 1972, and the rate of assessment herein fixed will automatically apply to all assessable olives beginning with such date.

Dated: September 13, 1972.

FLOYD F. HEDLUND,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc.72-15878 Filed 9-18-72;8:46 am]

PART 966—TOMATOES GROWN IN FLORIDA

Expenses and Rate of Assessment

Notice of rule making regarding the proposed expenses and rate of assessment to be effective under Marketing Agreement No. 125 and Order No. 966 both as amended (7 CFR Part 966), was published in the August 25, 1972, issue of the FEDERAL REGISTER (37 F.R. 17212). This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

The notice afforded interested persons an opportunity to file written data, views, or arguments pertaining thereto not later than September 10, 1972. None was filed.

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

§ 966.209 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period ending July 31, 1973, by the Florida Tomato Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate will amount to $115,000.

(b) The rate of assessment to be paid by each handler in accordance with the marketing agreement and this part shall be one-half cent ($0.005) per 30-pound container of tomatoes, or equivalent quantity, handled by him as the first handler thereof during said fiscal period.

(c) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular fiscal period shall be applicable to all assessable tomatoes from the beginning of such period, and (2) the current fiscal period began August 1, 1972, and the rate of assessment herein will automatically apply to all assessable tomatoes beginning with such date.

(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.72–15905 Filed 9–18–72;8:48 am]

Chapter XVIII—Farmers Home Administration, Department of Agriculture

SUBCHAPTER C—LOANS PRIMARILY FOR PRODUCTION PURPOSES

[FHA Instruction 441.2]

PART 1832—EMERGENCY LOANS

Subpart A—Emergency Loan Policies and Authorizations

MISCELLANEOUS AMENDMENTS

The requirements of 5 U.S.C. 553 involve a delay in making available the assistance provided by this authority. Farmers that have had crop production losses or damages to their farms by natural disasters are seeking emergency loan assistance to continue normal operations in counties determined to be major disaster areas by the President, and in counties designated emergency loan areas by the Secretary of Agriculture, and in counties where the FHA State Director has authorized emergency loans on a nondesignated basis. Many of these requested loans are for financing 1972 crop and livestock operations. The operating year is well underway and any delay in providing loan assistance under these revised instructions would be contrary to the public interest.

The revised regulations provide a reduction in the damage or loss eligibility requirement for emergency loans. Furthermore, emergency loan security requirements will now permit making the entire emergency loan for purchase of livestock, poultry, farm equipment, or facilities without taking a lien on crops.

Accordingly, in the public interest, this subpart shall be effective upon publication in the FEDERAL REGISTER (9–19–72).

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. See the Secretary of Agriculture's statement setting forth the policy on public participation in rule making 36 F.R. 13804, dated July 24, 1971. In accordance with the spirit of that policy, interested parties may submit written comments, suggestions, data, or arguments to the Office of the Assistant Administrator for Management, Farmers Home Administration, U.S. Department of Agriculture, Room 5013, South Building, Washington, D.C. 20250, within 30 days after the publication of this part. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. However, this Subpart A of Part 1832 shall remain effective until it is amended, in order to permit the public business to proceed expeditiously.

Subpart A of Part 1832, Title 7, Code of Federal Regulations (37 F.R. 7293), § 1832.5(c), subdivisions (i) and (ii) of subparagraph (1) of this paragraph; paragraph (c)(3) of this section are amended to state the damage or loss eligibility requirement; § 1832.11(a)(10) has been added to clarify security requirements.

As revised, §§ 1832.5(c)(1)(i)(ii); paragraph (c)(3), and 1832.11(a)(10) read as follows:

§ 1832.5 Eligibility requirements.

To be eligible for an EM loan, an applicant must:

* * * * *

(c) Have suffered severe production production losses not compensated for by losses not compensated for by insurance or otherwise, or severe damage otherwise to buildings, land and water resources, or farming or ranching equipment essential to normal operations, if the application is for an initial EM loan. Such production losses or property damages must have been caused by the natural disaster(s) or major disaster(s) which resulted in the designated or nondesignated counties, as defined in § 1832.1 (a) (4) and (5) becoming or remaining areas in which EM loans may be made.

(1) * * *

(i) Twenty percent or more in any major farming or ranching enterprise or

(ii) The equivalent of 10 percent or more in his total farming or ranching enterprises.

* * * * *

(3) When the qualifying loss consists of damage to or destruction of farm or ranch dwellings and service buildings, land and water resources, or farming and ranching equipment, EM loans will be made only to repair or replace such damaged or destroyed property.

* * * * *

§ 1832.11 Security policies.

(a) *EM loans for other than real estate.* * * *

(10) *Security requirements when entire loan is for purchase of livestock, poultry, farm equipment or facilities.* Loans made only for this purpose will be secured by a first lien on all such items purchased with loan funds in accordance with paragraph (a)(3) of this section, and by the best lien obtainable on other property of security value needed to give reasonable protection. It will not be necessary to additionally secure such a loan by a lien on crops unless the loan approval official determines a crop lien is needed to adequately protect the Government's interest.

* * * * *

(Sec. 339, 75 Stat. 318, 7 U.S.C. 1989; sec. 510, 63 Stat. 437, 42 U.S.C. 1480; sec. 4, 64 Stat. 100, 40 U.S.C. 442; sec 301, 80 Stat. 379, 5 U.S.C. 301; order of Act. Sec. of Agr, 36 F.R. 21529; Order of Asst. Sec. of Agr. for Rural Development and Conservation, 36 F.R. 21529)

Dated: September 11, 1972.

DARREL A. DUNN,
Acting Administrator, Farmers Home Administration.

[FR Doc.72–15879 Filed 9–18–72;8:46 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. 72–553]

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:

1. In § 76.2, in paragraph (e)(3) relating to the State of North Carolina, a new subdivision (v) relating to Pitt County is added to read:

(e) * * *

(3) *North Carolina.* * * *

(v) That portion of Pitt County bounded by a line beginning at the junction of U.S. Highway 264 and Secondary Road 1762; thence, following Secondary Road 1762 in a southwesterly direction to Secondary Road 1764; thence, following Secondary Road 1764 in a generally southwesterly direction to Secondary Road 1766; thence, following Secondary Road 1766 in a southeasterly direction to Secondary Road 1767; thence, following Secondary Road 1767 in a southeasterly direction to Secondary Road 1756; thence, following Secondary Road 1756 in a southeasterly direction to Secondary Road 1770; thence, following Secondary Road 1770 in a southeasterly direction to Secondary Road 1772; thence, following Secondary Road 1772 in a southeasterly direction to Secondary Road 1777; thence, following Secondary Road 1777 in a southwesterly direction to Secondary Road 1774; thence, following Secondary Road 1774 in a generally southwesterly direction to Secondary Road 1744; thence, following Secondary Road 1744 in a generally southwesterly direction to Secondary Road 1743; thence, following Secondary Road 1743 in a northwesterly direction to State

Highway 43; thence, following State Highway 43 in a northwesterly direction to Secondary Road 1739; thence, following Secondary Road 1739 in a northwesterly direction to Secondary Road 1737; thence, following Secondary Road 1737 in a northwesterly direction to Secondary Road 1725; thence, following Secondary Road 1725 in a northwesterly, then northeasterly direction to Secondary Road 1704; thence, following Secondary Road 1704 in a northwesterly direction to U.S. Highway Bypass 264; thence, following U.S. Highway Bypass 264 in a northeasterly direction to U.S. Highway 264; thence, following U.S. Highway 264 in a generally southeasterly direction to its junction with Secondary

2. In § 76.2, in paragraph (e) (11) relating to the State of Ohio, a new subdivision (iii) relating to Madison County is added to read:

(e) * * *

(11) *Ohio.* * * *

(iii) That portion of Madison County bounded by a line beginning at the junction of County Road 109 and the Madison-Clark County line; thence, following County Road 109 in a northeasterly, then southeasterly direction to Township Road 111; thence, following Township Road 111 in a northeasterly direction to County Road 110; thence, following County Road 110 in a southeasterly direction to State Highway 38; thence, following State Highway 38 in a southeasterly direction to State Highway 56; thence, following State Highway 56 in a northwesterly direction to Old Springfield Road; thence, following Old Springfield Road in a westerly direction to the Madison-Clark County line; thence, following the Madison-Clark County line in a northeasterly direction to its junction with County Road 109.

3. In § 76.2, in paragraph (g) the names of the States of Indiana and Ohio are deleted.

(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 amendments shall become effective upon issuance.

The amendments quarantine a portion of Pitt County, N.C., and a portion of Madison 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 areas.

The amendments remove the States of Indiana and Ohio from the list of hog cholera-free States appearing in 9 CFR § 76.2(g), as amended, because of the secondary spread of the contagion of hog cholera within these States. The special provisions pertaining to the interstate movement of swine and swine products from eradication and free States are no longer applicable to Indiana and Ohio. However, the general restrictions contained in 9 CFR Part 76, as amended, pertaining to the interstate movement of swine and swine products from nonquarantined areas apply to the States of Indiana and Ohio. This removal of the States of Indiana and Ohio from hog cholera-free status has the effect of reducing the Federal indemnities payable under other regulations (9 CFR Part 56) for swine slaughtered because of hog cholera in Indiana and Ohio.

The amendments impose certain further restrictions necessary to prevent the spread of hog cholera, and must be made effective immediately to accomplish their 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 amendments are impracticable, unnecessary and contrary to the public interest, and good cause is found for making them effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 14th day of September 1972.

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

[FR Doc.72-15906 Filed 9-18-72;8:48 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 72-SO-74, Amdt. 39-1522]

PART 39—AIRWORTHINESS DIRECTIVES

Continental Models IO-470 and TSIO-470 Engines

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to supersede Amendment 39-509 was published in 37 F.R. 15434. This proposal requires retirement at next overhaul of all Part No. 626820 "Non-H" cylinders and those "H" cylinders manufactured or remanufactured (rebarreled) prior to April 1963. It also retains the inspection procedures of Airworthiness Directive 67-31-5 only as long as necessary to facilitate the retirement of these cylinders on Continental IO-470 and TSIO-470 engines.

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

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

CONTINENTAL. Applies to Models IO-470-D, IO-470-E, IO-470-F, IO-470-H, IO-470-L, IO-470-M, IO-470-N, IO-470-S, IO-470-U, IO-470-V, and TSIO-470-B, TSIO-470-C, TSIO-470-D engines which have installed "Non-H" cylinder assemblies, Part No. 626820, and "H" cylinder assemblies manufactured or remanufactured prior to April 1963.

NOTE 1: "H" type cylinders are those having the letter H impression stamped on the top edge of the rocker box flange over the exhaust valve. "Non-H" type cylinders do not have this identification.

Compliance: Required as indicated unless already accomplished.

To preclude additional inflight failures of Part No. 626820 "Non-H" type cylinder assemblies and "H" type cylinder assemblies manufactured or remanufactured prior to April 1963, accomplish the following or an equivalent procedure approved by the Chief, Engineering and Manufacturing Branch, Southern Region, Atlanta, Ga.:

A. Within the next 25 hours' time in service after the effective date of this airworthiness directive and thereafter at intervals not exceeding 25 hours' time in service from the last inspection:

(1) Visually inspect the circumference of these cylinder assemblies at the junction of the aluminum head and steel barrel for oil leaks and/or combustion product strains. Engine permanent maintenance record entry must be made to reflect airworthiness directive compliance.

NOTE 2: In order to perform the inspection required by paragraph A(1) of this airworthiness directive, it may be necessary to remove engine cowling or access doors to permit visual examination with mirrors or other visual aids of the prescribed area of the cylinder. If the engine is clean and free of oil in the area to be inspected, the inspection required by paragraph A(1) may be performed without further cleaning of the engine. If oil leakage from an unknown source has caused a generally oily condition, the engine should be washed down and run up to normal operating conditions prior to the inspection required by paragraph A(1). During the inspection it may also be helpful to rotate the propeller to detect significant differences in compression between cylinders or audible compression leakage through a crack in the cylinder barrel.

(2) The inspection(s) required by paragraph A(1) must be performed by those persons authorized to perform inspections under Federal Aviation Regulation 43.3 except that on aircraft not utilized in air carrier services the inspection(s) may be performed by the holder of a pilot's certificate issued under Part 61 of the Federal Aviation Regulations on any aircraft owned or operated by him.

(3) If oil leaks and/or combustion product stains are found at the junction of the cylinder head and barrel during any inspection required by paragraph A(1), before further flight, a certificated powerplant mechanic shall investigate and establish the source of these conditions. If a cylinder barrel crack is found, the cracked cylinder must be replaced with an airworthy part.

B. At next engine overhaul replace Part No. 626820 "Non-H" cylinder assemblies and "H" cylinder assemblies manufactured or remanufactured prior to April 1963 (as identified by the date of manufacture impression stamped in the machined area beneath the valve rocker shaft supports) with Part No. 626820 cylinder assemblies manufactured or remanufactured after April 1963 and having the letter "H" impression stamped on the top edge of the rocker box flange over the exhaust valve.

NOTE 3: On engines manufactured or remanufactured during 1964 or later, as indicated by the year suffix on the serial number, it may be assumed without further verification that "H" type cylinders installed were manufactured subsequent to April 1963 if the maintenance records do not indicate a cylinder exchange.

On other engines having "H" type cylinders installed, it will be necessary to establish the cylinder's date of manufacture by removing the rocker box cover and inspecting the area beneath the rocker arms for the impression stamped manufacture date. Information on the location of this stamp was given on page 115 of the August 1971 General Aviation Inspection Aids Summary.

C. Inspections as outlined in paragraph A(1) are no longer required when paragraph B has been accomplished.

This airworthiness directive supersedes Amendment 39-509, AD 67-31-5.

This amendment becomes effective September 25, 1972.

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

Issued in East Point, Ga., on September 8, 1972.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.72-15869 Filed 9-18-72;8:46 am]

[Airspace Docket No. 72-SO-21]

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

Designation of Transition Area

On March 15, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 5396), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Clemson, S.C., transition area.

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

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

In § 71.181 (37 F.R. 2143), the following transition area is added:

CLEMSON, S.C.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Clemson-Oconee County Airport (latitude 34°40'22" N., longitude 82°53'07" W.); within 3 miles each side of the 092° bearing from the Oconee RBN (latitude 34°40'25" N., longitude 82°53'13" W.), extending from the 5-mile radius area to 8.5 miles east of the RBN.

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

Issued in East Point, Ga., on September 7, 1972.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.72-15870 Filed 9-18-72;8:46 am]

Chapter II—Civil Aeronautics Board

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-757; Amdt. 6]

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Performance of Overseas Military Personnel Charters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of September 1972.

By SPR-54, (Part 372), ER-734 (Part 207), ER-735 (Part 208), ER-736 (Part 212), and ER-737 (Part 214), adopted May 18, 1972,[1] the Board established a new class of overseas military personnel charters, and authorized air carriers and, until October 1, 1972, foreign air carriers to perform flights in connection with such charters.[2] In adopting these rules, the Board stated that its determination not to permanently authorize foreign air carriers to perform the flights was tentative; and accordingly, the Board contemporaneously issued a Supplemental Notice of Proposed Rule Making, EDR-173F/SPDR-25C,[3] inviting comments on the specific issue of whether such authorization should be made permanent.

Comments in response to the supplemental notice were filed by Atlantis Airways, Britannia Airways, Ltd., jointly by British Caledonian Airways (Charter), Ltd., and British Caledonian Airways, Ltd., British Overseas Airways Corp., Capitol International Airways, Inc. (Capitol), Condor Flugdienst GmbH, Davis Agency, Inc., the International Air Carrier Association, Japan Air Lines, Co., Ltd., KLM Royal Dutch Airlines, Laker Airways, Ltd., Lufthansa German Airlines, Olympic Airways, S.A., Sabena Belgian World Airlines, Saturn Airways, Inc., Shoftour Charters, Inc., Spantax, S.A., and Trans International Airlines, Inc. (TIA).

The comments are unanimous in urging that foreign air carriers be permanently authorized to perform the overseas military personnel charter flights. It is argued that restricting the market to U.S. carriers would be unfairly discriminatory against foreign carriers, and that foreign governments might retaliate by imposing restrictions upon U.S. carriers. It is also contended that the proposed exclusion of foreign air carriers from the market might make it difficult for the overseas military personnel charter operators to obtain needed capacity.

Upon consideration, the Board has determined to permanently authorize foreign air carriers to perform overseas military personnel charter flights. Our tentative determination to do otherwise was based upon the fact that, although the military charter operations are commercial ventures, all of the traffic on these flights is related to the U.S. defense effort. However, we are persuaded by the comments that to exclude foreign air carriers from the overseas military personnel charter market could severely hamper the operation of this new class of charter. Of particular significance is the fact that several U.S. carriers urge the permanent authorization of foreign carriers to perform the flights, and none oppose.

Since this rule imposes no burden upon any person, and merely makes permanent a temporary grant of authority, the Board finds that the amendment may be made effective immediately.

Accordingly, the Board hereby amends Part 212 of the economic regulations (14 CFR Part 212), effective September 13, 1972, as follows:

Amend § 212.8 by modifying paragraphs (a)(6) and (b)(4), the section as amended to read as follows:

§ 212.8 Charter flight limitations.

* * * * * * *

(a) * * *

(6) By an overseas military personnel charter operator as defined in Part 372 of this chapter, or

(b) * * *

(4) By an overseas military personnel charter operator as defined in Part 372 of this chapter: *Provided, however,* That with respect to paragraph (b) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats: *And provided further,* That paragraph (b) of this section shall not be construed to apply to movements of property.

(Secs. 204(a) and 402 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 and 757; 49 U.S.C. 1324 and 1372)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-15913 Filed 9-18-72;8:50 am]

[Reg. ER-758; Amdt. 9]

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

Performance of Overseas Military Personnel Charters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of September 1972.

For the reasons set forth in ER-757 (Part 212), published contemporaneously herewith, the Board hereby amends Part 214 of the Economic Regulations (14 CFR Part 214), effective September 13, 1972, as follows:

Amend § 214.7 by modifying paragraphs (a)(4) and (b)(4), the section as amended to read as follows:

§ 214.7 Charter flight limitations.

* * * * * * *

(a) * * *

(4) By an overseas military personnel charter operator as defined in Part 372 of this chapter; or

(b) * * *

---

[1] 37 F.R. 11159, 11156, 11157.

[2] By ER-750, et al., adopted July 27, 1972, 37 F.R. 15424, the Board extended the interim authority of foreign air carriers to perform the flights until the later of (a) Nov. 30, 1972, or (b) 90 days following publication of the Board's final determination as to whether to make such authority permanent.

[3] 37 F.R. 11190.

(4) By an overseas military personnel charter operator as defined in Part 372 of this chapter:

(Secs. 204(a) and 402 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 and 757; 49 U.S.C. 1324 and 1372.)

By the Civil Aeronautics Board.

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

[FR Doc.72-15914 Filed 9-18-72;8:50 am]

SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. SPR-60; Amdt. 2]

PART 372—OVERSEAS MILITARY PERSONNEL CHARTERS

Performance of Flights by Foreign Air Carriers

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 13th day of September 1972.

For the reasons set forth in ER-757 (Part 212), published contemporaneously herewith, the Board hereby amends Part 372 of the special regulations (14 CFR Part 372), effective September 13, 1972, as follows:

1. Amend § 372.1 to read as follows:

§ 372.1 Applicability.

This part establishes the terms and conditions governing the furnishing of overseas military personnel charters in air transportation by direct air carriers or foreign air carriers and by overseas military charter operators. This part also relieves charter operators from the provisions of section 401 of the Act, for the purpose of enabling them to provide overseas military personnel charters utilizing aircraft chartered from such direct air carriers or foreign air carriers. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

2. Amend § 372.24(a)(2)(ii)(b) to read as follows:

§ 372.24 Surety bond, depository agreement, escrow agreement.

(a) * * *

(2) * * *

(ii) * * *

(b) The bank shall not pay the air carrier or foreign air carrier the charter price for the transportation earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date and price by the charter operator;

* * * * *

3. Amend § 372.26 to read as follows:

§ 372.26 Prohibition on operations unless tariffs are observed.

No charter operator shall charter aircraft to provide air transportation to charter participants except in accordance with the rates, fares, and charges and all applicable rules, regulations, and other provisions for such transportation as set forth in the currently effective tariff or tariffs of the direct air carrier or foreign air carrier transporting charter participants; and no such operator shall demand, collect, accept, or receive, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, any portion of the rates, fares, or charges so specified in the tariffs of such air carrier or foreign air carrier, and shall not demand, accept, or receive, either directly or indirectly, any privilege, service, or facility except those specified in the currently effective tariffs of such direct air carrier or foreign air carrier.

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

By the Civil Aeronautics Board.

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

[FR Doc.72-15915 Filed 9-18-72;8:50 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 121—FOOD ADDITIVES

Saccharin and Its Salts; Requests for Extension of Time Period for Label Changeover

An order establishing a provisional food additive regulation for saccharin and its salts (21 CFR 121.4001) was published in the FEDERAL REGISTER of February 1, 1972 (37 F.R. 2437). This order requires certain labeling to be adopted that is not now generally used, and provides that such labeling changes must be reflected in labeling used on all affected products sold after July 1, 1972.

The Commissioner of Food and Drugs has received requests from several firms for an extension of the time period for label changeover on the grounds that the current deadline does not provide sufficient time to permit an orderly changeover. These requests are being evaluated on an individual basis, and, an extension of time will be granted only to those firms that satisfy the Commissioner in writing that their use of the additive is in accord with the use limitations of 21 CFR 121.4001 and that a real hardship is incurred in adhering to the July 1, 1972, deadline. Any other requests for an extension of time that are received will be evaluated in the same manner and on the same basis. Notification of the granting of an extension of time will be made by letter, and a copy of the notification will be available for public inspection in the office of the Hearing Clerk, Food and Drug Administration, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852.

(Sec. 409(d), 72 Stat. 1787; 21 U.S.C. 348(d))

Dated: September 12, 1972.

SAM D. FINE, *Associate Commissioner for Compliance.*

[FR Doc.72-15890 Filed 9-18-72;8:47 am]

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

PART 135g—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

Oxytetracycline Hydrochloride

The Commissioner of Food and Drugs has evaluated new animal drug applications filed by Diamond Shamrock Chemical Co., 60 Park Place, Newark, NJ 07101 (45-143V), and Philips Roxane, Inc., 2621 North Belt Highway, St. Joseph, MO 64502 (47-278V), proposing the safe and effective use of oxytetracycline hydrochloride injection for the treatment of specified animals. The applications are approved.

The Commissioner concludes that negligible tolerance limitations are required to assure that edible tissues of cattle and swine treated with the drug are safe for human consumption.

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), Parts 135b and 135g are amended as follows:

1. Part 135b is amended by adding a new section as follows.

§ 135b.65 Oxytetracycline hydrochloride injection.

(a)(1) *Specifications.* The drug contains 50 milligrams of oxytetracycline hydrochloride in each milliliter of sterile solution.

(2) *Sponsor.* See code No. 025 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) The drug is intended for use in beef cattle, beef calves, nonlactating dairy cattle, and dairy calves for treatment of disease conditions caused by one or more of the following oxytetracycline sensitive pathogens listed as follows: pneumonia and shipping fever complex (*Pasteurella spp.; Hemophilis spp.; Klebsiella spp.*), bacterial enteritis (scours) (*E. coli*), foot-rot (*Spherophorus necrophorus*), diphtheria (*Spherophorus necrophorus*), wooden tongue (*Actinobacillus lignieresi*), leptospirosis (*Leptospira pomona*), and wound infections; acute metritis; traumatic injury (caused by a variety of bacterial organisms (such as streptococcal and staphylococcal organisms)).

(ii) It is administered by intramuscular injection of 3 to 5 milligrams of oxytetracycline hydrochloride per pound of body weight per day. Leptospirosis, severe foot-rot and severe forms of the indicated diseases should be treated with 5 milligrams per pound of body weight per day. Treatment should be continued for 24 to 48 hours following remission of disease symptoms; however, not to exceed a total of 4 consecutive days. Only 2 milliliters of the drug should be injected per site in case of calves weighing 100 pounds or less and not more than 10 milliliters should be injected per site in adult cattle.

(iii) Discontinue treatment with the drug at least 20 days prior to slaughter of the animal. When administered to animals within 30 days of slaughter, muscle discoloration may necessitate trimming of injection site and surrounding tissues.

(iv) For use only in beef cattle, beef calves, nonlactating dairy cattle, and dairy calves.

(b) (1) *Specifications.* The drug contains 50 milligrams of oxytetracycline base as oxytetracycline hydrochloride in each milliliter of sterile solution.

(2) *Sponsor.* See code No. 059 in § 135.501(c) of this chapter.

(3) *Conditions of use.* (i) The drug is intended for use in the treatment of diseases due to oxytetracycline-susceptible organisms in beef cattle and nonlactating dairy cattle. It is indicated in the treatment of pneumonia and shipping fever complex associated with *Pasteurella spp., Hemophilus spp., Klebsiella spp.,* footrot and diphtheria caused by *Spherophorus necrophorus,* bacterial enteritis (scours) caused by *Escherichia coli,* wooden tongue caused by *Actinobacillus lignieresi,* acute metritis, and wound infections caused by Staphylococcal and Streptococcal organisms.

The drug is intended for use in sows to aid in control of infections enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *Escherichia coli.*

(ii) It is administered by intramuscular injection to beef cattle and nonlactating dairy cattle at a level of 3 to 5 milligrams of oxytetracycline per pound of body weight per day. In severe footrot and severe forms of the indicated diseases treat at 5 milligrams per pound of body weight. No more than 2 milliliters should be injected in each site in the case of smaller animals and no more than 10 milliliters should be injected in each site in adult cattle. Treatment in cattle should be continued for 24 to 48 hours following remission of disease symptoms, not to exceed a total of 4 days. It is administered to sows at a level of 2 to 3 milligrams of oxytetracycline per pound of body weight approximately 8 hours before farrowing or immediately after completion of farrowing. No more than 5 milliliters should be injected per each site in sows.

(iii) Not for use in lactating dairy animals. Discontinue use 18 days before slaughter. When administered to animals within 20 days of slaughter, muscle discoloration may necessitate trimming of injection site and surrounding tissues.

(iv) If the product contains the statement, "Federal law restricts this drug to use by or on the order of a licensed veterinarian" it may contain additional directions for use in beef cattle and nonlactating dairy cattle for use in the treatment of anaplasmosis caused by *Anaplasma marginale.* It is administered to beef cattle and nonlactating dairy cattle as described in subdivision (ii) of this subparagraph at the dosage level of 5 milligrams of oxytetracycline per pound of body weight.

2. Part 135g is amended in § 135g.14 in paragraphs (b) and (c) as follows:

§ 135g.14 Oxytetracycline.

* * * * *

(b) 0.1 part per million in uncooked edible tissues of swine.

(c) 0.1 part per million in uncooked edible tissues of cattle, beef calves, nonlactating dairy cattle and dairy calves.

* * * * *

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER (9–19–72).

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

Dated: September 13, 1972.

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

[FR Doc.72–15891 Filed 9–18–72;8:47 am]

Title 29—LABOR

Chapter XVII—Occupational Safety and Health Administration, Department of Labor

PART 1906—ADMINISTRATION WITNESSES AND DOCUMENTS IN PRIVATE LITIGATION

On page 13849 of the FEDERAL REGISTER of Tuesday, July 27, 1971, there was published a notice of proposed regulations setting forth the policies and procedures concerning witnesses employed by the Occupational Safety and Health Administration in private litigation and the availability of administrative documents in private litigation.

Interested persons were given an opportunity to submit written comments, suggestions, or objections regarding the proposed regulations.

After careful consideration of all the comments, suggestions, and objections submitted, appropriate policies and procedures are hereby adopted as a new Part 1906.

The new Part 1906 reads as follows:

Sec.
1906.1 Purpose.
1906.2 Definitions.
1906.3 Subpenas.
1906.4 General considerations.
1906.5 Factual testimony.
1906.6 Expert or opinion testimony.
1906.7 Disclosure of records.

AUTHORITY: The provisions of this Part 1906 issued under sec. 8(g), 84 Stat. 1600; 29 U.S.C. 657.

§ 1906.1 Purpose.

(a) This part prescribes the policies and procedures of the Administration with respect to testimony of its employees as witnesses in legal proceedings in which neither the United States nor the Secretary is involved, and the production of Administration records pursuant to subpena.

(b) This part does not apply to any legal proceeding in which an employee is to testify while in leave status, as to facts or events that are in no way related to the duties he performs or to the functions of the Administration.

§ 1906.2 Definitions.

(a) "Administration" means the Occupational Safety and Health Administration.

(b) "Legal proceeding" includes any proceeding before a court of law, administrative board or commission, hearing officer, or other body conducting a legal or administrative proceeding.

(c) "Secretary" means the Secretary of Labor.

§ 1906.3 Subpenas.

(a) Whenever an employee of the Administration is served with a subpena or is requested to testify, he shall immediately report the service or request to the nearest office of the Solicitor. The Solicitor or his representative shall then determine whether and to what extent the employee is required to comply and shall in appropriate cases arrange for legal representation for the employee.

(b) Whenever an employee's compliance with a subpena would have an undue adverse effect upon the performance of official duties, the Solicitor or his representative shall attempt to have the subpena withdrawn or modified, or shall request the issuing body to authorize testimony by deposition, when appropriate, rather than requiring the employee's physical presence at the trial, hearing, or otherwise.

§ 1906.4 General considerations.

In balancing under § 1906.3(b) the particular needs of any requesting person with those of the Administration, the Solicitor or his representative shall give consideration to the following policies of the Administration as they may be pertinent:

(a) To conserve the time of employees for conducting official business.

(b) To minimize the possibility of involving the Administration in controversial issues that are not related to its mission.

(c) To prevent the possibility that the public will misconstrue variances between the personal opinions of employees and Administration policy.

(d) To avoid spending the time and money of the United States for private purposes.

§ 1906.5 Factual testimony.

(a) An employee of the Administration who has been subpenaed in a legal proceeding and who is required to comply with the subpena, shall testify only as to facts within his personal knowledge.

(b) In the event the testimony of an employee of the Administration may concern a particular inspection, the Office of the Solicitor shall notify the employer inspected as to the time and place such testimony shall be given.

(c) Whenever a demand is made upon an employee for testimony as to any privileged or confidential information contained in files of the Department (i.e.,

information not disclosable under Parts 70 of this title and Part 1913 of this chapter), the employee shall respectfully decline to comply with the demand. ("United States ex rel Touhy v. Ragen," 340 U.S. 462.)

§ 1906.6 Expert or opinion testimony.

If, while testifying in a legal proceeding, an employee of the Administration is asked for expert or opinion testimony, he shall decline to do so on the grounds that he is forbidden to do so by this part which, among other things, is intended to prevent the possibility that the public may misconstrue any possible variances existing between the opinion of the witness and Administration policy. If he is then ordered to do so by the body conducting the proceeding to testify, he shall do so.

§ 1906.7 Disclosure of records.

(a) Records of the Administration are available for public inspection and copying as provided in Part 70 of this title and Part 1913 of this chapter.

(b) If an employee of the Administration receives a subpena or request to produce records in court or before any other body, he shall refer it to the nearest office of the Solicitor. If the subpena or request specifies records available under Part 70 of this title and under Part 1913 of this chapter, counsel shall advise that the subpena or request be honored. The person seeking them shall comply with the fee schedule contained in that part.

(c) If an employee of the Administration is served with a subpena calling for records not available for public disclosure, the Office of the Solicitor shall attempt to have the subpena withdrawn, quashed, or modified. If this cannot be done, the employee shall appear at the time and place specified in the subpena, accompanied by a Government attorney and explain to the authority conducting the proceeding that a statute or regulation prohibits him from producing the record.

(d) If an employee who follows the procedure in paragraph (c) of this section is ordered to show cause why he should not be cited for contempt of court, he shall be represented by a Government attorney.

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

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72-15884 Filed 9-18-72;8.47 am]

Title 32—NATIONAL DEFENSE

Chapter VI—Department of the Navy

SUBCHAPTER C—PERSONNEL

PART 730—ADMINISTRATIVE DISCHARGES AND RELATED MATTERS CONCERNING SEPARATIONS FROM THE NAVAL SERVICE

Conscientious Objectors

Subpart A, Navy, of Subchapter C of Chapter VI of Title 32 of the Code of Federal Regulations is amended as follows:

A new § 730.18 is added as follows:

§ 730.18 Conscientious objectors.

(a) Conscientious objectors are persons who by reason of religious training and belief have a firm, fixed, and sincere objection to participation in war in any form or the bearing of arms. No vested right exists for any member to be discharged from the Regular Navy or Naval Reserve at his own request, even for conscientious objection, before the expiration of his term of service, whether he is serving voluntarily or involuntarily. Administrative discharge prior to the completion of an obligated term of service will be effected only with the approval of the Chief of Naval Personnel.

(b) After entering naval service, a request for discharge based solely on conscientious objection which existed but was not claimed prior to induction or enlistment shall not be considered if such beliefs satisfied the requirements for classification as a conscientious objector pursuant to section 6(j) of the Universal Military Training and Service Act, as amended (50 U.S.C. App. 456) and related provisions of law, and the member failed to request classification as a conscientious objector by the Selective Service System (SSS), or if his request for classification as a conscientious objector before entering military service was denied on the merits by the SSS and his present request for classification as a conscientious objector is based on essentially the same grounds, or supported by essentially the same evidence, as the request which was denied by the SSS. Claims growing out of the experiences prior to entering military service but which did not become fixed until after entry into the service will be considered.

(1) The following definitions will apply and, unless otherwise specified, the term "conscientious objector" includes both 1–O and 1–A–O conscientious objector classifications:

(i) A class 1–O conscientious objector is a person who by reason of conscientious objection, sincerely objects to participation of any kind in war in any form.

(ii) A class 1–A–O conscientious objector is a person who by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a noncombatant status.

(2) Religious training and belief does not limit beliefs to traditional religious convictions. Belief in an external power or being, or deeply held moral or ethical belief, to which all else is subordinate or upon which all else is ultimately dependent, and which has the power or force to affect moral well-being also qualifies. The external power or being need not be deity in the conventional useage, but may be a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by God in the usual sense, or, in the case of deeply held moral or ethical beliefs, a belief held with the strength and devotion of a traditional religious conviction. The term "religious training and belief" may include solely moral or ethical beliefs even though the applicant himself may not characterize these beliefs as "religious" in the traditional sense, or may expressly characterize them as not religious. The term "religious training and belief" does not include a belief which rests solely upon consideration of policy, pragmatism, expediency, or political views.

(3) Noncombatant service or noncombatant duties (1–A–O) (used interchangeably herein) include service as follows:

(i) Service in any unit of the Armed Forces which is unarmed at all times.

(ii) Service in the medical department of any of the Armed Forces, wherever performed.

(iii) Any other assignment the primary function of which does not require the use of arms in combat provided that such other assignment is acceptable to the member concerned and does not require him to bear arms or to be trained in their use.

(iv) Service aboard an armed ship or aircraft or in a combat zone provided the member concerned is not personally and directly involved in the operation of weapons.

(4) Noncombatant training is any training which is not concerned with the study, use, or handling of arms or weapons.

(c) A request for discharge or assignment to noncombatant duties on the grounds of conscientious objection will be handled on an individual basis, with final determination made by the Chief of Naval Personnel. If separaiton is deemed warranted, the type of discharge will be determined by the member's military record, the standards set forth in DOD Directive 1332.14,[1] and the procedural guidelines outlined below.

(d) There are no provisions for a member of the Navy to influence his change of station or active duty orders by submission of a request for designation or discharge as a conscientious objector. When a member on active or inactive duty submits a request for such designation or discharge, he shall be required to comply with active duty or transfer orders in effect at that time or subsequently received. Authorization for transfer of a member from his duty station solely because he has submitted such an application will not be granted.

(e) In evaluating requests for discharge based on conscientious objection, great care shall be exercised to assure the sincerity of the claim and that clear and concise discharge procedures are followed to preclude inviting or permitting abuse by unscrupulous members who may seek to avoid all obligations on the grounds of moral, ethical or religious beliefs. The procedures which shall be followed with respect to members who claim to be conscientious objectors are:

(1) A member enlisted or inducted into the naval service who claims to be a conscientious objector and states that he was so classified by his local board but his records do not so indicate, or claims he was erroneously denied SSS classifi-

[1] Filed as part of the original document.

cation as a conscientious objector, or states he was denied a procedural right in his classification by the SSS shall be employed only in duties which involve the minimum practicable conflict with his asserted beliefs pending investigation and decision on the case. A statement shall be obtained from the member concerned and immediately forwarded with the commanding officer's comment to the Chief of Naval Personnel for referral to the National Headquarters, Selective Service System, for investigation.

(i) When it is determined that the member should have been classified as 1–O or 1–A–O but inadvertently was not so classified, the records will be corrected and the commanding officer will be directed to correct his records accordingly. Further disposition of the member will be directed by the Chief of Naval Personnel in accordance with the procedures set forth below.

(ii) When it is determined that no change in classification is warranted, the member will be notified to this effect by the Chief of Naval Personnel.

(2) A member who has served a portion of his minimum required (obligated) service and who requests discharge or noncombatant service for conscientious objection shall, to the extent practicable, be employed in duties which involve the minimum conflict with his asserted beliefs pending a decision on his case. Assignment to such duties should commence as soon as practicable after the commanding officer has received an application in writing in the format and containing the information specified below. Applications shall not be submitted on preprinted forms but shall contain the following information identified by corresponding paragraph numbers:

(i) Date of application.

(ii) Full name of applicant.

(iii) Social Security number.

(iv) Selective Service number.

(v) Service address.

(vi) Permanent home address.

(vii) Name and address of each school and college attended after age 16 together with the dates of attendance and the type of school (public, church, military, commercial, etc.).

(viii) Chronological list of all compensated and uncompensated occupations, positions, jobs, or types of work engaged in after age 16, except while a student in school or college. Include the type of work, name and address of employer, and the inclusive dates for each.

(ix) All former residences after age 16 including dates and addresses.

(x) Each parent's name, present address, and whether living or deceased.

(xi) The religious denomination or sect of spouse and/or each parent.

(xii) Whether application was made to the Selective Service System (Local Board) for classification as a conscientious objector prior to entry into the Armed Forces. If yes, state which local board and what decision was made by the Board, if known.

(xiii) When the applicant has served less than 180 days in the naval service, state whether he is willing to perform work under the Selective Service civilian work program for conscientious objectors if discharged as a conscientious objector and whether he consents to the issuance of an order for such work by his local Selective Service Board.

(xiv) A thorough description of the nature of the belief which requires the applicant to seek separation from the military service or assignment to noncombatant training and duty for reasons of conscience.

(xv) An explantion of how the applicant's beliefs have changed or developed, including an explanation of what factors (how, when, from whom, or from what source training was received and the beliefs acquired) caused the change in or development of conscientious objection beliefs.

(xvi) An explanation of when and why these beliefs became incompatible with military service.

(xvii) An explanation of the circumstances, if any, under which the applicant believes in the use of force under any foreseeable circumstances.

(xviii) An explanation of how the applicant's daily life style has changed as a result of his beliefs and what future actions he plans to continue to support his beliefs.

(xix) An explanation of what, in the applicant's opinion, most conspicuously demonstrates the consistency and depth of his beliefs which gave rise to this application.

(xx) Whether the applicant has ever been a member of any military organization or establishment before entering upon his present term of service. If yes, state the name and address of such organization together with reasons why he became a member.

(xxi) Whether the applicant is a member of a religious sect or organization. If yes, include the following:

(*a*) The name of the sect, and the name and location of its governing body or head, if known.

(*b*) When, where, and how the applicant became a member of said sect or organization.

(*c*) The name and location of any church, congregation, or meeting which the applicant customarily attends and the extent of the applicant's active participation therein.

(*d*) The name, title, and present address of the pastor or leader of such church, congregation, or meeting.

(*e*) A description of the creed or official statements, if any and if known, of said religious sect or organization in relation to participation in war.

(xxii) A description of the applicant's relationships with and activities in all organizations with which he is or has been affiliated, other than military, political, or labor organizations.

(xxiii) List and attach any additional information, such as letters, references, or official statements of organizations to which the applicant belongs or refers to in his application that he desires to be considered by the authority reviewing his application. The burden is on the applicant to obtain and forward such information.

(f) The Chief of Naval Personnel shall be informed by message if after submitting an application for designation or discharge as a conscientious objector, the member commits an offense punishable under the UCMJ or if at the time of submission of an application, the member is the subject of disciplinary action; and when disciplinary action has been completed. Final action on an application or an approved request for discharge will not be effected until all disciplinary action, including confinement if applicable, has been resolved.

(g) The applicant shall be personally interviewed by a chaplain who shall actively and critically examine the applicant's beliefs. The chaplain shall submit a written report containing his opinion of the nature and basis of the applicant's claim, sincerity, and depth of conviction in his claim of conscientious objection. The chaplain's report shall include a recommendation of disposition with the reasons for his conclusions. Such interview may be conducted by a chaplain who is a member of a regular or reserve component of any of the Armed Forces of the United States.

(h) The applicant shall be interviewed by a psychiatrist who is a member of a regular or reserve component of any of the Armed Forces, or by a medical officer if a psychiatrist is not reasonably available. Interview by a psychologist Medical Service Corps vice Medical Corps is not acceptable. The psychiatrist or medical officer shall submit a written report of psychiatric disorders which would warrent treatment or disposition through medical channels or such character or personality disorder which would warrant recommendation for appropriate administrative action. Comment concerning the sincerity or credibility of the applicant's claimed convictions may be included in the report.

(i) The chaplain's and psychiatrist's or medical officer's reports will become part of the case file. If the applicant refuses to participate, is uncooperative, or unresponsive in the course of an interview, this fact will be included in the statements of the chaplain and psychiatrist or medical officer.

(j) The applicant's commanding officer shall appoint an investigating officer in the grade of lieutenant commander or above, not necessarily a member of the applicant's command, to investigate the applicant's claim. If a qualified officer of this grade is not available, the commanding officer may appoint an officer of the grade of lieutenant who, in the opinion of the commanding officer, is well-qualified by reason of age, education, training, experience, and length of service. The officer so appointed shall not be in the immediate chain of command of the applicant and, if the applicant is a commissioned officer, shall be

senior in both temporary and permanent grades to the applicant.

(1) Upon appointment, the investigating officer will review this article and, if possible, request a local Judge Advocate or legal officer to provide a briefing or summary of court decisions which have revised the criteria to be considered in developing comments and recommendations concerning conscientious objector applications. During the course of this investigation, the investigating officer shall obtain all necessary legal advice from the above officers.

(2) The investigating officer shall conduct a hearing on the application to afford the applicant an opportunity to present any evidence he desires in support of his application; to enable the investigating officer to ascertain and assemble all relevant facts; to create a comprehensive record; and to facilitate an informed recommendation by the investigating officer and an informed decision on the merits by higher authority. The investigating officer shall actively and critically examine the applicant's beliefs, and any failure or refusal of the applicant to submit to questioning under oath or affirmation may be considered by the investigating officer in making his recommendation and evaluation of the applicant's claim. If the applicant fails to appear at the hearing without good cause, the investigating officer may proceed in his absence and the applicant will be deemed to have waived his appearance.

(3) If the applicant desires, he shall be entitled, at his own expense, to be represented by counsel who shall be permitted to be present at the hearing, assist the applicant in the presentation of his case, and examine all items in the file.

(4) The hearing will be informal in character and the rules of evidence employed by courts-martial shall not apply except that all oral testimony presented shall be under oath or affirmation. Any relevant evidence may be received. Statements obtained from persons not present at the hearing need not be made under oath or affirmation. The hearing is not an adversary proceeding.

(5) The applicant may submit any additional evidence that he desires (including sworn or unsworn statements) and present any witnesses in his own behalf, but he shall be responsible for securing their attendance. The installation or local commander shall render all reasonable assistance in making available as witnesses those military members of his command requested by the applicant. The applicant shall be permitted to question any other witnesses who appear and to examine all items in the file.

(6) A verbatim record of the hearing is not required. If the applicant desires such a record and agrees to provide it at his own expense, he may do so. If he elects to provide such a record, he shall provide a copy thereof to the investigating officer at the conclusion of the hearing and at no expense to the Government. In the absence of a verbatim record, the investigating officer will summarize the testimony of witnesses and permit the applicant or his counsel to examine the summaries and note for the record their differences from the investigating officer's summary. Copies of statements and other documents received in evidence will be made a part of the hearing record.

(7) A written report will be prepared at the conclusion of the investigation by the investigating officer stating whether the applicant appeared, whether he was accompanied by counsel, and, if so, the latter's identity; whether the nature and purpose of the hearing were explained to the applicant and understood by him; the investigating officer's conclusions concerning the underlying basis, sincerity, and depth of the applicant's conscientious objection and beliefs, including the reasons for such conclusions; and attaching documents, statements, other material received during the investigation, and summaries of the testimony of the witnesses presented (or a verbatim record of the testimony if such record was made).

(8) The investigating officer shall fully advise and counsel the applicant concerning the provisions of 38 U.S.C. 3103 which provides in pertinent part that the discharge of any person on the grounds of conscientious objection who refused to perform military duty, to wear the uniform, or otherwise to comply with lawful orders of competent military authority shall bar all rights (except Government insurance) of such persons under laws administered by the Veterans' Administration based upon the period of service from which discharged or dismissed. The only exception is in cases where it is established to the satisfaction of the Administrator, Veterans' Administration, that the member was insane. After counseling, the member will be required to sign and date the following statement, a copy of which shall be forwarded as part of the record of the case:

I have been advised of the provisions of 38 U.S.C. 3103 concerning possible nonentitlement to benefits administered by the Veterans' Administration due to discharge from the military service as a conscientious objector under certain conditions. I understand that a discharge as a conscientious objector, who refused to perform military duty or otherwise to comply with lawful orders of competent military authority, shall bar all rights, based upon the period of service from which discharged, under any laws administered by Veterans' Administration except my legal entitlement (if any) to any war risk, Government (converted) or National Service Life Insurance.

(9) The investigating officer's report shall include his recommendations for disposition of the case and his reasons therefor. Subject to the provision that an applicant claiming 1–O status will not be granted 1–A–O status as a compromise, the actions recommended shall be limited to denial of any classification as a conscientious objector, classification as 1–A–O conscientious objector, or classification as 1–O conscientious objector.

(10) The investigating officer's report along with the member's application, all interviews with chaplains or doctors, the applicant's statement concerning Veterans' Administration benefits, evidence received as a result of the investigating officer's hearing, and any other items submitted by the applicant in support of his case will constitute the record. The investigating officer's conclusions and recommended disposition will be based on the entire record and not merely on the evidence produced at the hearing. A copy of the record will be furnished to the applicant at the time it is forwarded to his commanding officer. The applicant shall be informed that he has the right to submit a rebuttal within 5 working days after receiving his copy of the record. The investigating officers' report shall include the following dated statement signed by the applicant:

I received this date a copy of the record (as defined in BUPERSMAN article 1860120.-10j)[2] of my conscientious objector hearing. I understand that I have the right to submit a written rebuttal to this record, provided my rebuttal is submitted to the investigating officer within 5 working days after this date. I (do)/(do not desire to submit a rebuttal.

(k) The commanding officer shall review the record of the case for completeness and may return it to the investigating officer for further investigation. When the record is complete, the commanding officer shall forward it with his personal recommendations and the reasons therefor to the Chief of Naval Personnel for final action. If the applicant's request is for assignment to noncombatant duties, the commanding officer's recommendation shall include a statement concerning whether the applicant should be assigned to noncombatant duties or training and, if so, whether he is qualified and desires assignment to the Hospital Corps or, in the case of officers, to the Medical Corps, Medical Service Corps, Dental Corps, or Nurse Corps. If the member does not desire such duties or training, or is not qualified, the commanding officer shall state whether his services can be utilized on board his present duty station if assigned a limited duty designator L–8. The commanding officer's forwarding endorsement shall include the applicant's rebuttal to the record, if any.

(l) The sole purpose of these procedures is to determine whether an applicant qualifies for classification or discharge as a conscientious objector. Specifically, interviewers and commanding officers should put aside considerations of the applicant's value to the service and focus solely on the issue of whether the applicant meets the criteria for the type of conscientious objector status he seeks. Comments and recommendations by chaplains, investigating officers, and commanding officers shall be related directly to that determination. Recommendations for discharge for reasons other than conscientious objection are not appropriate and should be processed in accordance with applicable regulations.

(m) Members who were classified 1–A–O by Selective Service prior to induction shall, upon induction, be transferred for recruit training and shall be subject to noncombatant service and

[2] See § 730.18.

training. The member will be required to sign and date the following statement:

I have been counseled concerning designation as a conscientious objector. Based on my religious training and belief, I consider myself to be a conscientious objector within the meaning of the statute and regulations governing conscientious objectors and am conscientiously opposed to participation in combatant training and service. I request assignment to noncombatant duties for the remainder of my term of service. I fully understand that on expiration of my current term of service I am not eligible for voluntary enlistment, reenlistment, or active service in the Armed Forces.

(n) The chaplain, hearing officers, and others, except the psychiatrist, who interview the applicant to determine the validity of his application shall thoroughly evaluate the applicant and the application in the light of all relevant circumstances. Sincerity and beliefs generally cannot be proved or disproved by direct evidence other than the applicant's own statement in support of his application. Nevertheless, sincerity and beliefs may be proved or disproved by circumstantial evidence, that is, by facts and circumstances from which, alone or in connection with other facts, the interviewing officer may, according to the common experiences of mankind, reasonably infer the existence or nonexistence of depth and sincerity of beliefs. Thus circumstantial evidence, such as the applicant's past conduct and the history of the development of his beliefs, is highly relevant in evaluating the sincerity of his claim and whether his beliefs are deeply held. The timing of a claim of conscientious objection is also a relevant circumstance, such as when the applicant claims his beliefs became fixed immediately prior to hazardous duty or shortly after termination of educational benefits, or when there is a long period between the assertion of conscientious objection beliefs and submission of a formal application.

(1) In evaluating an applicant, an interviewing officer, including the investigating officer, may consider his personal impressions of the applicant, such as the applicant's demeanor and the manner in which he answers questions. Consideration should be given to all background information and any outward manifestations which tend to support or rebut the applicant's claim. Some examples are:

(i) How the applicant acted when the opportunity arose to assert beliefs consistent with those now asserted.

(ii) Whether he accepted or rejected a program which would extend his obligated service.

(iii) Whether he volunteered or requested exclusion from certain billets.

(iv) Whether he accepted or rejected a promotion which would require additional responsibility and support of the military establishment.

(v) Whether he accepted or rejected offers for leave or assignments which would require less participation in military functions.

(2) Applicants should be carefully evaluated to ensure they are not objecting to military service solely on the basis of a false premise. For example, an applicant may state he cannot serve because he is opposed to murder, organized killing for the sake of ideology, military ventures to gain territory or national wealth, and similar reasons which he indicates to be policies of the Government or the Armed Services. Political opposition to national policies is not necessarily an indication of an applicant's objection to war on a moral, ethical, or religious basis.

(3) After weighing all the information, either direct or circumstantial, if an interviewer or investigating officer is not convinced of the beliefs or sincerity of the applicant, he should recommend the application be disapproved since the burden is upon the applicant to establish his beliefs and sincerity. If interviewers or investigating officers do not consider an applicant meets the necessary criteria or is not sincere, they shall provide the basis for their opinions.

(4) When interviewers and investigating officers consider that an applicant meets the criteria for classification as a conscientious objector, they shall give a clear and detailed explanation of why and how they consider the applicant meets the necessary criteria for such classification. This explanation shall discuss any contradictory facts indicating nonqualification or insincerity and rationalize the opinion in the light of the contradictory indicia.

(o) All claims of conscientious objection will be judged by SSS standards used in determining 1–O or 1–A–O classification of draft registrants prior to induction. Subject to the limitations set forth in this article concerning consideration for discharge from the naval service based solely on conscientious objection which existed but was not claimed prior to induction or enlistment, an application for conscientious objector status may be approved for any member who is conscientiously opposed to participation in war in any form when opposition is founded on religious training and belief as defined in this article, and whose position is sincere and deeply held.

(1) A true conscientious objector's convictions must be against all wars rather than a specific war. A member who desires to choose the war in which he will participate is not a conscientious objector under the law. A belief in a theocratic or spiritual war between the powers of good and evil, where the weapons of warfare are spiritual and not carnal, does not constitute a willingness to participate in "war" within the meaning of this article.

(2) In order to find that an applicant's moral and ethical beliefs are against participation in war in any form and are held with the strength of traditional religious convictions, the applicant must show that these moral and ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth, and duration have directed the lives of those whose beliefs are clearly found in traditional religious convictions. In other words, the belief upon which conscientious objection is based must be the primary controlling force in the applicant's life.

(3) A primary factor to be considered is the sincerity with which the belief is held. Great care must be exercised in seeking to determine whether asserted beliefs are honestly and genuinely held. The important consideration is not whether the applicant is sincere in wanting to be designated a conscientious objector, rather whether his asserted convictions are sincerely held. Sincerity is determined by an impartial evaluation of the applicant's thinking and living in its totality, past and present. Care must be exercised in determining the integrity of belief and the consistency of application. Information presented by the applicant should be sufficient to convince that the applicant's personal history reveals views and actions strong enough to demonstrate the belief upon which conscientious objection is based is the primary controlling force in his life and that expediency or avoidance of military service is not the basis of his claim. The conduct of an applicant, in particular his outward manifestation of the beliefs asserted, will be carefully examined and given substantial weight in evaluating the application.

(i) Relevant factors that should be considered in determining an applicant's claim of conscientious objection include:

(*a*) Training in the home and church.

(*b*) Whether general demeanor and pattern of conduct support asserted beliefs.

(*c*) Participation in religious activities.

(*d*) Whether ethical or moral convictions were gained through training, study, contemplation, or other activity comparable in rigor and dedication to the processes by which traditional religious convictions are formulated.

(*e*) Credibility of the applicant.

(*f*) Credibility of persons supporting the claim.

For example, the applicant may have made some major commitments during the time his beliefs were developing which are inconsistent with his claim. He may have applied for conscientious objector status shortly after having been rejected for a special Navy program. He may have applied after becoming aware of the prospect of hazardous or other undesirable duty. Taking the military oath of office shortly before applying for conscientious objector status may be evidence of insincerity in a given case. These examples are noteworthy because of their frequent recurrence. The potential relevant areas of inquiry are limitless.

(ii) Particular care must be exercised not to deny the existence or bona fide beliefs simply because those beliefs are incompatible with one's own. Church membership or adherence to particular theological tenets are not required to warrant separation or assignment to noncombatant training and service for conscientious objectors. Mere affiliation with a church or other group which advocates conscientious objection as a tenet of its creed is not necessarily determinative of an applicant's position or belief.

Conversely, affiliation with a church or group which does not teach conscientious objection does not necessarily rule out adherence to conscientious objection beliefs in any given case. Where an applicant is or has been a member of a church, religious organization, or religious sect, and where his claim of conscientious objection is related to such membership, inquiry may properly be made as to the fact of membership and the teaching of the church, religious organization, or religious sect, as well as the applicant's religious activity. The fact the applicant may disagree with, or not subscribe to, some of the tenets of his church does not necessarily discredit his claim. The personal convictions of each applicant will be controlling so long as they derive from his moral, ethical, or religious beliefs. An applicant who is otherwise eligible for conscientious objector status may not be denied that status simply because his conscientious objection influences his views concerning the nation's domestic or foreign policies. The task is to decide whether the beliefs professed are sincerely held and whether they govern the claimant's actions in both word and deed.

(4) The burden of establishing a claim of conscientious objection as grounds for separation or assignment to noncombatant training and service is on the applicant. To this end, he must establish the following by clear and convincing evidence:

(i) That the nature or basis of his claim comes within the definition and criteria prescribed herein for conscientious objection.

(ii) That his belief in connection therewith is honest, sincere, and deeply held. He also has the burden of determining and setting forth the exact nature of his requests, i.e., whether for separation based on conscientious objection (1–O) or for assignment to noncombatant training and services based on conscientious objection (1–A–O).

(5) An applicant claiming 1–O status will not be granted 1–A–O status as a compromise. He may be assigned noncombatant status if the record of the case clearly indicates that his beliefs are actually such that he is qualified as a noncombatant but not for discharge as a conscientious objector.

(6) Commanding officers are authorized to return to an applicant, without action, any second or subsequent application that is based upon essentially the same grounds, or supported by essentially the same evidence, as a previous application dissapproved by the Chief of Naval Personnel. This authority does not preclude forwarding such an application if the commanding officer considers review of the application may be warranted.

(p) When a determination has been made on the merits of the application by the Chief of Naval Personnel, the following actions shall be taken:

(1) Members determined by the Chief of Naval Personnel to meet the criteria of 1–O classification will normally be discharged for the convenience of the Government. To avoid possible future confusion, conscientious objection will be specifically cited in the discharge document as the supporting reason when that is the sole reason for discharge. Pending separation, the member shall continue to be assigned duties providing the minimum practicable conflict with his professed beliefs and shall be required to maintain the same standards of performance and behavior as other members assigned to his unit.

(2) Members (volunteers and inductees) with less than 180 days active duty who are determined to be bona fide conscientious objectors (1–O classification) and whose request for separation is made in time to permit discharge prior to completion of 180 days duty shall be separated for the convenience of the Government by reason of conscientious objection to permit completion of the remaining service obligation in the civilian work program administered by the Selective Service System. In such cases, the Selective Service System shall be promptly notified of the date of discharge from the naval service, notified of the fact that the member has not completed 180 days active duty, and requested to induct the individuals for alternate service as provided in the Military Selective Service Act.

(3) Members for whom 1–A–O classification is determined to be appropriate by the Chief of Naval Personnel will be reassigned to noncombatant training and duties as indicated below or discharged from military service at the discretion of the Chief of Naval Personnel. Members reassigned to noncombatant duties shall be required to sign and date the following statement:

I have been counseled concerning designation as a conscientious objector. Based on my religious training and belief, I consider myself to be a conscientious objector within the meaning of the statute and regulations governing conscientious objectors and am conscientiously opposed to participation in combatant training and service. I request assignment to noncombatant duties for the remainder of my term of service. I fully understand that on expiration of my current term of service I am not eligible for voluntary enlistment, reenlistment, or active service in the Armed Forces.

(4) Determination by the Chief of Naval Personnel shall be final with respect to the administrative separation of members.

(5) Any member reassigned to noncombatant duties or returned to his normal duty assignment who, in the judgement of the commanding officer concerned, demonstrates or has previously demonstrated his inability or unwillingness to cooperate in a manner which constitutes the basis for disciplinary action shall be disciplined as in the case of any other member of the naval service who demonstrates similar behavior.

(q) Personnel who are designated as conscientious objectors and retained in the service for noncombatant training or duties will be assigned as follows:

(1) After completion of recruit training, enlisted or inducted members may be transferred to the Hospital Corps for further training provided they volunteer and meet the requirements. Qualified members previously classified 1–A–O and subject to induction into certain staff corps related to medical fields, may be utilized as officers only in those staff corps, and only with the approval of the Chief of Naval Personnel. Such members shall not be allowed to avoid the important or hazardous duties which are the responsibility of all members of the medical organization. Any member who does not meet the requirements for this training, who fails to complete the prescribed course of instruction, or who otherwise cannot be assigned to this training or duty, shall be employed in other noncombatant duties if retained in the naval service.

(2) If a member cannot be utilized in a noncombatant assignment, the commanding officer shall report this fact to the cognizant personnel distributor who shall transfer the member to a noncombatant duty assignment.

Subpart B, Marine Corps, of Subchapter C of Chapter VI of Title 32 of the Code of Federal Regulations is amended as follows:

A new § 730.77 is added as follows:

§ 730.77 Conscientious objectors.

(a) *Scope.* Procedures herein apply to all commissioned officers, warrant officers, and enlisted personnel in the Marine Corps and Marine Corps Reserve.

(b) *Definitions.* (1) *Conscientious objection.* A firm, fixed, and sincere objection to participation in war in any form, or the bearing of arms, by reason of religious training and belief.

(2) *Class 1–O conscientious objector.* A member who, by reason of conscientious objection, sincerely objects to participation of any kind in war in any form.

(3) *Class 1–A–O conscientious objector.* A member who, by reason of conscientious objection, sincerely objects to participation as a combatant in war in any form, but whose convictions are such as to permit military service in a noncombatant status.

(4) *Religious training and belief.* Belief in an external power or being or deeply held moral or ethical belief, to which all else is subordinate or upon which all else is ultimately dependent, and which has the power or force to affect moral well being. The external power or being need not be of an orthodox deity, but may be a sincere and meaningful belief which occupies in the life of its possessor a place parallel to that filled by the God of another, or, in the case of deeply held moral or ethical beliefs, a belief held with the strength and devotion of traditional religious conviction. The term "religious training and belief" may include solely moral or ethical beliefs even though the applicant himself may not characterize these beliefs as "religious" in the traditional sense, or may expressly characterize them as not religious. The term "religious training and belief" does not include a belief which rests solely upon consideration of policy, pragmatism, expediency, or political views.

(5) *Noncombatant service or noncombatant duties.* (i) Any assignment the primary function of which does not require the use of arms in combat provided that such other assignment is acceptable to the individual concerned and does not require him to bear arms or to be trained in their use.

(ii) Service aboard an armed ship or aircraft or in a combat zone shall not be considered to be combatant duty unless the individual concerned is personally and directly involved in the operation of weapons.

(6) *Noncombatant training.* Any training which is not concerned with the study, use or handling of arms or weapons.

(c) *Policy.* (1) Conscientious objection does not exempt marines from active military service. However, as indicated by provisions of 50 App. U.S.C. 456(j) and related statutes, it is more essential to respect a man's religious beliefs than to force him to serve in the Marine Corps and accordingly a person having bona-fide religious objection to participation in war in any form (1–O classification) shall not be inducted/enlisted into the Marine Corps.

(2) The administrative discharge of Marines on active duty prior to the completion of an obligated term of service for reasons of conscientious objection shall be at the discretion of the Commandant of the Marine Corps and will be determined by a judgment of the facts and circumstances. However, a request for classification as a conscientious objector and relief from or restriction of military duties in consequence thereof will be approved to the extent practicable and equitable within the following limitations:

(i) Except as provided for in this order, no Marine who possesses conscientious objection beliefs before entering military service is eligible for classification as a conscientious objector if he failed to request classification as a conscientious objector by the Selective Service System or if a request for classification as a conscientious objector was disapproved by the Selective Service System and a subsequent request is based upon essentially the same grounds, or supported by essentially the same evidence as the request denied by the Selective Service System.

(ii) A Marine who possessed conscientious objector beliefs prior to entering the Marine Corps is eligible for classification as a conscientious objector if:

(*a*) Such beliefs crystalized after receipt of induction notice/enlistment;

(*b*) He could not request classification as a conscientious objector by the Selective Service System because of Selective Service regulations prohibiting the submission of such requests after receipt of induction notice.

(3) Individuals inducted into the Marine Corps under 1–A–O Selective Service classification will be assigned to noncombatant duties. Marines in this category will be required by the commanding general of the appropriate recruit training depot to sign and date a statement as set forth in subparagraph (1) of this paragraph. The original copy will be included in the Marine's service record book and a copy forwarded to the Commandant of the Marine Corps (code DG).

(4) The Commandant of the Marine Corps (code DF) will be notified when:

(i) Inducted Marines claim to have been classified as conscientious objectors by the Selective Service System, but records do not so indicate, or

(ii) Inducted Marines claim they were erroneously denied Selective Service classification as conscientious objectors.

(5) In those circumstances cited in subparagraph (4) of this paragraph upon receipt of notification that the individuals claim to have been classified as a conscientious objector or erroneously denied such classification by the Selective Service System, the Commandant of the Marine Corps will contact the Selective Service System to resolve such conflict.

(d) *Criteria.* (1) General: The criteria set forth herein provided policy and guidance in considering applications for separation or for assignment to noncombatant training and service based on conscientious objection.

(2) Consistent with the national policy to recognize the claims of bona fide conscientious objectors in the military service, an application for classification as a conscientious objector may be approved (subject to the limitations of paragraph (c)(2) of this section) for any Marine:

(i) Who is conscientiously opposed to participation in war in any form;

(ii) Whose opposition is founded on religious training and belief; and

(iii) Whose position is sincere and deeply held.

(3) The clause "war in any form" will be interpreted in the following manner:

(i) An individual who desires to choose the war in which he will participate is not a conscientious objector under the law. His objection must be to all wars rather than a specific war;

(ii) A belief in a theocratic or spiritual war between the powers of good and evil does not constitute a willingness to participate in "war" within the meaning of this order.

(4) Religious training and belief:

(i) In order to find that an applicant's moral and ethical beliefs are against participation in war in any form and are held with the strength of traditional religious convictions, the applicant must show that these moral and ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth, and duration have directed the lives of those whose beliefs are clearly found in traditional religious convictions. In other words, the belief upon which conscientious objection is based must be the primary controlling force in the applicant's life.

(ii) A primary factor to be considered is the sincerity with which the belief is held. Great care must be exercised in seeking to determine whether asserted beliefs are honestly and genuinely held. Sincerity is determined by an impartial evaluation of the applicant's thinking and living in its totality, past and present. Care must be exercised in determining the integrity of belief and the consistency of application. Information presented by the claimant should be sufficient to convince that the claimant's personal history reveals views and actions strong enough to demonstrate that expediency or avoidance of military service is not the basis of his claim. Therefore, in evaluating applications the conduct of applicants, in particular their outward manifestation of the beliefs asserted, will be carefully examined and given substantial weight.

(iii) Relevant factors that should be considered in determining an applicant's claim of conscientious objection include: Training in the home and church; general demeanor and pattern of conduct; participation in religious activities; whether ethical or moral convictions were gained through training, study, contemplation, or other activity comparable in rigor and dedication to the processes by which traditional religious convictions are formulated; credibility of the applicant; and credibility of persons supporting the claim.

(iv) Particular care must be exercised by individuals processing applications not to deny the existence of bona fide beliefs that are incompatible with one's own.

(v) Church membership or adherence to particular theological tenets are not required to warrant separation or assignment to noncombatant training and service for conscientious objectors.

(vi) Mere affiliation with a church or other group which advocates conscientious objection as a tenet of its creed is not necessarily determinative of an applicant's position or belief.

(vii) Conversely, affiliation with a church or group which does not teach conscientious objection does not necessarily rule out adherence to conscientious objection beliefs in any given case.

(viii) Where an applicant is or has been a member of a church, religious organization, or religious sect, and where his claim of conscientious objection is related to such membership, inquiry may properly be made as to the fact of membership, and the teaching of the church, religious organization, or religious sect, as well as the applicant's religious activity. However, the fact that the applicant may disagree with, or not subscribe to, some of the tenets of his chruch does not necessarily discredit his claim. The personal convictions of each individual will be controlling so long as they derive from his moral, ethical, or religious beliefs.

(ix) Moreover, an applicant who is otherwise eligible for conscientious objector status may not be denied that status simply because his conscientious objection influences his views concerning the Nation's domestic or foreign policies. The task is to decide whether the beliefs professed are sincerely held, and whether they govern the claimant's actions both in word and deed.

(5) The burden of establishing a claim of conscientious objection as a ground for separation or assignment to noncombatant training and service is on the applicant. To this end, he must establish by clear and convicing evidence that the nature or basis of his claim comes within the definition of and criteria prescribed herein for conscientious objection and that his belief in connection therewith is honest, sincere, and deeply held. The claimant has the burden of determining and setting forth the exact nature of his request, i.e., whether for separation based on conscientious objection (1–O) or for assignment to noncombatant training and service based on conscientious objection (1–A–O).

(6) An applicant claiming 1–O status shall not be granted 1–A–O status as a compromise.

(7) Provisions of this order will not be used to effect administrative separations of Marines who do not qualify as conscientious objectors, or in lieu of administrative separations otherwise set forth in this part (MCOP 1900.16). Marines determined not qualified for conscientious objector status, but the separation of whom would otherwise appear to be in the interest of the Marine Corps will be considered for administrative separation under the provisions of this part (MCOP 1900.16).

(e) *Procedures.* (1) A Marine who seeks either separation or assignment to noncombatant duties by reason of conscientious objection will submit an application therefor. The application will indicate whether he is seeking a discharge or assignment to noncombatant duties and will include the following items:

(i) The personal information required by enclosures (2) and (3).[3]

(ii) Any other items which the applicant desires to submit in support of his case.

(2) Prior to processing the application of the individual, he will be advised of the specific provisions of 38 U.S..C 3103 regarding the possible effects of discharge as a conscientious objector who refuses to perform military duty or refuses to wear the uniform or otherwise to comply with lawful orders, and required to execute the statement contained in enclosure (3).[3]

(3) The applicant shall be personally interviewed by a chaplain who shall submit a written opinion as to the nature and basis of the applicant's claim, and as to the applicant's sincerity and depth of conviction. "The chaplain's report shall include specific reasons for his conclusions." In addition, the applicant will be interviewed by a psychiatrist (or by a medical officer if a psychiatrist is not reasonably available) who shall submit a written report of psychiatric evaluation indicating the presence or absence of any psychiatric disorder which would warrant treatment or disposition through medical channels, or such character or personality disorder as to warrant recommendation for appropriate administrative action. This opinion and report will become part of the application. If the applicant refuses to participate or is uncooperative or unresponsive in the course of the interviews, this fact will be included in the statement and report filed by the chaplain and psychiatrist or medical officer.

(4) The commander exercising special court-martial jurisdiction over the applicant, will appoint an officer in the grade of O–3 or higher, knowledgeable in policies and procedures relating to conscientious objector matters, to investigate the applicant's claim. The officer so appointed will not be an individual in the chain of command of the applicant. If the applicant is a commissioned officer, the investigating officer must be senior in both temporary and permanent grades to the applicant.

(5) Upon appointment, the investigating officer will review the applicable Marine Corps regulations. During the course of his investigation, the investigating officer will obtain all necessary legal advice for the local staff judge advocate or legal officer. As part of his investigation, the investigating officer will seek information from commanders, supervisors, records, and any other sources which may contribute to his final recommendation. Whenever possible, information so obtained will be presented to the applicant at the hearing.

(6) The investigating officer will conduct a hearing on the application. The purpose of the hearing is to afford the applicant an opportunity to present any evidence he desires in support of his application; to enable the investigating officer to ascertain and assemble all relevant facts; to create a comprehensive record; and to facilitate an informed recommendation by the investigating officer and an informed decision on the merits by higher authority.

(i) If the applicant desires, he shall be entitled to be represented by counsel, at his own expense, who shall be permitted to be present at the hearing, assist the applicant in the presentation of his case, and examine all items in the file.

(ii) Should the applicant refuse to make a statement, orally or in writing during the conduct of the hearing, he will submit a signed statement in his own handwriting that he has been afforded the opportunity at the hearing to appear in person, with counsel retained by him, if desired, and that he refuses to make a statement.

(iii) In this regard, any failure or refusal of the applicant to submit to questioning under oath or affirmation before the investigating officer may be considered by the officer making his recommendation and evaluation of the applicant's claim.

(iv) If the applicant fails to appear at the hearing without good cause, the investigating officer may proceed in his absence and the applicant will be deemed to have waived his appearance.

(v) The hearing will be informal in character and will not be governed by the rules of evidence employed by courts-martial except that all oral testimony presented shall be under oath or affirmation. Any relevant evidence may be received. Statements obtained from persons not present at the hearing need not be made under oath or affirmation. The hearing is not an adversary proceeding.

(vi) The applicant may submit any additional evidence that he desires (including sworn or unsworn statements) and present any witnesses in his own behalf, but he shall be responsible for securing their attendance. Commanders will render all reasonable assistance in making available military members of his command requested by the applicant as witnesses. Further, the applicant will be permitted to question any other witnesses who appear and to examine all items in the record.

(vii) A verbatim record of the hearing is not required. If the applicant desires such a record and agrees to provide it at his own expense, he may do so. If he elects to provide such a record, he shall make a copy thereof available to the investigating officer, at no expense to the Government, at the conclusion of the hearing. In the absence of a verbatim record, the investigating officer will summarize the testimony of witnesses and permit the applicant or his counsel to examine the summaries and note for the record their differences with the investigating officer's summary. Copies of statements and other documents received in evidence will be made a part of the hearing record. The investigating officer has the responsibilty for authenticating the hearing record. His version is final as to the record of the testimony of the witnesses.

(7) At the conclusion of the investigation, the investigating officer will prepare a written report which will contain the following:

(i) A statement as to whether the applicant appeared, whether he was accompanied by counsel, and, if so, the latter's identity, and whether the nature and purpose of the hearing were explained to the applicant and understood by him.

(ii) Any documents, statements, and other material received during the investigation.

(iii) Summaries of the testimony of the witnesses presented (or a verbatim record of the testimony if such record was made).

(iv) A statement of the investigating officer's conclusion as to the underlying basis of the applicant's conscientious objection and the sincerity of the applicant's beliefs, including his reasons for such conclusions.

(v) The investigating officer's recommendation for disposition of the case, including his reasons therefor (insure compliance with paragraph (d)(7)) of this section. The actions recommended will be limited to the following:

(*a*) Denial of any classification as a conscientious objector; or

(*b*) Classification as 1–A–O conscientious objector; or

[3] Filed as part of the original document.

(c) Classification as 1–O conscientious objector.

(vi) The investigating officer's report, along with the individual's application, all interviews with chaplains or doctors evidence received as a result of the investigating officer's hearing, and any other items submitted by the applicant in support of his case will constitute the record. The investigating officer's conclusions and recommended disposition will be based on the entire record and not merely on the evidence produced at the hearings. A copy of the record will be furnished to the applicant at the time it is forwarded to the commander who appointed the investigating officer, and the applicant will be informed that he has the right to submit a rebuttal to the report within 7 days.

(8) The record of the case will be forwarded to the headquarters of the officer who appointed the investigating officer where it shall be reviewed for completeness and legal sufficiency. If necessary, the case may be returned to the investigating officer for further investigation. When the record is complete, the commanding officer who appointed the investigating officer shall forward it with his personal recommendation for disposition and the reasons therefor, through the appropriate chain of command, to the Commandant of the Marine Corps (code DF) for determination of action. Each officer in the chain of command will provide a specific recommendation.

(9) The commanding officer providing the final endorsement will, prior to forwarding the application to the Commandant of the Marine Corps, furnish the applicant a copy of any material he has not seen plus any forwarding endorsements containing recommendations. The applicant will be informed that he has the right to submit a rebuttal to the additional material within 7 days. The applicants comments will be attached to the report or a statement will be made in the forwarding endorsement that he elected not to comment or did not comment within the allotted 7 days.

(10) A final decision based on the entire record will be made at Headquarters Marine Corps. Any additional information other than the official service record of the applicant considered which is adverse to the applicant, and which the applicant has not had an opportunity to comment upon or refute, will be made a part of the record and the applicant shall be given an opportunity to comment upon or refute the material before a final decision is made. The reason for an adverse decision will be made a part of the record and will be provided to the individual.

(11) Processing of applications need not be abated by the unauthorized absence of the applicant subsequent to the initiation of the application, or by the institution of disciplinary action or administrative separation proceedings against him. However, an applicant whose request for classification as a conscientious objector has been approved will not be discharged until all disciplinary action has been resolved.

(12) To the extent practicable under the circumstances, during the period applications are being processed and until a decision is made at Headquarters Marine Corps, every effort will be made to assign applicants to duties within the command to which they are assigned which will conflict as little as possible with their asserted beliefs.

(13) If a Marine has made application prior to receiving PCS orders, he will be retained at his command pending final decision of his application. The Commandant of the Marine Corps (code DF) will be notified of this action and commanders will request advice relative to the PCS orders issued. A Marine who desires to apply for conscientious objector status subsequent to receiving PCS orders will comply with the reassignment orders issued.

(14) During the period applications are being processed, applicants will be expected to conform to the normal requirements of the command and perform satisfactorily such duties as they may be assigned. Applicants may be disciplined for violations of the Uniform Code of Military Justice while awaiting action on their applications.

(15) A Marine reservist ordered to involuntary active duty will report as ordered, unless his application for conscientious objector status was made prior to the receipt of notification of his commanding officer's intent to recommend him for involuntary active duty.

(16) A Marine reservist who applies for conscientious objector status subsequent to receiving notification of his commanding officer's intent to recommend him for involuntary active duty will carry out orders issued and be employed in duties in accordance with provisions of subparagraph (12) of this paragraph.

(f) *Classification*—(1) *Discharge*—(i) Applicants requesting discharge who are determined to be 1–O conscientious objectors by Headquarters Marine Corps will be discharged "For the Convenience of the Government" with an entry in the service record and on the discharge document that the reason for separation is conscientious objection. The type of discharge issued will be governed by the applicant's service record and provisions of this part (MCO P1900.16). The Director of the Selective Service System will be promptly notified of the discharge of those who have served less than 180 days on active duty. Pending separation, the applicant will continue to be assigned duties providing the minimum practicable conflict with his professed beliefs and will be expected to conform to the normal requirements of the command and to perform satisfactorily such duties to which he is assigned. Applicants may be discharged for violations under the Uniform Code of Military Justice while awaiting discharge, in addition to such other disciplinary and/or administrative action as may be deemed appropriate.

(ii) If the Selective Service System advises that induction was in fact erroneous under subparagraph 5d above, the claimant will be separated or assigned to noncombatant duties as he desires. If the Selective Service System advises that there was in fact a denial of a right or a significant procedural error in the evaluation of a claim, the induction will be considered erroneous and the individual discharged in accordance with this part (MCO P1900.16).

(2) *Assignment.* (i) Applicants requesting assignment to noncombatant duties who are determined to be class 1–A–O conscientious objectors by Headquarters Marine Corps will be reassigned to noncombatant training duties as indicated below or discharged at the discretion of the Commandant of the Marine Corps. Each applicant will be required to execute the statement attached as enclosure (1).[1]

(ii) If the Selective Service System advises that any claim under paragraph (c)(4) of this section is unfounded or makes a final determination adverse to any claim, the claimant will be so informed and returned to full duty.

(iii) Inductees classified as 1–A–O by the Selective Service System will be assigned to regular recruit platoons and will participate in all regular recruit training except that concerning the use or studying of or handling of, firearms or weapons. The Commandant of the Marine Corps (code DF) will be notified of inductees so classified, to include the occupational field acceptable to the individual conscientious objector.

(iv) Enlistees who apply for conscientious objector status subsequent to commencement of recruit training will complete the regular recruit training except that concerning the use or studying of, or handling of, firearms or weapons and will list in their application three of the OF's in subdivision (vi) of this subparagraph that are acceptable to them.

(v) During recruit training involving the use and handling of firearms or weapons the inductee/enlistee conscientious objector will receive noncombatant training with other platoons or perform useful work.

(vi) A conscientious objector will not be assigned to individual combat training. Instead, upon completion of recruit training, he will be assigned directly to appropriate basic specialty training or on-the-job training to qualify in an MOS within OF's 01, 04, 15, 25, 30, 31, 32, 33, 34, 35, 40, 41, 46, or 55.

(vii) Subsequent to basic specialty training or on-the-job training, conscientious objectors will be utilized in their MOS's and/or in other duties which are consistent with paragraph (b)(5)(i) of this section. These assignments will be the responsibility of the command to which the conscientious objector is assigned. Nothing in the foregoing will preclude assignment of consientious objectors to Fleet Marine Force units, or overseas, or in combat areas.

(viii) The disposition of Marine officers classified as conscientious objectors

[1] Filed as part of the original document.

will be determined at Headquarters Marine Corps.

(3) Marines who are assigned to noncombatant duties, and persons who are assigned to normal military duties by reason of disapproval of their application, will be expected to conform to the normal requirements of the command and to perform satisfactorily such duties to which they are assigned. Violations of the Uniform Code of Military Justice by these members will be treated as in any other situation.

(g) *Promotion.* Promotion of conscientious objectors is permitted provided they meet all requirements prescribed for their assigned occupational fields and if, in the opinion of the commanding officer, the status of the individual in no way hampers him in the performance of the duties expected of that grade. A Marine's status as a conscientious objector, in itself, will not affect promotion, nor will special provisions in existing promotion procedures be established.

(Secs. 280, 1162, 1163, 6291–6298, 70A Stat. 14, 89, 391–393, as amended, 76 Stat. 508, 517; sec. 301, 80 Stat. 379; 5 U.S.C. 301, 10 U.S.C. 133, 280, 1162, 1163, 1168, 1169, 1171, 6292, 6294)

[SEAL] H. B. ROBERTSON, Jr.,
Rear Admiral, JAGC, U.S. Navy,
Acting Judge Advocate General.

SEPTEMBER 8, 1972.

[FR Doc.72-15622 Filed 9-18-72;8:45 am]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 2—DELEGATIONS OF AUTHORITY

PART 3—ADJUDICATION

Miscellaneous Amendments

The following regulatory provisions, implementing the provisions of Public Law 92-328 (86 Stat. 393) are effective August 1, 1972, except the amendments to §§ 2.68a, 3.100, 3.901, and 3.905 which are effective June 30, 1972. Compliance with the provisions of § 1.12 of this chapter, as to notice of proposed regulatory development is unnecessary in this instance and would be impracticable and contrary to the public interest inasmuch as the delay required would delay payment of benefits authorized by Public Law 92-328.

1. Section 2.68a is revised to read as follows:

§ 2.68a Director, Compensation and Pension Service and personnel of that service designated by him authorized to determine whether claimant or payee has forfeited right to gratuitous benefits or to remit a prior forfeiture pursuant to provisions of 38 U.S.C. 3503 or 3504.

This delegation of authority is identical to § 3.100(c) of this chapter.

2. In § 3.100, paragraph (c) is amended to read as follows:

§ 3.100 Delegations of authority.

* * * * *

(c) Authority is delegated to the Director, Compensation and Pension Service, and to personnel of that service designated by him to determine whether a claimant or payee has forfeited the right to gratuitious benefits pursuant to the provisions of 38 U.S.C. 3503 or 3504. See § 3.905. (38 U.S.C. 212(a))

3. In § 3.350, those portions of paragraphs (a), (b), (c), (e), and (i) preceding subparagraph (1) and paragraphs (d), (f) (1) and (2), and (h) are amended to read as follows:

§ 3.350 Special monthly compensation ratings.

The rates of special monthly compensation stated in this section are those provided under 38 U.S.C. 314 based on wartime service. For disabilities due to peacetime service, the rate is 80 percent of the wartime rate, as provided in 38 U.S.C. 334.

(a) *Ratings under 38 U.S.C. 314(k).* Special monthly compensation ($47 wartime rate) is payable for each anatomical loss or loss of use of one hand, one foot, both buttocks, one or more creative organs, blindness of one eye having only light perception, deafness of both ears, having absence of air and bone conduction, or complete organic aphonia with constant inability to communicate by speech. This special compensation is payable in addition to the basic rate of compensation otherwise payable on the basis of degree of disability, provided that the combined rate of compensation does not exceed $616 monthly when authorized in conjunction with any of the provisions of 38 U.S.C. 314 (a) through (j) or (s). When there is entitlement under 38 U.S.C. 314 (l) through (n) or an intermediate rate under (p) such additional allowance is payable for each such anatomical loss or loss of use existing in addition to the requirements for the basic rates, provided the total does not exceed $862 per month. The limitations on the maximum compensation payable under this paragraph are independent of and do not preclude payment of additional compensation for dependents under 38 U.S.C. 315, or the special allowance for aid and attendance provided by 38 U.S.C. 314(r). (Public Law 92-328, 86 Stat. 393)

* * * * *

(b) *Ratings under 38 U.S.C. 314(l).* The special monthly compensation provided by 38 U.S.C. 314(l) is payable for anatomical loss or loss of use of both hands, both feet, one hand and one foot, blindness in both eyes with visual acuity of 5/200 or less or being permanently bedridden or so helpless as to be in need of regular aid and attendance. The monthly rate is $616.

* * * * *

(c) *Ratings under 38 U.S.C. 314(m).* The special monthly compensation provided by 38 U.S.C. 314(m) is payable for anatomical loss or loss of use of two extremities at a level or with complications preventing natural elbow or knee action with prosthesis in place; or for blindness in both eyes having only light perception; or for blindness in both eyes rendering him so helpless as to be in need of regular aid and attendance. The monthly rate is $678.

* * * * *

(d) *Ratings under 38 U.S.C. 314(n).* The special monthly compensation provided by 38 U.S.C. 314(n) is payable for the anatomical loss of two extremities so near the shoulder or hip as to prevent the use of a prosthetic appliance or anatomical loss of both eyes. The rate is $770 per month. Amputation is a prerequisite. If a prosthesis cannot be worn at the present level of amputation but could be applied if there were a reamputation at a higher level the requirements of this paragraph are not met; instead, consideration will be given to loss of natural elbow or knee action.

(e) *Ratings under 38 U.S.C. 314(o).* The special monthly compensation provided by 38 U.S.C. 314(o) is payable for conditions entitling to two or more of the rates (no condition being considered twice) provided in 38 U.S.C. 314(l) through (n) or for bilateral deafness rated at 60 percent or more disabling, and the hearing impairment in one or both ears is service connected, in combination with service-connected blindness with bilateral visual acuity 5/200 or less. The monthly rate is $862.

* * * * *

(f) *Intermediate or next higher rate; 38 U.S.C. 314(p)*—(1) *Extremities.* (i) Anatomical loss or loss of use of one extremity with the anatomical loss or loss of use of another extremity at a level or with complications preventing natural elbow or knee action with prosthesis in place will entitle to the rate intermediate between 38 U.S.C. 314(l) and (m). The monthly rate is $647.

(ii) Anatomical loss or loss of use of one extremity with anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance will entitle to the rate equal to 38 U.S.C. 314(m). The monthly rate is $678.

(iii) Anatomical loss or loss of use of extremity at a level preventing natural elbow or knee action with prosthesis in place with anatomical loss of another extremity so near the shoulder or hip as to prevent the use of a prosthetic appliance will entitle to the rate intermediate between 38 U.S.C. 314 (m) and (n). The monthly rate is $724.

(2) *Eyes, bilateral, and blindness in connection with deafness.* (i) Blindness of one eye with 5/200 visual acuity or less and blindness of the other eye having only light perception will entitle to the rate intermediate between 38 U.S.C. 314 (l) and (m). The monthly rate is $647.

(ii) Blindness of one eye with 5/200 visual acuity or less and anatomical loss, or blindness having no light perception accompanied by phthisis bulbi, evisceration, or other obvious deformity or dis-

figurement of the other eye, will entitle to a rate equal to 38 U.S.C. 314(m). The monthly rate is $678.

(iii) Blindness of one eye having only light perception and anatomical loss, or blindness having no light perception accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement of the eye, will entitle to a rate intermediate between 38 U.S.C. 314 (m) and (n). The monthly rate is $724.

(iv) Total blindness of both eyes having no light preception accompanied by phthisis bulbi, evisceration, or other obvious deformity or disfigurement will entitle to a rate equal to 38 U.S.C. 314(n). The monthly rate is $770.

(v) Blindness in both eyes rated under 38 U.S.C. 314 (l), (m), or (n), or under the intermediate or next higher rate provisions outlined above, when accompanied by:

(a) Service-connected total deafness in one ear, will afford entitlement to the next higher intermediate rate or if the veteran is already entitled to an intermediate rate to the next higher statutory rate under 38 U.S.C. 314, but not higher than the (o) rate; or

(b) Bilateral deafness rated at no less than 40 percent, and the hearing impairment in one or both ears is service connected, will afford entitlement to the next higher statutory rate under 38 U.S.C. 314 or if the veteran is already entitled to an intermediate rate to the next higher intermediate rate, but in no event higher than the rate for (o).

* * * * *

(h) *Special aid and attendance benefit in maximum monthly compensation cases; 38 U.S.C. 314(r).* A veteran receiving the maximum rate ($862) of special monthly compensation under any provision or combination of provisions in 38 U.S.C. 314 who is in need of regular aid and attendance is entitled to an additional allowance during periods he is not hospitalized at U.S. Government expense. (See § 3.552(b)(2) as to continuance following admission for hospitalization.) The rate is $370. Determination of this need is subject to the criteria of § 3.352. This additional allowance is payable whether or not the need for regular aid and attendance was a partial basis for entitlement to the maximum $862 rate, or was based on an independent factual determination.

(i) *Total plus 60 percent, or housebound; 38 U.S.C. 314(s).* The special monthly compensation at the rate of $554 provided by 38 U.S.C. 314(s) is payable where the veteran has a single service-connected disability rated as 100 percent under regular scheduled evaluation and,

* * * * *

4. In § 3.400(j), subparagraph (6) is added to read as follows:

§ 3.400 General.

* * * * *

(j) *Election of Veterans Administration benefits (§ 3.700 series).* * * *

(6) August 1, 1972, as to pension payable under Public Law (73 Stat. 432) as amended by Public Law 92-328 (86 Stat. 393) if there was basic eligibility on that date based on death of a veteran of the Spanish-American War and an election is filed prior to December 1, 1972.

* * * * *

5. In § 3.551, paragraphs (a), (b), and (c)(1) are amended and paragraph (g) is added so that the added and amended material reads as follows:

§ 3.551 Reduction because of hospitalization.

(a) *General.* Pension in excess of $30 monthly is subject to reduction when a veteran who has neither wife, child, nor dependent parent is hospitalized, unless the veteran is hospitalized for Hansen's disease. The provisions of this section apply to initial periods of hospitalization and to readmissions following discharge from a prior period of hospitalization. If the veteran is hospitalized for observation and examination, the date treatment began is considered the date of admission. Special rules governing discontinuance of aid and attendance allowance are contained in § 3.552 and for discontinuance of awards for incompetent veterans in § 3.557. Except as otherwise indicated the terms "hospitalized" and "hospitalization" in §§ 3.551 through 3.559 mean:

(1) Hospital treatment in a Veterans Administration hospital or in any hospital at Veterans Administration expense.

(2) Institutional, domiciliary, or nursing home care in a Veterans Administration institution or domiciliary or at Veterans Administration expenses.

(b) *Reduction after 6 months.* Pension (except as provided in paragraph (c) of this section) in excess of $30 monthly for a veteran who has neither wife, child, nor dependent parent shall continue at the full monthly rate until the end of the sixth calendar month following the month of admission for hospitalization. The rate payable will be reduced effective the first day of the seventh calendar month to $30 monthly or 50 percent of the amount otherwise payable, whichever is greater. The reduced rate will be effective the first day of the seventh calendar month following admission or the first day of the month following the month in which action is taken, which ever is later. Payment of the amount withheld may be made on termination of hospitalization, as provided in § 3.556. (Public Law 92-328; 86 Stat. 393)

(c) *Reduction after 2 months.* * * *

(1) Where pension was being paid to a married veteran at the rate prescribed by 38 U.S.C. 521(b), all or any part of the rates payable under 38 U.S.C. 521(c) or (c) and (e) may be apportioned for an estranged wife as provided in § 3.454(b). (38 U.S.C. 3203(a); Public Law 92-328, 86 Stat. 393)

* * * * *

(g) *Settlement of previously withheld compensation or retirement pay.* Compensation or retirement pay withheld pursuant to the provisions of paragraph (b) of this section as it was constituted prior to August 1, 1972, shall be paid in a lump sum to the veteran if competent. If incompetent, payment shall be made in a lump sum or successive lump sums, subject to the provisions of § 3.557(b). No part of the amount remaining unpaid is payable in the event of the death of the incompetent veteran. If the veteran is competent and dies before payment is made, the withheld amounts are payable according to the order of precedence and subject to the time limitation provided in § 3.1001. (Public Law 92-328, 86 Stat. 393, effective August 1, 1972)

6. In § 3.552, paragraphs (a)(3), (b)(3), (g), and (h) are amended to read as follows:

§ 3.552 Adjustment of allowance for regular aid and attendance.

(a) * * *

(3) Additional compensation for dependents under § 3.4(b)(2) is payable during hospitalization in addition to the rates authorized by this section. The rates specified will also be increased by amounts authorized under 38 U.S.C. 314(k) based on independently ratable disability, subject to the statutory ceiling on the total amount of compensation payable as set forth in § 3.350(a).

(b) * * *

(3) Where a veteran affected by the provisions of subparagraphs (1) and (2) of this paragraph is discharged or released from the hospital against medical advice or as the result of disciplinary action, and is readmitted to such hospitalization within 6 months after that date, the allowance, additional compensation, or increased pension will be discontinued effective the day preceding the date of readmission. A readmission 6 months or more after such discharge or release will be considered as a new admission. (38 U.S.C. 3203(e))

* * * * *

(g) Where a veteran entitled to one of the rates under 38 U.S.C. 314 (l), (m), or (n) or their corresponding peacetime equivalent by reason of anatomical losses or losses of use of extremities, blindness (visual acuity 5/200 or less or light perception only), or anatomical loss of both eyes is being paid compensation of $862 because of entitlement to another rate under section 314(l) on account of need for aid and attendance his compensation will be reduced while hospitalized to the following:

(1) If entitlement is under section 314 (l) and in addition there is need for regular aid and attendance for another disability, the award during hospitalization will be $678 since the disability requiring aid and attendance is 100 percent disabling. (38 U.S.C. 314(p))

(2) If entitlement is under section 314(m), $770.

(3) If entitlement is under section 314(n), $862 would be continued, since the disability previously causing the need for regular aid and attendance would then be totally disabling entitling him to the maximum rate under 38 U.S.C. 314(p).

(h) If, because of blindness, a veteran requires regular aid and attendance, but

has better vision than "light perception only" his award under 38 U.S.C. 314(m) $678 will be reduced while hospitalized to the rate payable under 38 U.S.C. 314 (l) ($616).

* * * * *

7. In § 3.557, paragraph (a) is amended to read as follows:

§ 3.557 Incompetents; estate over $1,500 and hospitalized.

(a) Where a veteran having neither wife, child, nor dependent parent is being hospitalized by the Veterans Administration and is rated incompetent by the Veterans Administration by reason of mental illness, the pension of such veteran will be subject to reductions as provided in § 3.551.

* * * * *

8. In § 3.711, paragraph (b) is amended to read as follows:

§ 3.711 Public Law 86–211.

* * * * *

(b) *Service prior to World War I*—(1) *General.* Veterans of the Indian wars who meet the service requirements of 38 U.S.C. 511(b) and veterans of the Spanish-American War who meet the service requirements of 38 U.S.C. 512(a) may elect to receive pension under 38 U.S.C. 521. Any widow eligible for pension under 38 U.S.C. 536 may elect to receive pension under 38 U.S.C. 541. An election of pension under 38 U.S.C. 521 or 541 is final, except as provided in subparagraph (2) of this paragraph, when the payee (or his fiduciary) has negotiated one check for this benefit. There is no right of reelection.

(2) *Aid and attendance.* Any veteran who meets the service requirements of subparagraph (1) of this paragraph and who is receiving or entitled to receive pension based on need of regular aid and attendance will be paid whichever is greater: The monthly rate authorized by 38 U.S.C. 511(a) or 5.2(a), or the monthly rate authorized by 38 U.S.C. 521. A widow of a veteran of the Spanish-American War who is receiving or entitled to receive pension based on a need of regular aid and attendance will be paid whichever is the greater: the monthly rate authorized by 38 U.S.C. 536 (a) and (b) and 544, or the monthly rate authorized by 38 U.S.C. 541 and 544. Elections are not required for these purposes. The change in rate will be effective the first day of the month in which the facts warrant such change (38 U.S.C. 511, 512, 536, 541, 544; Public Law 92–328, 86 Stat. 393).

9. Section 3.810 is added to read as follows:

§ 3.810 Clothing allowance.

(a) A Veteran whose service-connected disability is compensable under laws administered by the Veterans Administration is entitled, upon application therefor, to an annual clothing allowance of $150 (payable in a lump sum).

(1) Where a Veterans Administration examination or hospital or examination report from a facility specified in § 3.326(c) discloses that he wears or uses certain prosthetic or orthopedic appliances which tend to wear or tear clothing (including a wheelchair) because of such disability and such disability is the loss or loss of use of a hand or foot compensable at a rate specified in § 3.350 (a), (b), (c), (d), or (f) (l); or

(2) Where the Chief Medical Director or his designee certifies that because of such disability a phosthetic or orthopedic appliance is worn or used which tends to wear or tear the veteran's clothing. For the purposes of this paragraph "appliance" includes a wheelchair.

(b) Effective August 1, 1972, the initial lump sum clothing allowance is due and payable for veterans meeting the eligibility requirements of paragraph (a) of this section as of that date. Subsequent annual payments for those meeting the eligibility requirements of paragraphs (a) of this section will become due on the anniversary date thereafter, both as to initial claims and recurring payments under previously established entitlement.

10. In § 3.901, paragraph (e) is added to read as follows:

§ 3.901 Fraud.

* * * * *

(e) *Remission of forfeitures imposed prior to September 2, 1959.* Where it is determined that a forfeiture for fraud which was imposed prior to September 2, 1959, would not be imposed under the law and regulation in effect on and after September 2, 1959, the forfeiture shall be remitted effective June 30, 1972. Benefits to which a person becomes eligible by virtue of the remission, upon application therefor, shall be awarded effective as provided by § 3.114. (38 U.S.C. 3503; Public Law 92–328, 86 Stat. 393; effective June 30, 1972)

11. In § 3.905, the centerhead and paragraph (a) are amended and paragraph (e) is added so that the amended and added material reads as follows:

§ 3.905 Declaration of forfeiture or remission of forfeiture.

(a) *Jurisdiction.* At the regional office level, the Chief Attorney is authorized to determine whether the evidence warrants formal consideration as to forfeiture. Submissions may also be made by the director of a service, the Chairman, Board of Veterans Appeals, and the General Counsel. Jurisdiction to determine whether the claimant or payee has forfeited the right to gratuitous benefits or to remit a prior forfeiture is vested in the Director, Compensation and Pension Service, and personnel to whom authority has been delegated under the provisions of § 3.100(c).

* * * * *

(e) *Remission of forfeiture.* In event of remission of forfeiture under § 3.901 (e), any amounts paid as an apportionment(s) during periods of the previously forfeited beneficiary's reentitlement will be offset.

Approved: September 14, 1972.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

[FR Doc.72–15894 Filed 9–18–72;8:48 am]

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER E—PESTICIDES PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Maneb and Zineb

A notice was published by the Environmental Protection Agency in the FEDERAL REGISTER of July 29, 1972 (37 F.R. 15319), proposing the reduction of established tolerances (40 CFR Part 180) for residues of the fungicides maneb and zineb (PP 2E1266) in or on endive, kale, lettuce, mustard greens, and spinach to 10 parts per million; celery and corn fodder and forage to 5 parts per million; cucumbers, melons, squash, and tomatoes to 4 parts per million; apples to 2 parts per million; and corn grain to 0.1 part per million. No comments or requests for referral to an advisory committee were received.

It is concluded that the proposal should be adopted.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(e)), the authority transferred to the Administrator of the Environmental Protection Agency (35 F.R. 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticides Programs (36 F.R. 9038), Part 180 is amended, as follows:

1. In § 180.110, by deleting the word "apples" from the paragraph "7 parts per million * * *" and by inserting the new paragraph "2 parts per million * * * ", as follows:

§ 180.110 Maneb; tolerances for residues.

* * * * *

2 parts per million in or on apples.

* * * * *

2. In § 180.115 by deleting the words "endive," "kale," "lettuce," "mustard greens," and "spinach" from the paragraph "25 parts per million * * *"; by deleting the words "apples," "celery," "corn," "cucumbers," "melons," "squash," and "tomatoes" from the paragraph "7

parts per million * * *"; and by inserting five new paragraphs as follows:

§ 180.115 Zineb; tolerances for residues.

* * * * *

10 parts per million in or on endive, kale, lettuce, mustard greens, and spinach.

* * * * *

5 parts per million in or on celery and corn fodder and forage.

4 parts per million in or on cucumbers, melons, squash, and tomatoes.

2 parts per million in or on apples.

* * * * *

0.1 part per million in or on corn grain.

Any person who will be adversely affected by the foregoing order may at any time within 30 days after its date of publication in the FEDERAL REGISTER file with the Hearing Clerk, Environmental Protection Agency, Room 3125, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C. 20460, written objections thereto in quintuplicate. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularly the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof.

Effective date. This order shall become effective on its date of publication in the FEDERAL REGISTER (9–19–72).

(Sec. 408(e), 68 Stat. 514; 21 U.S.C. 346a(c))

Dated: September 7, 1972.

WILLIAM M. UPHOLT,
Deputy Assistant Administrator for Pesticides Programs.

[FR Doc.72–15872 Filed 9–18–72;8:46 am]

Title 46—SHIPPING

Chapter IV—Federal Maritime Commission

[General Order 16; Amdt. 10]

PART 502—RULES OF PRACTICE AND PROCEDURE

Change of Title of Hearing Examiner to Administrative Law Judge

Rules changing the title "Hearing Examiner" to "Administrative Law Judge" were published in the FEDERAL REGISTER, August 19, 1972, by the U.S. Civil Service Commission (37 F.R. 16787).

The Federal Maritime Commission's Rules of Practice and Procedure were published October 26, 1965 (30 F.R. 13604), and contained numerous references to the words "Hearing Examiner" or "Hearing Examiners." In order that the Commission's rules will be consistent with other regulatory agencies, notice is hereby given that the title "Hearing Examiner" or "Hearing Examiners" as used in Part 502, Title 46 of the Code of Federal Regulations, is hereby changed to Administrative Law Judge, or Administrative Law Judges, as appropriate.

Effective on publication in the FEDERAL REGISTER (9–19–72).

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72–15–15920 Filed 9–18–72;8.49 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 16495; FCC 72–807]

PART 25—SATELLITE COMMUNICATIONS

Establishment of Domestic Facilities by Nongovernmental Entities

Memorandum opinion and order. In the matter of establishment of domestic communications-satellite facilities by nongovernmental entities, Docket No. 16495.

1. On June 30, 1972, the Communications Satellite Corp. (Comsat) filed a request, pursuant to § 1.106(n) of the Commission's rules and regulations, for a stay of the second report and order issued in this proceeding on June 16, 1972. In addition to seeking a stay of the effectiveness of that order with respect to its own applications for a domestic satellite system, Comsat requested that the Commission "not entertain or process any applications filed pursuant thereto or otherwise implement the order pending release of a final Commission decision on reconsideration and completion of any judicial review of that final decision." Comsat's request is opposed by Western Union Telegraph Co. (Western Union), MCI Lockheed Satellite Corp. (MCI Lockheed), Hughes Aircraft Co. (Hughes), and Western TeleCommunications, Inc. (WTCI); and supported by American Telephone & Telegraph Co. (AT&T). By order adopted on July 19, 1972 (FCC 72–645) the Commission, on its own motion, extended the July 25, 1972, date specified in paragraph 45 (a) and (b) of the Second Report and Order pending action on the request for stay.

2. In support of its request for stay relief, Comsat asserted that the policies and conditions in the Second Report and Order reflect a substantially different approach from that recommended by the Common Carrier Bureau and that there has been a close division within the Commission, as well as divergent views among the parties, on issues in this proceeding. Comsat further stated that it intended to file a petition for reconsideration, raising substantial questions, and anticipated that others would seek reconsideration. In the circumstances, Comsat urged, it would be premature to require applicants to take action consistent with the policies and conditions specified in the order or to make decisions upon the assumption that the order will be unchanged. Comsat claimed that it in particular would be confronted with a drastic election. Paragraph 45(b) of the order does not afford adequate relief since it provides that an applicant may request additional time only for the purpose of "reframing its proposal consistently with such policies and conditions." Moreover, even if Comsat were not required to bring its proposal into compliance with the order pending a final decision on reconsideration, it would allegedly be placed at a substantial disadvantage if other applications were to be processed, and perhaps even granted, in the interim.

3. In supporting Comsat's request, A.T. & T. urged in addition that the more orderly approach would be to defer to an appropriate date after final action on reconsideration the requirement that applicants file with the Commission a statement concerning their intentions with respect to their domestic satellite applications.

4. Those opposed to a stay object principally to the request that the Commission not entertain or process any domestic satellite applications or otherwise implement the Second Report and Order pending Commission action on reconsideration and any judicial review. They urge that Comsat and any other applicant desiring to await the outcome of reconsideration should be free to do so, provided that those applicants who are in the main satisfied with the Second Report and Order are not precluded from moving ahead. They further assert that Comsat has failed to satisfy the standard criteria for stay relief set forth in Virginia Petroleum Jobbers Ass'n. v. Federal Power Commission, 259 F. 2d 921 (C.A.D.C. 1958), and followed by the Commission (e.g., CATV Rules, 34 FCC 2d 165, 166 (1972)), namely:

(a) The likelihood of prevailing on the merits of the appeal;

(b) Irreparable injury to petitioner if the stay is denied;

(c) No harm to other interested parties if the stay is granted; and

(d) The stay would be in the public interest.

5. Thus, they claim that Comsat did no more than state that it would file a petition for reconsideration raising substantial questions, but did not identify the nature of such questions or show that they would be likely to result in modification of the Second Report. Further, while the Commission placed special conditions or limitations on some applicants in adopting a policy of multiple entry, some applicants are not subject to any special conditions and reconsideration is unlikely to increase the restrictions particularly in the case of those applicants who have not sought reconsideration.

6. In asserting that Comsat has not shown that it would suffer irreparable injury if others were free to proceed at

their own risk,[1] those opposed to a stay note that Comsat would obtain at least part of the relief requested through the normal processing delays to be anticipated for applications of this nature. They point out that the Second Report and Order does not require applicants to amend their applications to conform to the policies enunciated by any specified date, but merely to apprise the Commission as to their intentions. Moreover, the Second Report and Order (paragraph 45(b) and footnote 11) contemplates the issuance of a public notice on processing procedures, and applicants allegedly cannot perfect all amendments until such procedures are established. Western Union further argues that Comsat would not suffer any legally cognizable injury if other applicants were processed, because an applicant is without any legal right to demand that rule making matters affecting its applications be resolved before the Commission processes and grants other applications that accord with its policies and rules or, in the absence of a situation of mutual exclusivity, to secure contemporaneous processing of its and copending applications. Coastal Bend Television Co. v. F.C.C., 234 F. 2d 686, 690 (C.A.D.C. 1956); F.C.C. v. WJR, 337 U.S. 265, 272 (1949); Mount Pleasant Radio, Inc., 20 Pike & Fischer, R.R. 2d 761 (1970).

7. Those opposed to Comsat's request also urge that the grant of a general stay would irreparably harm other parties by delaying their realization of the potential service and cost advantages of domestic satellites and by creating uncertainties and complexities in the utilization of personnel having special expertise in this field. Western Union claims that the indefinite postponement sought by Comsat would require Western Union, in order to meet its domestic service obligations (which Comsat does not now have), to expend funds for terrestrial facilities that could be more effectively invested in satellite facilities. MCI Lockheed notes that a general stay would mean that while Comsat exhausted every possibility for reversal, other applicants who may not wish to contest the Commission's decision would have to postpone the date upon which they could begin to recoup their investments and delay to some indefinite time the utilization of the resources they have committed on a standby basis.

8. Finally, it is contended that the broad relief requested by Comsat would be contrary to the public interest and the goal of making the benefits of domestic satellite communications service available to the public at an early date. Noting that this proceeding has been pending for 6 years already and that processing of the applications and implementation of any grant will be time consuming in any event, they claim that the public interest could not be advanced by adding the "unnecessary and unjustified delay sought by Comsat." Western Union further urges that concern as to delay in the inauguration of new service has long been a key factor in rejecting stay requests and that " 'the promise of the early commencement of service [via satellite] must take precedence' over further argument Comsat may make concerning the kind of domestic satellite system it will have." Los Angeles Unified School District, 22 RR 2d 141, 143 (1971).

DISCUSSION AND CONCLUSIONS

9. Upon consideration of the pleadings of the parties, we are of the view that any applicant that desires to defer stating its intentions, making an election, filing amendments to conform its applications to the Second Report and Order or otherwise pursuing its application for domestic satellite facilities pending Commission action on the petitions for reconsideration and any judicial review, should be permitted to do so. Accordingly, in addition to the alternatives afforded by paragraph 45(b) of the Second Report and Order, any applicant may file a statement to the above effect on or before the new date specified in the order herein. However, for the reasons stated below we are of the opinion that insufficient cause has been shown for a grant of extraordinary stay relief which would preclude processing of any applicant preferring to proceed at its own risk in the present posture of this proceeding.

10. Neither Comsat nor AT&T has made any showing as to the likelihood of prevailing on the merits of their petitions for reconsideration or how the applications of others could be substantially affected thereby. Comsat's request for stay, which was filed prior to its petition for reconsideration, merely states that "Comsat intends to file a petition for reconsideration, raising substantial questions, as promptly as is reasonably possible * * *." Comsat did not identify the nature of such questions, or state what policies and conditions in the Second Report and Order it intended to challenge, or indicate how success on its unspecified challenges could affect other applications. AT&T in its supporting letter, filed concurrently with AT&T's petition for reconsideration, stated only that the "disposition by the Commission of the petitions for reconsideration filed in this proceeding by AT&T and other parties will directly affect the manner in which AT&T and presumably others pursue their domestic satellite system proposals." Thus, Comsat and AT&T have failed to satisfy the first prerequisite for the grant of stay relief, a showing of "likelihood of prevailing on the merits of the appeal."

11. Nevertheless, in light of our public interest responsibilities, we have on our own motion examined the petitions for reconsideration filed by Comsat and AT&T to ascertain whether the applications of others would be affected in the event either should prevail. In its petition for reconsideration Comsat states (page 2):

> In this petition we challenge the soundness of that view [that "Comsat is somehow competitively crippled by reason of AT&T's ownership of Comsat stock and representation on Comsat's Board of Directors"] and the soundness of the restrictions imposed upon Comsat by the order. Specifically, we ask that the Commission reconsider its order that: (1) Disapproves of the Comsat application to serve AT&T (paragraphs 13, 22); (2) artificially divides the potential market and requires Comsat to elect one of the markets (paragraphs 22–25); and (3) restricts Comsat's ability to provide service to offshore points (paragraph 26). (Material in brackets is supplied from the preceding sentence in Comsat's petition.)

Comsat does not otherwise challenge the policies and conditions in the Second Report and Order or seek additional restrictions on other applicants.

12. AT&T's petition for reconsideration states (page 3):

> Thus, while we are in substantial agreement with many of the other conclusions reached by the Commission in its order, we respectfully submit that the limitation placed upon AT&T's initial use of domestic satellites for particular services and the denial of the AT&T/Comsat proposal are, as more fully set forth hereinafter, contrary to the record developed in this proceeding and past Commission policy, and will not serve the public interest in the future development of satellite technology and services. In addition, considerations affecting the Commission's conclusions regarding rates for services to Hawaii, Alaska, and Puerto Rico, the GTE proposal and interconnection are discussed herein.

A.T. & T.'s comments on the latter matters do not appear to warrant a halt in all processing pending reconsideration. The Second Report and Order contemplated that consideration of the question of specific revised rates to Alaska, Hawaii, and Puerto Rico would not commence until 6 months after the issuance of the pertinent construction permits for domestic satellite facilities (paragraph 37). Insofar as GTE is concerned, A.T. & T. supports the showing required by paragraph 29 of the Second Report and Order and expresses its willingness to continue to cooperate in the development of pertinent information. And, while A.T. & T. challenges the requirement in paragraph 34 that applicants who are existing terrestrial carriers shall submit a description of the kinds of interconnection arrangements that will be made available for Commission approval prior to the grant of a domestic satellite authorization to such carrier, A.T. & T. is the applicant principally affected by this requirement. Moreover, it claims that the requirement "will only delay domestic satellite authorizations" (A.T. & T. petition, page 21).

13. We are satisfied that there is nothing in the petitions for reconsideration filed by those who have sought stay relief which warrants a general stay of the effectiveness of the Second Report and Order in the public interest. Comsat and AT&T have not challenged our basic policy of affording an opportunity for multiple entry by qualified appli-

[1] In disputing Comsat's claim that major expenditures by others to amend their applications would give rise to claims of equity, MCI Lockheed asserts that most "applicants have already spent much more money in preparing and prosecuting their applications up to now * * * than they could possibly expend in conforming their applications to the report and order."

cants (Second Report and Order, paragraphs 16–18) or contended that other applicants should ultimately be barred from pursuing their applications or from receiving a grant in the event that they meet such policies and conditions as are applicable to them and make the requisite public interest showing. Rather Comsat and AT&T are primarily seeking a relaxation of certain conditions or restrictions directed toward their own proposals. Of course, other applicants may have an interest in how such questions are resolved. However, as stated at the outset, Comsat, AT&T, or any other applicant that desires to await a resolution of any of the questions raised in the various petitions for reconsideration is free to do so. Those that elect to pursue their applications in the interim will proceed at their own risk and in accordance with the policies and constraints specified by our Second Report and Order. They will, of course, be fully subject to any action on reconsideration that might affect their interests, including any changes resulting from questions raised by petitioners who have not sought stay relief.

14. In light of the circumstance that Comsat and A.T. & T. will not be required to make any election or to conform their applications to the Second Report and Order prior to disposition of the petitions for reconsideration, we are not persuaded that they would suffer any irreparable injury sufficient to warrant the issuance of a stay if other applications were to be processed—or even granted—in the interim. Processing of other applicants would in no way prejudice a grant of the relief Comsat and A.T. & T. have requested on the merits in their petitions for reconsideration. Moreover, reconsideration may well be accomplished before we are in a position to make any grant.[2] In any event, it is highly unlikely that any authorized system could become operational in view of the long lead time required for construction of facilities of this nature. To be sure, applicants choosing to pursue their applications pending reconsideration may achieve a headstart over those electing to defer. However, while Comsat and A.T. & T. have every right to exhaust their administrative and judicial remedies with respect to their own proposals, we do not think that they are entitled to delay others in this kind of noncomparative situation, particularly since the applications of others are not being challenged (except to the extent that A.T. & T. supports the showing we have required of GTE).[3] See also, paragraph 6 above.

15. Further, other parties could be harmed if we were to grant the request for delay. For example, on July 25, 1972, Western Union filed amendments to its applications and requested "processing as promptly as possible." Western Union was granted a partial waiver of section 319 of the Act on July 26, 1972, in order to permit it to contract immediately for procurement of satellites at its own risk and thereby gain "significant price and schedule benefits" (FCC 72–686). An indeterminate delay in processing might put Western Union in the position of being unable to commence operations even if it were to receive a timely grant of construction permits for satellites and launch authority, because other necessary components of its proposed system—such as earth stations and connecting terrestrial facilities—were not authorized in time.[4] In this connection, we note Western Union's assertion that the indefinite postponement sought by Comsat would require it, in order to meet its domestic service obligations, to expend funds for terrestrial facilities that could be more effectively invested in satellite facilities.

16. Finally, we believe that the public interest would be best served by processing those applicants who desire to proceed pending reconsideration. This proceeding has been pending for a number of years and the public will not receive service from the proposed systems for some time after any grant. We have had informal indications that various segments of the U.S. consuming public are so eager to have early access to communications satellite facilities for domestic purposes that they are exploring the possibility of leasing satellite capacity in the shortly-to-be-operational Canadian Telsat system, with a view toward applying for domestic earth stations and later converting to a domestic space segment when such facilities become operational. We have repeatedly recognized that "the satellite technology has the potential of making significant contributions to the Nation's domestic communications structure by providing a better means of serving certain of the existing markets and developing new markets not now being served" (Second Report, paragraph 4). This conclusion is not challenged in the petitions for reconsideration. In the circumstances, it is our judgment that the desirability of making domestic satellite facilities available to the public at an early date outweighs the considerations urged in support of an across-the-board delay.

17. In light of all of the foregoing, we find it appropriate and in the public interest to deny the broad stay relief sought by Comsat and AT&T insofar as it is requested that the Commission not entertain or process any applications for domestic satellite facilities or otherwise implement the Second Report and Order "pending release of a final Commission decision on reconsideration and completion of any judicial review of that final decision."

18. Since the July 25, 1972, date specified in paragraph 45(a) and 45(b) of the Second Report and Order was previously extended on the Commission's own motion pending action on the request for stay (FCC 72–645), our order herein will prescribe a new effective date and a new deadline for the filing of statements by each of the system applicants as to its intentions with respect to the various alternatives (paragraph 9 above, and paragraph 45(b) of the Second Report and Order). We are aware of discussions and negotiations that are proceeding among applicants with a view toward establishing consolidations or consortiums. While we do not intend to discourage those negotiations, we caution the participants that any consolidation or consortium that may be agreed upon will not prejudice our resolution of the issues raised by the petitions for reconsideration, and will be subject to Commission approval upon a finding that the public interest would be served thereby.

19. *Accordingly, it is ordered,* That:

1. The relief sought in the "Request for Stay" filed by the Communications Satellite Corp. on June 30, 1972, and in the supporting letter filed by American Telephone and Telegraph Co., on July 17, 1972, is granted only to the extent reflected herein and is otherwise denied.

2. The July 25, 1972, date specified in paragraph 45 (a) and (b) of the Second Report and Order, which was previously extended pending action on the request for stay (FCC 72–645), is hereby modified to read October 16, 1972.

3. In addition to the alternatives set forth in paragraph 45(b) of the Second Report and Order applicants for domestic communications satellite systems shall have the option of filing a statement pursuant to paragraph 9 herein.

Adopted: September 13, 1972.

Released: September 14, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[5]
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72–15908 Filed 9–18–72;8:49 am]

[2] After the applicants have apprised the Commission of their intentions, processing procedures have been established, and conforming or other amendments and/or showings have been filed, it may be some time before processing of any application is completed.

[3] We do not suggest, of course, that A.T. & T. has abandoned any claims of electrical interference between the earth stations of others and its terrestrial facilities. Such claims would be considered in the normal course of processing.

[4] Processing of earth stations and associated terrestrial microwave facilities may be time consuming because of claims of interference with other existing or proposed terrestrial facilities, and the necessity for amendments to resolve any such problems. This has proved to be the case with respect to new terrestrial specialized carriers. Moreover, even after construction permits have been issued, construction may take a considerable period of time.

[5] Commissioners Robert E. Lee and Reid absent.

Title 49—TRANSPORTATION

Subtitle A—Office of the Secretary of Transportation

[OST Docket No. 1, Amdt. 1–59]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Delegation of Authority Regarding Appalachian Airport Development

The purpose of this amendment is to delegate to Federal Aviation Administrator authority vested in the Secretary by

a recently enacted statute, Public Law 92–65 (85 Stat. 168), which amended the Appalachian Regional Development Act of 1965 to provide a grant-in-aid program for development of existing airports in the Appalachian Region.

Since this amendment relates to departmental management, procedures, and practices, notice and public procedure thereon is unnecessary and it may be made effective in less than 30 days after publication in the FEDERAL REGISTER.

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended, effective September 12, 1972, as follows:

1. Section 1.47 is amended by adding a new paragraph (c) to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(c) Carry out the functions of the Secretary under section 208 of the Appalachian Regional Development Act of 1965 (85 Stat. 168; 40 U.S.C. App. 208).

2. Section 1.48(j) is amended to read as follows:

§ 1.48 Delegations to Federal Highway Administrator.

* * * * *

(j) Carry out the functions of the Secretary under the Appalachian Regional Development Act of 1965 (79 Stat. 5; 40 U.S.C. App.), except section 208.

* * * * *

(Secs. 3(e), 9(e), Department of Transportation Act, 49 U.S.C. 1652(e), 1657(e))

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

JOHN A. VOLPE,
Secretary of Transportation.

[FR Doc.72–15868 Filed 9–18–72;8:46 am]

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

[Docket No. 70–27; Notice 5]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Hydraulic Brake Systems

Correction

In F.R. Doc. 72–14762 appearing at page 17970 of the issue for Saturday, September 2, 1972, the following changes are to be made:

1. In the second line of S5.2.2, the reference to "S5.2.2.1" should read "S5.-2.1".

2. The word "brakepower", which appears in line 10 of S5.3.1(a), line 2 of S7.17(b), and line 1 of S7.17(c), should read "brake power".

3. The word "brakesprings", which appears in line 3 of S5.6(a), should read "brake springs".

4. The word "Brakeshoe", which appears at line 3 of S5.6(a), should read "brake shoe".

5. The word "brakeshoes", which appears at line 3 of S7.17(a), should read "brake shoes".

6. The first word in S7.6.4, "Nonservice", should read "non service".

7. The penultimate word in the fourth line of S7.10.3.2 should read "at" instead of "to".

[Docket No. 72–18; Notice 3]

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

New Pneumatic Tires, Tire Selection and Rims for Passenger Cars

The NHTSA published on August 2, 1972 (37 F.R. 15430), additions and amendments to the tables in the appendices of Motor Vehicle Safety Standard No. 109 (49 CFR 571.109) and Motor Vehicle Safety Standard No. 110 (49 CFR 571.110). Guidelines published in the FEDERAL REGISTER on October 5, 1968 (33 F.R. 14964), provide that routine additions to the tables become effective 30 days from the publication date if no objections are received. If objections are received, rule making pursuant to 49 CFR Part 553 is initiated.

The Rubber Manufacturers' Association (R.M.A.) and the B. F. Goodrich Tire Co. have raised an objection to the change made by the August 2 publication to footnote 1, Table I–R of Standard No. 109, which would have allowed the letters "HR", "SR", or "VR" to be included in any tire size designation adjacent to or in place of the dash. Accordingly, the amendment to footnote 1, Table I–R of Appendix A, Motor Vehicle Safety Standard No. 109 (571.109), published August 2, 1972 (Item 17, page 15432), is hereby revoked. Notice of proposed rule making regarding this change will be issued before the rule is amended.

This notice is issued pursuant to sections 103, 119, 201, and 202 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392, 1407, 1421, and 1422) and the delegations of authority at 49 CFR 1.51, 49 CFR 501.8.

Issued on September 14, 1972.

ELWOOD T. DRIVER,
Acting Associate Administrator, Motor Vehicle Programs.

[FR Doc.72–15917 Filed 9–18–72;8:49 am]

Title 50—WILDLIFE AND FISHERIES

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

PART 32—HUNTING

Lacreek National Wildlife Refuge, S. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (9–19–72).

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

SOUTH DAKOTA

LACREEK NATIONAL WILDLIFE REFUGE

Public hunting of mourning doves on the Lacreek National Wildlife Refuge, S. Dak., is permitted from September 1 through September 17, 1972, but only on the area designated by signs as open to hunting. This open area comprising 310 acres is delineated on a map available at the refuge headquarters, Martin, S. Dak. 57551, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of mourning doves.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through September 17, 1972.

TRAVIS S. ROBERTS,
Regional Director.

SEPTEMBER 8, 1972.

[FR Doc.72–15864 Filed 9–18–72;8:45 am]

PART 32—HUNTING

Bear River Migratory Bird Refuge, Utah

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (9–19–72).

§ 32.22 Special regulations; upland game; for individual wildlife refuge areas.

UTAH

BEAR RIVER MIGRATORY BIRD REFUGE

Public hunting of pheasants on the Bear River Migratory Bird Refuge, Utah, is permitted from November 11 through December 10, 1972, inclusive, but only on the area designated by signs as open to hunting. This open area, comprising 9,495 acres, is delineated on maps and shown as "Area A" which are available at refuge headquarters, Brigham City, Utah, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, N.M. 87103. Hunting shall be in accordance with all applicable State regulations governing the hunting of pheasants subject to the following special conditions:

(1) *Iron shot.* The exclusive use of 12-gauge iron shot shells in Area A will be required on Tuesdays, Thursdays, and Saturdays to conform to the experimental iron shot waterfowl hunting program in this area. Should the refuge supply of iron shot be exhausted, this requirement will be terminated.

(2) *Shells limited.* On hunting days concurrent with "iron shot" days, hunters in Area A will not take more than 25 shot shells into the area.

(3) *Roads.* No hunting is permitted from roadways or within 100 yards of roadways.

(4) *Hunted check station.* Each hunter who enters Area A is required to register at the checking station and check out before leaving the refuge.

(5) *Parking.* Hunters may park cars only at designated areas within the refuge.

(6) *Routes of travel.* To reach open hunting area, travel is permitted on foot or bicycle from refuge checking station over roads between Units 1 and 2 and Units 2 and 3.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through December 10, 1972.

LLOYD F. GUNTHER,
Refuge Manager, Bear River Migratory Bird Refuge, Brigham City, Utah.

SEPTEMBER 11, 1972.

[FR Doc.72-15865 Filed 9-18-72;8:45 am]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Tax Incentives for Contributions to Candidates for Public Office

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, by October 20, 1972. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner by October 20, 1972. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER, unless the person or persons who have requested a hearing withdraw their request for a hearing before notice of the hearing has been filed with the Office of the Federal Register. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] JOHNNIE M. WALTERS,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to sections 41, 218, 642(a)(3), and 642(i) of the Internal Revenue Code of 1954, relating to tax incentives for contributions to candidates for public office, as added by sections 701, 702, and 703 of the Revenue Act of 1971 (85 Stat. 560–562), such regulations are hereby amended as follows:

PARAGRAPH 1. The following new sections are inserted immediately before § 1.46:

§ 1.41 Statutory provisions; contributions to candidates for public office.

SEC. 41. *Contributions to candidates for public office*—(a) *General rule.* In the case of an individual, there shall be allowed, subject to the limitations of subsection (b), as a credit against the tax imposed by this chapter for the taxable year, an amount equal to one-half of all political contributions, payment of which is made by the taxpayer within the taxable year.

(b) *Limitations*—(1) *Maximum credit.* The credit allowed by subsection (a) for a taxable year shall be limited to $12.50 ($25 in the case of a joint return under section 6013).

(2) *Application with other credits.* The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under section 33 (relating to foreign tax credit), section 35 (relating to partially tax-exempt interest), section 37 (relating to retirement income), and section 38 (relating to investment in certain depreciable property).

(3) *Verification.* The credit allowed by subsection (a) shall be allowed, with respect to any political contribution, only if such political contribution is verified in such manner as the Secretary or his delegate shall prescribe by regulations.

(c) *Definitions.* For purposes of this section—

(1) *Political contribution.* The term "political contribution" means a contribution or gift of money to—

(A) An individual who is a candidate for nomination or election to any Federal, State, or local elective public office in any primary, general, or special election, for use by such individual to further his candidacy for nomination or election to such office.

(B) Any committee, association, or organization (whether or not incorporated) organized and operated exclusively for the purpose of influencing or attempting to influence, the nomination or election of one or more individuals who are candidates for nomination or election to any Federal, State, or local elective public office, for use by such committee, association, or organization to further the candidacy of such individual or individuals for nomination or election to such office;

(C) The national committee of a national political party;

(D) The State committee of a national political party as designated by the national committee of such party; or

(E) A local committee of a national political party as designated by the State committee of such party designated under subparagraph (D).

(2) *Candidate.* The term "candidate" means, with respect to any Federal, State, or local elective public office, an individual who—

(A) Has publicly announced that he is a candidate for nomination or election to such office; and

(B) Meets the qualifications prescribed by law to hold such office.

(3) *National political party.* The term "national political party" means—

(A) In the case of contributions made during a taxable year of the taxpayer in which the electors of President and Vice President are chosen, a political party presenting candidates or electors for such offices on the official election ballot of 10 or more States, or

(B) In the case of contributions made during any other taxable year of the taxpayer, a political party which met the qualifications described in subparagraph (A) in the last preceding election of a President and Vice President.

(4) *State and local.* The term "State" means the various States and the District of Columbia; and the term "local" means a political subdivision or part thereof, or two or more political subdivisions or parts thereof, of a State.

(d) *Cross references.* For disallowance of credits to estates and trusts, see section 642(a)(3).

[Sec. 41 as added by sec. 701(a), Rev. Act 1971 (85 Stat. 560)]

§ 1.41–1 Credit for contributions to candidates for public office.

(a) *In general*—(1) *Allowance of credit.* Subject to the limitations of subparagraph (2) of this paragraph, in the case of an individual who makes the election described in paragraph (c) of this section, there shall be allowed as a credit against the tax imposed by Chapter 1 of the Code for the taxable year an amount equal to one-half of all political contributions, payment of which is made by such individual within such taxable year. In no event shall a political contribution qualify for the credit allowed by section 41 and this section unless such contribution is actually paid by the taxpayer within the taxable year for which the taxpayer claims such credit. For purposes of the preceding sentence, the method of accounting employed by the taxpayer and the date on which such contribution is pledged shall be irrelevant. In the case of married individuals making a joint return, a political contribution made by either spouse shall qualify for the credit under section 41. In the case of married individuals making separate returns, the contribution must have been made by the spouse claiming the credit.

(2) *Limitations*—(i) *Maximum credit.* The credit allowed by subparagraph (1) of this paragraph for a taxable year shall not exceed $12.50 (or $25, in the case of married individuals making a joint return).

(ii) *Application with other credits.* In no event shall the credit allowed by subparagraph (1) of this paragraph exceed—

(*a*) The amount of the tax imposed by Chapter 1 of the Code for the taxable year, reduced by

(*b*) The sum of the credits allowable under section 33 (relating to foreign tax credit), section 35 (relating to partially tax-exempt interest), section 37 (relating to retirement income), and section 38 (relating to investment in certain depreciable property) for such taxable year.

(iii) *Verification*—(*a*) *In general.* The credit allowed by subparagraph (1) of this paragraph shall be allowed, with respect to any contribution, only if the taxpayer can verify that a political contribution has in fact been paid. Such verification shall consist of a written receipt from the person to whom the con-

tribution was paid. A canceled check, the payee of which is an individual described in paragraph (b)(1)(ii) of this section or a committee, association, or organization described in paragraph (b)(1)(iii) of this section will normally meet the requirement for a written receipt and be accepted as proof of payment. However, in determining if a political contribution has been made to an individual or to a committee, association, or organization described in paragraph (b)(1)(iii)(*a*) of this section, a taxpayer may in appropriate cases be required to present additional information regarding the qualification of the individual, committee, association, or organization, unless the taxpayer provides a special authorized receipt issued by the individual committee, association, or organization. Such receipt shall contain the information and representations set forth in (*b*) of this subdivision and may be issued to the contributing taxpayer at the time his contribution is made or as soon thereafter as practical. A taxpayer is not required to identify on his income tax return the name of the candidate, or of the committee, association, or organization, to whom the contribution is made.

(*b*) *Authorized receipt.* The receipt referred to in (*a*) of this subdivision shall contain the following information and representations:

(*1*) In the case of a contribution to an individual described in paragraph (b)(1)(ii) of this section, the full name of such individual; or, in the case of a committee, association, or organization described in paragraph (b)(1)(iii)(*a*) of this section, the official name of such committee, association, or organization as recited on Form 4909;

(*2*) The amount of the contribution;

(*3*) The year in which the contribution was received by such individual or such committee, association, or organization;

(*4*) The name of the contributor;

(*5*) The particular nomination or election for which the contribution has been paid, by specifying—

(*i*) The specific public office for which such nomination or election is sought;

(*ii*) The year or years in which such nomination and (or) election will be (or was) held;

(*iii*) Whether such office is Federal, State, or local; and

(*iv*) If such office is State or local, the particular State or locality involved; and

(*6*) In the case of an individual described in paragraph (b)(1)(ii) of this section, that Form 4908 was or will be filed in the manner prescribed in paragraph (c)(1) of § 1.41–2; or, in the case of a committee, association, or organization described in paragraph (b)(1)(iii)(*a*) of this section, that Form 4909 was or will be filed in the manner prescribed in paragraph (c)(1) of § 1.41–2; and that the undertakings set forth in such form will be observed.

(c) *Sample receipts.* The following samples illustrate the type of forms which will be deemed to satisfy the requirements of (*b*) of this subdivision.

SAMPLE RECEIPT—INDIVIDUAL CANDIDATE

I, John Doe, of Illinois, in connection with my campaign for nomination and election to the U.S. Senate in 1972:

(1) Acknowledge receipt during 1972 of $---------- from ----------, and

(2) Declare that Internal Revenue Service Form 4908 was or will have been properly filed before the end of this calendar year, and that the undertakings in such form will be observed.

John Doe

SAMPLE RECEIPT—CAMPAIGN COMMITTEE FOR NAMED CANDIDATES

The Illinois Committee for John Doe, for the nomination and election of John Doe to the U.S. Senate in 1972:

(1) Acknowledges receipt during 1972 of $---------- from ----------, and

(2) Declares that Internal Revenue Service Form 4909 was or will have been properly filed before the end of this calendar year, and that the undertakings in such form will be observed.

The Illinois Committee for John Doe.

By ----------
Authorized agent

SAMPLE RECEIPT—CAMPAIGN COMMITTEE FOR MULTIPLE CANDIDATES

The Illinois Committee for an Effective Congress, for the nomination and election of certain individuals to the Congress of the United States in 1972:

(1) Acknowledges receipt during 1972 of $---------- from ----------, and

(2) Declares that Internal Revenue Service Form 4909 was or will have been properly filed before the end of this calendar year, and that the undertakings in such form will be observed.

Illinois Committee for an Effective Congress.

By ----------
Authorized agent

SAMPLE RECEIPT—CAMPAIGN COMMITTEE FOR MULTIPLE CANDIDATES IN MORE THAN ONE STATE

The Illinois Committee for Good Government, for the nomination and election of certain individuals to Federal, State, or local elective public offices in 1972:

(1) Acknowledges receipt during 1972 of $---------- from ----------, and

(2) Declares that Internal Revenue Service Form 4909 was or will have been properly filed before the end of this calendar year, and that the undertakings in such form will be observed.

Illinois Committee for Good Government.

By ----------
Authorized agent

(3) *Illustrations.* The application of this paragraph may be illustrated by the following examples:

Example (*1*). Assume that A, an unmarried individual, makes a political contribution of $10 for his taxable year ending on December 31, 1972. Assume, further, that A's total tax liability for such taxable year is $100, and that A has no allowable credit under section 33, 35, 37, or 38. Under the provisions of subparagraph (1) of this paragraph, A is allowed a credit against tax for such taxable year equal to 50 percent of the amount of such contribution, or $5.

Example (*2*). Assume the facts as stated in example (1), except that A makes a political contribution of $30 for his taxable year ending on December 31, 1972. Since an amount equal to 50 percent of the amount of such contribution (i.e., $15) exceeds the maximum allowable amount under subparagraph (2)(i) of this paragraph, A is allowed a credit against tax for such taxable year equal to such maximum allowable amount, or $12.50.

Example (*3*). Assume the facts as stated in example (1), except that A's total tax liability for the taxable year is, when reduced by the retirement income credit under section 37, equal to $3. Since an amount equal to 50 percent of the amount of such contribution (i.e., $5) exceeds the maximum allowable amount under subparagraph (2)(ii) of this paragraph (i.e., A's total tax liability for the taxable year, reduced by the sum of the credits allowable under sections 33, 35, 37, and 38), A is allowed a credit against tax for such taxable year equal to such maximum allowable amount, or $3.

Example (*4*). Assume that H and W, married individuals, make a joint return for their taxable year ending on December 31, 1972, and that H makes a political contribution of $50 for such taxable year. Assume, further, that the joint tax liability of H and W for such taxable year is $100 and that H and W have no allowable credit under section 33, 35, 37, or 38. Under the provisions of subparagraph (1) of this paragraph, H and W are allowed a credit against tax for such taxable year equal to 50 percent of the amount of the contribution, or $25.

Example (*5*). Assume the facts as stated in example (4), except that H and W make separate returns for their taxable year ending on December 31, 1972. Assume, further, that H's total tax liability for such taxable year is $75, and that H has no allowable credit under section 33, 35, 37, or 38. Since H made the political contribution, only H may claim a credit for such contribution under section 41. In addition, since an amount equal to 50 percent of the amount of such contribution (i.e., $25) exceeds the maximum allowable amount under subparagraph (2)(i) of this paragraph, H is allowed a credit against tax for such taxable year equal to such maximum allowable amount, or $12.50.

(b) *Definitions*—(1) *Political contribution*—(i) *In general.* (*a*) For purposes of sections 41 and 218 and subject to the provisions of § 1.41–2, the term "political contribution" means any contribution, or gift, of money to one or more of the individuals described in subdivision (ii) of this subparagraph, or of the committees, associations, or organizations described in subdivision (iii), of this subparagraph.

(*b*) The term also includes any amount paid for the purchase of a ticket to a political dinner or function, provided that such dinner or function—

(*1*) In the case of a political dinner or function by or on behalf of an individual described in subdivision (ii) of this subparagraph or a committee, association, or organization described in subdivision (iii)(*a*) of this subparagraph, is clearly in the context of the campaign of one or more individuals who have qualified as candidates under subparagraph (2) of this paragraph by the end of the calendar year in which such ticket is purchased, and

(*2*) Is not primarily a divice to confer private benefits in the form of meals or entertainment to the contributor. Ordinarily, a dinner or function which is incidental to the essentially political nature of the event in connection with which

such dinner or function occurs will not be considered primarily a device to confer private benefits in the form of meals or entertainment to the contributor.

(c) If a political dinner or function is primarily a device to confer private benefits in the form of meals or entertainment to the contributor, then the term "political contribution" includes only the excess of the amount paid for a ticket to such dinner or function over the fair market value of all of the privileges and benefits received or receivable by the contributor as consideration for the amount paid. A reasonable, good faith estimate of the fair market value of such privileges and benefits will ordinarily be accepted for purposes of making such determination.

(d) Notwithstanding the preceding provisions of this subdivision, the term "political contribution" does not include—

(1) A contribution, or gift, of property or services;

(2) Any amount paid for a raffle ticket purchased in connection with a political campaign; or

(3) Except as provided in section 276(c) and the regulations thereunder, any amount paid for the purchase of advertising in a publication of an individual described in subdivision (ii) of this subparagraph, or of a committee, association, or organization described in subdivision (iii) of this subparagraph.

(ii) *Individuals.* An individual described in subdivision (i) of this subparagraph is an individual who is a candidate for nomination or election to any Federal, State, or local elective public office in any primary, general, or special election, but only if the contribution or gift is to be used by him to further his candidacy for nomination or election to that office.

(iii) *Committees, associations, or organizations.* A committee, association, or organization described in subdivision (i) of this subparagraph is—

(a) Any committee, association, or organization (whether or not incorporated) organized and operated exclusively for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals who are candidates for nomination or election to any Federal, State, or local elective public office, but only if the contribution or gift is to be used by such committee, association, or organization to further the candidacy of such individual or individuals for nomination or election to that office;

(b) The national committee of a national political party;

(c) The State committee of a national political party as designated by the national committee of such party; and

(d) The one local committee of each local unit of a national political party, as designated by the State committee of such party designated under (c) of this subdivision.

(iv) *Limitation on committee activity.* (a) A contribution or gift to a committee, association, or organization described in subdivision (iii)(a) of this subparagraph will not qualify as a political contribution if such committee, association, or organization has to any extent any purpose in addition to, or other than, the purpose of furthering the candidacy of an individual or individuals for nomination or election to a Federal, State, or local elective public office in a primary, general, or special election. Thus, for example, a contribution to a political action committee which engages in general political, educational, or legislative activities will not qualify as a political contribution.

(b) A committee, association, or organization described in subdivision (iii)(a) of this subparagraph may be run in conjunction with a political action committee, but contributions to the committee, association, or organization described in such subdivision may qualify as political contributions only if they are received directly from individual taxpayers and not from the political action committee. Contributions made by individual taxpayers to a political action committee will not qualify as political contributions even if such contributions are later contributed by the political action committee to a committee, association, or organization described in subdivision (iii)(a) of this subparagraph.

(c) If an organization which engages in general political, educational, or legislative activities operates a division which is organized and operated exclusively for the purpose of furthering the candidacy of an individual or individuals for nomination of election to a Federal, State, or local elective public office, contributions to such division may qualify as political contributions, provided that such division is, in fact, operated separately. If a labor union, business league, corporation, or other organization operates a fund or division organized and operated exclusively for the purpose of furthering the candidacy of an individual or individuals for nomination or election to a Federal, State, or local elective public office, contributions to such fund or division may qualify as political contributions, provided that such fund or division is, in fact, operated separately.

(d) Contributions to a campaign committee organized for the purpose of supporting candidates both currently and in the future, such as a congressional campaign committee, or organized for the purpose of supporting candidacies which qualify, and candidacies which do not qualify, under subparagraph (2) of this paragraph will qualify as political contributions if the requirements set forth in this section and § 1.41–2 are otherwise satisfied.

(2) *Candidate.* (i) For purposes of sections 41 and 218, the term "candidate" means, with respect to any Federal, State, or local elective public office, an individual who—

(a) Has publicly announced that he is a candidate for nomination or election to such office, and

(b) Meets the qualifications prescribed by law to hold such office.

(ii) An individual shall be considered to have made a public announcement of candidacy only if he makes a positive statement, rendered publicly, that he intends to seek nomination or election to the specified Federal, State, or local elective public office. It is not necessary that he make such statement in the State or district where he will seek nomination or election; nor is it necessary that he make the statement at a formal press conference. A qualifying announcement would be one, for example, which is made by way of an announcement on television or radio or by way of a news release or announcement. Incumbency in the office for which an individual is seeking nomination or reelection will not of itself constitute a public announcement that he is a candidate for such nomination or reelection.

(iii) In the case of a candidate who seeks nomination for one office but ultimately runs for another, such as, for example, a candidate for President of the United States who is ultimately slated as the party nominee for Vice President, it will not be necessary to distinguish between contributions made in connection with seeking the nomination for President and contributions made in connection with the final election for Vice President. The entire activity will be treated as a single candidacy.

(3) *National political party.* For purposes of sections 41 and 218, the term "national political party" means—

(i) In the case of contributions made during a taxable year of the taxpayer in which the electors of President and Vice President of the United States are chosen, a political party presenting candidates or electors for such offices on the official election ballot of 10 or more States, or

(ii) In the case of contributions made during any other taxable year of the taxpayer, a political party which met the qualifications described in subdivision (i) of this subparagraph in the last preceding election of a President and Vice President of the United States.

(4) *State and local.* For purposes of sections 41 and 218—

(i) The term "State" means the various States and the District of Columbia, and

(ii) The term "local" means a political subdivision of a State or part of such subdivision, or two or more political subdivisions of a State or parts of such subdivisions.

(5) *Elective public office.* For purposes of sections 41 and 218, the term "elective public office" includes any office election to which requires solicitation of votes from the general public. However, such term does not include any office or position in any National, State, or local political party or similar organization, or membership in the electoral college for election of the President and Vice President of the United States.

(c) *Election to take credit.* A taxpayer may not be allowed the credit provided by section 41 and this section unless he elects to take such credit for the taxable year in which the political contributions are paid. The taxpayer shall signify on his return his election to take the

credit by claiming the credit on such return instead of itemizing any deduction otherwise allowed under section 218 for such contributions for such taxable year.

(d) *Restrictions*—(1) *In general.* The credit provided by section 41 and this section may be elected only by an individual taxpayer, and not, for example, by any corporation, association, company, organization, estate, or trust. However, pursuant to section 703(b), such credit may be elected by a partnership in connection with any political contribution made by such partnership; the credit so elected shall apply to each partner's distributive share of such contribution.

(2) *Cross-reference.* For provisions relating to the disallowance to estates and trusts of the credit provided by section 41 and this section, see section 642(a)(3).

(e) *Effective date.* The provisions of section 41 and this section apply to taxable years ending after December 31, 1971, but only with respect to political contributions, payment of which is made after such date.

§ 1.41–2 Restrictions applicable to certain contributions.

(a) *Application of section.* This section provides certain limitations which must be applied only in the case of contributions or gifts to individual candidates described in section 41(c)(1)(A) and subdivision (ii) of § 1.41–1(b)(1) and to committees, associations, or organizations described in section 41(c)(1)(B) and subdivision (iii)(*a*) of § 1.41–1(b)(1). For purposes of this section, such a candidate is referred to as an "individual" and such a committee, association, or organization is referred to as a "campaign committee."

(b) *Time for qualification as a candidate.* A contribution or gift to an individual will not qualify as a political contribution unless he qualifies as a candidate under paragraph (b)(2) of § 1.41–1 by the end of the calendar year in which the contribution or gift is made. A contribution or gift to a campaign committee will not qualify as a political contribution unless the individual or individuals for whose candidacy such contribution or gift is to be used qualifies as a candidate under paragraph (b)(2) of § 1.41–1 by the end of the calendar year in which the contribution or gift is made. To qualify as political contributions, it is not necessary that contributions made to further the nomination or election of an individual who has qualified as a candidate under paragraph (b)(2) of § 1.41–1 be made before the election for which such individual is a candidate. Once the individual has qualified as a candidate, he remains a qualified candidate for the specific election involved with respect to contributions made to meet the cost of that election irrespective of when the contributions are made. Thus, if an individual who qualified as a candidate in 1972 and was elected to public office in that year sustains a campaign deficit with respect to that election, contributions to satisfy such deficit which are made in 1973 to such individual, or to a compaign committee organized and operated to further the candidacy of such individual for election to that office, may qualify as political contributions.

(c) *Requirement for filing of report*—(1) *In general.* A contribution or gift to an individual or to a campaign committee will not qualify as a political contribution unless such individual or committee makes a report on the form prescribed by subparagraph (2) or (3) of this paragraph with the service center designated in the instructions to such form. The form must be filed for each calendar year with respect to all political contributions received during the calendar year and must be filed before the end of such calendar year. The report made by an individual must be signed by him or an authorized agent; the report made by a campaign committee must be signed by an officer or authorized agent of the committee. No report is required to be made for a calendar year during which no contributions are received. For penalty for false, fraudulent, or fictitious statements see 18 U.S.C. 1001.

(2) *Form 4908 for individuals.* The report to be made by an individual shall be on Form 4908 and shall contain the following information and representations:

(i) The individual's name, address, and social security number;

(ii) The year or years in which the nomination and (or) election is to be or was held;

(iii) The specific public office involved and, if such office is not a Federal office, the particular State or locality involved;

(iv) That he is (or was, if the date of voting has occurred) a candidate for such office within the meaning of § 1.41–1(b)(2);

(v) That he had publicly announced his candidacy by the end of the calendar year for which such form is filed;

(vi) That all contributions received by him constituting restricted amounts (as defined in paragraph (d)(1) of this section) will be expended only as provided in paragraph (d)(4) or (6) of this section;

(vii) That he will maintain records adequate to identify such contributions and expenditures; and

(viii) That he will file with the Internal Revenue Service such further information as the Internal Revenue Service may require.

(3) *Form 4909 for committees.* The report to be made by a campaign committee shall be made on Form 4909 and shall contain the following information and representations:

(i) The committee's official name, address, and employer identification number;

(ii) The year or years in which the nomination and (or) election is to be or was held;

(iii) The specific public office involved and, if such office is not a Federal office, the particular State or locality involved;

(iv) If more than one individual who is a candidate is being supported by such committee, a schedule listing the names of such individuals and the offices for which they are candidates;

(v) That all contributions constituting restricted amounts (as defined in paragraph (d)(1) of this section) and received by it during the year for which such report is filed will be expended only as provided in paragraph (d)(4) or (6) of this section and will be used solely on behalf of individuals who by the end of such year have filed Form 4908;

(vi) That it will maintain records adequate to identify such contributions and expenditures; and

(viii) That it will file with the Internal Revenue Service such further information as the Internal Revenue Service may require.

(d) *Expenditure of political contributions.*—(1) *Restricted amounts.* For purposes of this section, the term "restricted amount" means every contribution or gift qualifying as a political contribution without regard to this paragraph and received during a calendar year by an individual or by a campaign committee which—

(i) Is paid by an individual taxpayer and—

(*a*) Does not exceed the amount of $100, or

(*b*) Exceeds the amount of $100, but only to the extent such contribution or gift does not exceed $100; or

(ii) Is paid by a campaign committee from restricted amounts of such committee.

(2) *Unrestricted amounts.* For purposes of this section, the term "unrestricted amount" means every contribution or gift received during a calendar year by an individual or by a campaign committee which—

(i) Constitutes a contribution or gift not described in subparagraph (1) of this paragraph, or

(ii) Is accounted for pursuant to procedures approved in advance by the Commissioner of Internal Revenue as being adequate to insure that taxpayers will not claim a credit under section 41, or a deduction under section 218, with respect to such contribution or gift.

Any request for approval of procedures described in subdivision (ii) of this subparagraph must be made by submitting a letter, setting forth sufficient facts and circumstances, to the Commissioner of Internal Revenue, Attention: Income Tax Division, Washington, D.C. 20224.

(3) *Recordkeeping requirement.* All individuals and campaign committees are required to maintain records adequate to identify restricted and unrestricted amounts described in subparagraphs (1) and (2) of this paragraph.

(4) *Limitation on use of restricted amounts*—(i) *In general.* Restricted amounts described in subparagraph (1) of this paragraph may be used only to satisfy expenditures incurred to further the candidacy of one or more individuals for nomination or election to the Federal, State, or local elective public office in the primary, general, or special election involved, provided that such expenditures

are incurred during a calendar year in which such individual or individuals qualify as candidates under paragraph (b)(2) of § 1.41–1 or are incurred after the campaign in respect of which such individual or individuals are candidates and are directly related to the campaign. A campaign committee may use restricted amounts to satisfy expenditures incurred to further the candidacy of one or more individuals for nomination or election to the Federal, State, or local elective public office in the primary, general, or special election involved by making contributions for such purpose to an individual or individuals who qualify as candidates under paragraph (b)(2) of § 1.41–1 by the end of the calendar year in which such amounts are received from taxpayers or to another campaign committee which uses such contributions for an individual or individuals who so qualify.

(ii) *Qualifying expenditures defined.* (*a*) Expenditures incurred to further the candidacy of an individual for nomination or election to any Federal, State, or local elective public office in any primary, general, or special election include all expenditures incurred in the context of the political campaign, such as expenses for return trips home in connection with the actual campaign, expenses incurred in raising political contributions, expenses incurred for research and polling in connection with the campaign, expenses incurred to administer the campaign committee, and other general administrative expenses of the campaign.

(*b*) Expenses incurred in connection with a political dinner or function, such as hall rental, salaries, advertising costs, printing of tickets, and cost of food and beverages, are also included as qualifying expenditures under (*a*) of this subdivision if such dinner or function is given in the clear setting of the political campaign with a view of raising campaign funds for one or more individuals who qualify as candidates under paragraph (b)(2) of § 1.41–1.

(*c*) Any expenditure incurred by an individual who qualifies as a candidate under paragraph (b)(2) of § 1.41–1, or by a campaign committee supporting the candidacy of such an individual, which is in good faith determined by such individual or committee to be directly related to his campaign for nomination or election to the Federal, State, or local elective public office for which he is a candidate shall be presumed to be an expenditure to further his candidacy for such nomination or election.

(*d*) That part of the expenses incurred by a compaign committee which is incurred on behalf of one or more individuals who do not qualify as candidates under paragraph (b)(2) of § 1.41–1 must be expended from unrestricted amounts described in subparagraph (2) of this paragraph.

(*e*) The application of this subdivision may be illustrated by the following examples:

Example (1). C is a Congressman in the U.S. House of Representatives. In 1973, C qualifies as a candidate under § 1.41–1(b)(2) for reelection to the same office in November of 1974. In March of 1974, C travels to his home jurisdiction to confer with his constituency. C in good faith determines that the expenses incurred in connection with the trip are directly related to his campaign for reelection to the House of Representatives. Therefore, such expenses are presumed to be expenditures to further C's candidacy for reelection to that office.

Example (2). Assume the same facts as in example (1), except that for each month of 1974, C publishes and distributes to his constituency a newsletter describing his activities in the House of Representatives. C in good faith determines that the expenses incurred in connection with the newsletter are not directly related to his campaign for reelection to the House of Representatives. Accordingly, such expenses are not presumed to be expenditures to further C's candidacy for reelection to that office.

Example (3). Assume the same facts as in example (1), except that the expenses related to C's trip to his home jurisdiction are incurred before his qualification as a candidate under § 1.41–1(b)(2) for reelection to the House of Representatives in 1974. Accordingly, such expenses are not presumed to be expenditures to further C's candidacy for reelection to that office.

(5) *Determination of proper use.* In applying subparagraph (4)(i) of this paragraph, restricted amounts will be deemed to have been used for any calendar year for purposes specified in such subparagraph to the extent of the total of all expenditures incurred during such year by the individual or the campaign committee for purposes specified in such subparagraph.

(6) *Unexpended restricted amounts.* (i) That portion of the restricted amounts of an individual which is not used as provided in subparagraph (4)(i) of this paragraph may be retained by such individual at the end of the political campaign and be used in accordance with such subparagraph the next time such individual is a candidate within the meaning of § 1.41–1(b)(2) for the same office in respect of which such portion was contributed.

(ii) That portion of the restricted amounts of a campaign committee which is not used as provided in subparagraph (4)(i) of this paragraph may be retained by such committee at the end of the political campaign and be used in accordance with such subparagraph on behalf of any individuals who qualified as candidates under paragraph (b)(2) of § 1.41–1 by the end of the calendar year in which such portion was contributed and are again candidates within the meaning of such paragraph for the same office in respect of which such portion was contributed.

(iii) That portion of the restricted amounts of an individual or campaign committee which is not used as provided in subparagraph (4)(i) of this paragraph and may not be used as provided in subdivision (i) or (ii) of this subparagraph will constitute unexpended restricted amounts and must be either—

(*a*) Paid to a National, State, or local committee described in subdivision (iii) (*b*), (*c*), or (*d*) of § 1.41–1(b)(1), or

(*b*) Deposited in the general fund of the U.S. Treasury or of any State or local government.

PAR. 2. Section 1.218 is amended by redesignating such section as § 1.219, by redesignating section 218 as section 219, and by revising the historical note, as follows:

§ 1.219 Statutory provisions; cross references.

SEC. 219. *Cross references.* * * *

[Sec. 218 as redesignated by secs. 213(a)(1), Rev. Act 1964 (78 Stat. 50) and 702(a), Rev. Act 1971 (85 Stat. 561)]

PAR. 3. The following new sections are inserted immediately after § 1.217–1:

§ 1.218 Statutory provisions; contributions to candidates for public office.

SEC. 218. *Contributions to candidates for public office*—(a) *Allowance of deduction.* In the case of an individual, there shall be allowed as a deduction any political contribution (as defined in section 41(c)(1)) payment of which is made by such individual within the taxable year.

(b) *Limitations*—(1) *Amount.* The deduction under subsection (a) shall not exceed $50 ($100 in the case of a joint return under section 6013).

(2) *Verification.* The deductions under subsection (a) shall be allowed, with respect to any political contribution, only if such political contribution is verified in such manner as the Secretary or his delegate shall prescribe by regulations.

(c) *Election to take credit in lieu of deduction.* This section shall not apply in the case of any taxpayer who, for the taxable year, elects to take the credit against tax provided by section 41 (relating to credit against tax for contributions to candidates for public office): Such election shall be made in such manner and at such time as the Secretary or his delegate shall prescribe by regulations.

(d) *Cross reference.* For disallowance of deduction to estate and trusts, see section 642(i).

[Sec. 218 as added by section 702(a), Rev. Act 1971 (85 Stat. 561)]

§ 1.218–1 Deduction for contributions to candidates for public office.

(a) *Allowance of deduction.* Subject to the limitations of paragraph (b) of this section, in the case of an individual, there shall be allowed as a deduction for the taxable year any political contribution, payment of which is made by such individual within such taxable year. In no event shall a political contribution qualify for the deduction allowed by section 218 and this section unless such contribution is actually paid by the taxpayer within the taxable year for which the taxpayer claims such deduction. For purposes of the preceding sentence, the method of accounting employed by the taxpayer and the date on which such contribution is pledged shall be irrelevant. In the case of married individuals making joint returns, a political contribution made by either spouse shall qualify for the deduction. In the case of

married individuals making separate returns, the contribution must have been made by the spouse claiming the deduction. The provisions of paragraph (2) (relating to admission to any dinner or program) and paragraph (3) (relating to admission to an inaugural ball or similar event) of section 276(a), and the regulations thereunder, shall not apply to a deduction allowed by section 218 and this section. For definition of the term "political contribution," as used in this section, see paragraph (b)(1) of § 1.41–1.

(b) *Limitations*—(1) *Maximum deduction.* The deduction allowed by paragraph (a) of this section for a taxable year shall not exceed $50 (or $100, in the case of married individuals making a joint return).

(2) *Verification.* The deduction allowed by paragraph (a) of this section shall be allowed, with respect to any political contribution, only if the taxpayer can verify that such contribution has, in fact, been paid. Such verification shall be made in the manner prescribed by paragraph (a)(2)(iii) of § 1.41–1. The taxpayer is not required to identify on his income tax return the name of the candidate, or of the committee, association, or organization, to whom the contribution is made.

(c) *Election to take credit in lieu of deduction.* The provisions of section 218 and this section shall not apply in the case of any taxpayer who, for the taxable year, elects in the manner prescribed in sections 41 and 1.41–1(c) to take the credit under such sections for any political contribution paid in such year.

(d) *Restrictions*—(1) *In general.* The deduction provided by section 218 and this section may be claimed only by individual taxpayers who do not claim the standard deduction provided by section 141. The deduction provided by section 218 shall not be allowed in computing the taxable income of any corporation, association, company, organization, estate, or trust. The deduction may be allowed in computing the taxable income of any individual partner of a partnership for his distributive share of any political contribution made by such partnership.

(2) *Cross-reference.* For provisions relating to the disallowance to estates and trusts of the deduction provided by section 218 and this section, see section 642(i).

(e) *Effective date.* The provisions of section 218 and this section apply to taxable years ending after December 31, 1971, but only with respect to political contributions, payment of which is made after such date.

PAR. 4. Sections 1.642(a)(3), 1.642(a)(3)–1, 1,642(a)(3)–2, and 1.642(a)(3)–3 are deleted.

PAR. 5. The following new section is inserted immediately after § 1.642(a)(2)–1:

§ 1.642(a)(3) Statutory provisions; estates and trusts; special rules for credits and deductions; political contributions.

SEC. 642. *Special rules for credits and deductions*—(a) *Credits against tax.* * * *

(3) *Political contributions.* An estate or trust shall not be allowed the credit against tax for political contributions provided by section 41.

[Sec. 642(a)(3) as added by sec. 701(b), Rev. Act 1971 (85 Stat. 561)]

PAR. 6. Section 1.642(i) is amended by redesignating such section as § 1.642(j), by redesignating section 642(i) as section 642(j), and by revising the historical note, as follows:

§ 1.642(j) Statutory provisions; estates and trusts; special rules for credits and deductions; cross-references.

SEC. 642. *Special rules for credits and deductions.* * * *

(j) *Cross-references.* * * *

[Sec. 642(j) as amended by sec. 201(d)(6)(B), Rev. Act 1964 (78 Stat. 32) and redesignated by sec. 702(b), Rev. Act 1971 (85 Stat. 562)]

PAR. 7. The heading of § 1.642(i)–1 is revised to read as follows:

§ 1.642(j)–1 Cross-references.

* * * * *

PAR. 8. The following new section is inserted immediately after § 1.642(h)–5:

§ 1.642(i) Statutory provisions; estates and trusts; special rules for credits and deductions; political contributions.

SEC. 642. *Special rules for credits and deductions.* * * *

(i) *Political contributions.* An estate or trust shall not be allowed the deduction for contributions to candidates for public office provided by section 218.

[Sec. 642(i) as added by sec. 702(b), Rev. Act 1971 (85 Stat. 562)]

[FR Doc.72–15819 Filed 9–18–72;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 56]

SHELL EGGS

Proposed Grading, U.S. Standards, Grades, and Weight Classes

Notice is hereby given that the U.S. Department of Agriculture is considering amendments to the Regulations Governing the Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs (7 CFR Part 56), under authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

Statement of considerations. The Department has been requested to establish standards for nest-run shell eggs prior to washing, grading, and sizing. Nest-run eggs are those eggs which are in the beginning phase of movement through the marketing channels and have not yet been washed, graded, or sized. The purpose of the standards would be to anticipate the grade yield or such eggs after washing, grading, and sizing. In determining the grade of a particular lot, stains (other than rusty or blackish appearing cage marks or blood stains), and adhering dirt or foreign material on the shell less than one-half inch in diameter would not be considered as quality factors since such defects are usually removed during the washing process. However, rusty or blackish appearing cage marks, blood stains, and adhering dirt or foreign material on the shell one-half inch or larger in diameter would be considered as quality factors since they are usually not readily removed by washing. Commercial flocks are now generally large and the birds are of uniform age and breeding. Such flocks produce eggs relatively uniform in weight and quality characteristics, making it feasible to identify these factors by a sample grading. Such gradings make it possible to trade based on size and quality without the undue effort and expense of an initial grading and packaging in bulk form followed by another grading prior to final sale. A new definition would be added to define the term "cage mark."

All persons who desire to submit written data, views, or comments in connection with this proposal shall file the same in duplicate with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, no later than October 16, 1972.

The proposed amendments are as follows:

1. Section 56.1 would be amended by adding a new definition after the definition of "applicant" to read:

§ 56.1 Meaning of words and terms defined.

* * * * *

"Cage mark" means any stain-type mark caused by an egg coming in contact with a material that imparts a rusty or blackish appearance to the shell.

* * * * *

2. Following § 56.228, a new center heading would be added to read:

U.S. NEST-RUN GRADE AND WEIGHT CLASSES FOR SHELL EGGS

3. A new § 56.230 would be added to read:

§ 56.230 Grade.

"U.S. Nest Run ____ Percent AA Quality" shall consist of eggs of current production of which at least 20 percent are AA quality; and the actual percentage of AA quality eggs shall be stated in the grade name. Within the maximum of 15 percent which may be below A quality, not more than 10 percent may be B quality and C quality combined for shell texture, shape, interior quality (including blood and meat spots), or due to rusty or blackish appearing cage marks or blood stains, not more than 2 percent may have adhering dirt or foreign material on the shell one-half inch or larger in diameter, not more than 6 percent may be checks and not more than 3 percent may be loss. Marks which are slightly gray in appearance and adhering dirt or foreign material on the shell less than one-half inch in diameter are not considered

quality factors. The eggs shall be officially graded for all other quality factors.

4. A new § 56.231 would be added to read:

§ 56.231 Summary of grade.

A summary of the U.S. Nest-Run Grade for Shell Eggs follows in Table I of this section:

TITLE I.—SUMMARY OF U.S. NEST RUN GRADE FOR SHELL EGGS

Nest Run grade description [2]	Minimum percentage of quality required (lot average) [1]		Maximum percentage tolerance permitted (15% lot average) [1]			
	AA Quality [3]	A Quality or better	B and C Quality for shell texture or shape, interior quality (including blood and meat spots), or cage marks [4] and blood stains	Checks	Loss	Adhering dirt or foreign material ½ inch or larger in diameter
U.S. nest run ....% AA Quality. [5]	20	85	10	6	3	2

[1] Substitution of eggs of higher qualities for lower specified qualities is permitted.
[2] Stains (other than rusty or blackish appearing cage marks or blood stains), and adhering dirt and foreign material on the shell less than ½ inch in diameter shall not be considered as quality factors in determining the grade designation.
[3] No case may contain less than 10 percent AA quality.
[4] Cage marks which are rusty or blackish in appearance shall be considered as quality factors. Marks which are slightly gray in appearance are not considered as quality factors.
[5] The actual total percentage must be stated in the grade name.

5. A new § 56.232 would be added to read:

§ 56.232 Weight classes.

The weight classes for the U.S. Nest-Run Grade for Shell Eggs shall be as indicated in Table I of this section and shall apply to Nest-Run Grade.

TABLE I.—WEIGHT CLASSES FOR U.S. NEST-RUN GRADE FOR SHELL EGGS

Weight classes	*Minimum average net weight on lot basis 30-dozen cases (pounds)*
Class 1	51
Class 2	48
Class 3	45
Class 4	42
Class 5	39

No individual sample case may vary more than 2 pounds (plus or minus) from the lot average.

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

JOHN C. BLUM,
Acting Administrator.

[FR Doc.72-15876 Filed 9-18-72;8:46 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 72-SO-77]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Carrollton, Ga., transition area.

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

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

The Carrollton transition area would be designated as:

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of West Georgia Regional Airport (lat. 33°37'47" N., long. 85°09'13" W.); within 3 miles each side of the 168° bearing from Carrollton RBN (lat. 33°38'02" N., long. 85°-09'13" W.), extending from the 6.5-mile radius area to 8.5 miles south of the RBN.

The proposed designation is required to provide controlled airspace protection for IFR operations at West Georgia Regional Airport. A prescribed instrument approach procedure to this airport, utilizing the Carrollton (private) Nondirectional Radio Beacon, is proposed in conjunction with the designation of this transition area.

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

Issued in East Point, Ga., on September 7, 1972.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.72-15871 Filed 9-18-72;8:46 am]

Hazardous Materials Regulations Board

[49 CFR Part 172]

[Docket No. HM-105; Notice 72-11]

TRANSPORTATION OF HAZARDOUS MATERIALS

Tank Car Utilization

Correction

In F.R. Doc. 72-14668 appearing on page 17565 of the issue for Wednesday, August 30, 1972, in the tabulated material under "Article" in § 172.5(a), the words "Dichlorobutene, See" should be printed in italics.

CIVIL AERONAUTICS BOARD

[14 CFR Part 252]

[Docket No. 21708; EDR-231]

SPECIFICALLY DESIGNATED "SMOKING" AREAS ABOARD COMMERCIAL AIRCRAFT

Notice of Proposed Rule Making

SEPTEMBER 13, 1972.

Notice is hereby given that the Civil Aeronautics Board has under consideration the enactment of a new part to require certificated air carriers (both route and supplemental carriers) to establish procedures designed to segregate passengers who desire to be seated in designated "smoking" areas and to prohibit smoking in all areas not so designated on commercial flights.

The background and principal features of the proposed part are described and discussed in the attached explanatory statement and the proposal is set forth in the proposed rule. The part is proposed under the authority of sections 204(a), 404(a), and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 760, 766 (as amended); 49 U.S.C. 1324, 1374, 1377.

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. Individual members of the general public who, as prospective passengers, could be affected by the outcome of this proceeding, may participate in the proposed rule making through submission of comments in letter form to the Docket Section at the above-indicated address, without the necessity of filing additional copies thereof. All relevant material received on or before November 3, 1972, will be considered by the Board before taking final action on 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 Conecticut Avenue NW., Washington, DC, upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

EXPLANATORY STATEMENT

In December 1969 Mr. Ralph Nader in his individual capacity filed with the Board and with the Federal Aviation Administration (FAA) petitions for rule making to ban the smoking of cigars, cigarettes, and pipes on all passenger-carrying air flights. At about the same time he filed with the FAA a petition to require the segregation of passengers who wish to smoke from those who do not wish to smoke aboard commercial aircraft. These petitions raise three principal issues: (a) Whether smoking on commercial aircraft creates a fire hazard; (b) whether tobacco smoke is injurious to the health of all passengers subjected to it; and (c) whether tobacco smoke causes annoyance and discomfort to the passengers.

On March 19, 1970, the FAA issued an advance notice of rule making entitled "Smoking on aircraft operated by air carriers, air travel clubs, and commercial operators."[1] In the explanatory statement portion of the rule, the FAA dismissed the petitions insofar as they pertained to issue (c), above, and partially denied the petitions insofar as they pertained to issue (a), above. Thus, the scope of the petitions pending before the FAA was, according to the notice, to be limited to the issue of whether exposure to tobacco smoke aboard aircraft creates a health hazard to passengers. The notice referred to a joint study by the FAA and the Department of Health, Education, and Welfare (HEW) "to measure the amounts of tobacco smoke contaminants in air transport aircraft, using flights carrying military personnel and dependents as a 'test bed' for the study."

For its part, the Board deferred regulatory action with respect to issue (c), pending the results of the joint study.

The joint study referred to in the FAA advance notice has now been completed. In general, the study concludes that the low levels of contaminants measured do not represent a health hazard to the nonsmoking passengers. On the other hand, the study found that a significant portion of the nonsmokers (over 60 percent) stated that they were bothered by tobacco smoke, suggesting that corrective action should be taken, such as a ban on smoking or the segregation of smokers from nonsmokers on commercial flights. Thus, although the FAA has not yet taken final action on the basis of the study, it now seems that there is no longer any reason for the Board to defer institution of rule making proceedings on issue (c) above, namely, whether the extent to which tobacco smoke causes annoyance and discomfort to passengers warrants remedial action, and, if so, what form of action that should take.

As indicated above, the Nader petition filed with the Board asks for a ban on the smoking of cigars, cigarettes, and pipes on all passenger-carrying flights. An outright prohibition of smoking on commercial flights is an extremely drastic remedy since it would inconvenience a substantial segment of the public which travels on airplanes and desires to smoke. Such a remedy should not be proposed if a less drastic one is available which would provide an adequate solution to the problem at hand. We believe that the provision of smoking and nonsmoking areas on aircraft is such a solution and the one which we now propose.

Recently, the Board's Bureau of Enforcement conducted a survey of the certificated carriers to ascertain their practices with respect to certain in-flight amenities, including the provision of separate compartments for those who wish to smoke and those who do not wish to smoke. From this survey it appears that, as a general rule, the trunkline carriers already segregate smokers from nonsmokers;[2] while, on the other hand, as a general rule smokers are not segregated from nonsmokers by local service carriers,[3] supplemental air carriers,[4] and the Alaskan and Hawaiian carriers.[5]

The rule we propose would require all carriers to provide specially designated "smoking" areas, and prohibit smoking in all other areas. It would include the following minimum requirements: (1) The carriers would be required to set aside at the rear[6] of each compartment of an aircraft a section to be designated as a "smoking" area and prohibit smoking in the remaining seats in such compartment; (2) the number of seats set aside as a "nonsmoking" area must be sufficient so that all persons who prefer not to be seated in proximity to a smoking passenger can be accommodated; and (3) the carriers would be required to enforce their rules prohibiting smoking in nonsmoking areas. Under the proposed rule, carriers will not be required to provide such segregated seating in compartments of three rows or less.

Further, the proposed rule would also require carriers to provide a manual for their employees which shall set forth the company rules with respect to smoking by passengers aboard commercial aircraft. A copy of the manual would be required to be filed with the Board within 30 days after the effective date of the part. The Board may also direct an air carrier to modify any provision in the manual which it finds does not comply with the rules set forth in this part.

PROPOSED RULE

It is proposed to adopt a new part (Part 252) of the economic regulations as follows:

PART 252—SEGREGATION OF PASSENGERS WHO DESIRE TO BE SEATED IN SPECIFICALLY DESIGNATED "SMOKING" AREAS ABOARD COMMERCIAL AIRCRAFT OPERATED BY CERTIFICATED AIR CARRIERS

Sec.

252.1 Applicability.
252.2 Carriers required to provide specially designated "smoking" areas; smoking prohibited outside of such areas.
252.3 Carrier to enforce its rules for the segregation of passengers in smoking and nonsmoking areas.
252.4 Manual containing company rules for smoking by passengers aboard commercial aircraft.
252.5 Board may modify manual rules to conform them to the provisions of this part.

§ 252.1 Applicability.

This part establishes the rules for the provision of specially designated areas for smoking cigarettes, cigars, and pipes in each compartment of an aircraft (hereinafter "smoking" areas). This part shall apply to each direct air carrier which holds a certificate of public convenience and necessity issued pursuant to section 401 of the Act authorizing the transportation of persons.

§ 252.2 Carriers required to provide specially designated "smoking" areas; smoking prohibited outside of such areas.

Carriers subject to this part shall provide "smoking" areas in the rear of each compartment of the aircraft and no smoking shall be permitted in the remaining seats of such compartment: *Provided, however,* That this requirement shall not apply if the compartment contains three rows or less. Each carrier shall adopt procedures, pursuant to this section, which shall insure that a sufficient number of seats in the "nonsmoking" areas of the aircraft are available to accommodate all persons who do not wish to be seated in proximity to persons who smoke.

§ 252.3 Carrier to enforce its rules for the segregation of passengers in smoking and nonsmoking areas.

Each carrier shall take such action as is necessary to enforce its rules with respect to the segregation of the seating of passengers in smoking and nonsmoking areas.

[1] Dockets Nos. 10012, 10033, notice 70-14, 35 F.R. 5045, dated Mar. 25, 1970.

[2] The exceptions are: Braniff and National do not provide separate areas except on 747 aircraft or in certain limited markets; Eastern does not segregate on air shuttle flights; Pan American does not segregate in the first-class section of 727 aircraft (eight seats); and Northwest does not designate separate areas for smokers and nonsmokers.

[3] The exceptions are that Air West designates sections for smokers and nonsmokers on all flights; and Texas International segregates on DC-9 flights.

[4] The exceptions are ONA and Trans International which designate separate areas for smokers and nonsmokers.

[5] A chart showing the results of this letter survey is attached to this explanatory statement as an appendix, filed as part of the original document.

[6] Smoke drifts to the rear of an aircraft. For this reason it is the practice among carriers which segregate smokers from nonsmokers aboard commercial aircraft to place the smoking areas in the rear of each compartment. See also the recent ICC decision prohibiting smoking on interstate passenger buses except in a limited area located in the rear. Smoking by Passengers and Operating Personnel on Interstate Buses, 114 M.C.C. 256 (November 17, 1971).

§ 252.4 Manual containing company rules for smoking by passengers aboard commercial aircraft.

Each air carrier subject to this part shall maintain an employee manual containing company rules for smoking by passengers aboard commercial aircraft. One copy of such manual shall be filed with the Board within thirty (30) days after the effective date of this part, and revisions and amendments shall be filed within fifteen (15) days following adoption by the company.

§ 252.5 Board may modify manual rules to conform them to the provisions of this part.

If the Board finds that one or more company rules set forth in the manual is at variance with any provision of this part, the Board may by order modify such company rule to the extent necessary to conform the rules to the provisions of the part.

[FR Doc.72-15916 Filed 9-18-72;8:49 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

[Release 34-9731; File No. 57-433]

SECURITIES REGISTERED ON EXCHANGES

Proposal Regarding Availability of Prices and Volume of Completed Transactions

The Commission is releasing for public comment a revision of proposed Rule 17a-15 (17 CFR 240.17a-15) under the Securities Exchange Act of 1934 (the Act) requiring registered national securities exchanges, national securities associations, and broker-dealers who are not members of such organizations to make available through vendors of market transaction information price and volume reports as to completed transactions in securities registered on such exchanges.

Many comments on the rule were received, and the revised rule differs from that proposed in Securities Exchange Act Release No. 9530 and in the FEDERAL REGISTER for March 21, 1972, at 37 F.R. 5761 in several respects. First, it incorporates the recommendation of the Commission's Advisory Committee on Market Disclosure that all trades in a given security appear on the same tape display or interrogation device. The Commission feels that any deletions of trade reports from a composite tape or interrogation system based on market of execution would tend to be misleading to the investing public and should not be permitted. The revised rule, therefore, provides that market transaction information must be furnished by vendors and displayed by subscribers exclusively on a composite basis.

Second, and also as recommended by the Advisory Committee, the revised rule provides that trade reports appearing on the composite tape or an interrogation system shall identify the market where each trade was executed, at least until a central market system is developed.

Third, the revised rule provides that self-regulatory organizations and nonmember brokers or dealers may establish joint procedures by which market transaction information is to be collected, processed and made available to vendors. Many of the commentators on Rule 17a-15 as initially proposed, as well as the Advisory Committee, stressed the need for the central collection, processing, and dissemination of the information covered by the rule in order to insure, among other things, the uniform sequencing of trade reports. The Commission concurs in this view. The revision also sets forth certain specific items which each plan filed pursuant to the rule should contain.

The rule has been further revised to make clear that the imposition by self-regulatory organizations and vendors of reasonable, uniform charges for distribution of the information provided in connection with compliance with the rule will be permitted and that vendors may be required to make the information they distribute available throughout the continental United States to all qualified subscribers.

Furthermore, some commentators have questioned whether the proposed rule is intended to require that users of market transaction information deal through vendors exclusively. The Commission wishes to note that nothing contained in the proposed rule is intended to prevent such users from utilizing their own display and interrogation equipment rather than that of vendors.

Proposed Rule 17a-14 (17 CFR 240.17a-14) under the Act, published for comment in Securities Exchange Act Release No. 9529 and in the FEDERAL REGISTER for March 21, 1972, at 37 F.R. 5760 and relating to the establishment of a composite quotation system, is not being adopted or republished for comment at this time. Most comments received on the proposed rule were favorable, and it is the Commission's present intention eventually to adopt the substance of the rule; nevertheless, the Commission is anxious to receive the report of its Advisory Committee on this subject before it determines what changes in the rule may be desirable. It is anticipated that such report will be forthcoming in the near future. Accordingly, in planning the means by which they will comply with Rule 17a-15 the self-regulatory organizations should also consider the most appropriate methods of accomplishing the objectives of proposed Rule 17a-14 so that both rules can be implemented as expeditiously as possible. Interested persons are invited to comment and provide relevant information on whether any modifications in proposed Rule 17a-15 are necessary in light of prospects for adoption of a quotations rule such as proposed Rule 17a-14.

Concern has been expressed by several commentators that both rules raise regulatory problems of considerable dimension. The Commission's Advisory Committee on a Central Market System, as well as the Commission's own staff, are devoting careful study to the additional regulation which is necessary in the public interest and for the protection of investors prior to implementation of either rule. After reviewing the recommendations resulting from such study, the Commission will act to promulgate such regulation as it deems appropriate.

TEXT OF PROPOSED RULE

The Securities and Exchange Commission, acting pursuant to the provisions of the Securities Exchange Act of 1934, and particularly sections 10(b), 15(c), 17(a), and 23(a) thereof, hereby proposes to amend Part 240 of Title 17 of the Code of Federal Regulations by adopting § 240.17a-15 as follows:

§ 240.17a-15 Reporting of market information on transactions in listed securities.

(a) Every registered national securities exchange (exchange) shall, with respect to transactions executed through the facilities of such exchange, and every national securities association (association) shall, with respect to over-the-counter transactions executed by its members in securities registered or admitted to unlisted trading privileges on an exchange (listed securities), file with the Commission on or before (45 days after the adoption of this section) a plan, with respect to such exchange or association, for the dissemination of the information required to be reported pursuant to this section through vendors of market transaction information (vendors). Such plan shall not become effective unless the Commisison, having due regard for the maintenance of fair and orderly markets, the public interest and the protection of investors, declares the plan, with whatever changes are deemed necessary or appropriate by the Commission, to be effective. In declaring any such plan effective, the Commission may impose such terms and conditions relating to the provisions of the plan and amendments thereto as it may deem necessary or appropriate. After (75 days after adoption of this section) market information relating to transactions in listed securities executed through the facilities of any exchange or in the over-the-counter market shall not be released on a current and continuing basis by such exchange or association or member thereof except pursuant to such an effective plan.

(b) Each plan filed pursuant to paragraph (a) of this section may include joint procedures designed to comply with all or any portion of such paragraph, shall contain copies of all rules, bylaws or other constituent instruments relating to any entity which may be established to implement the plan and shall specify, among other things:

(1) The manner of collecting, processing, sequencing, distributing, and displaying the information required to be reported pursuant to this section;

(2) The applicable standards and methods which will be utilized to insure promptness of reporting, accuracy, completeness, and similar matters; and

(3) All other rules or procedures which may be adopted to insure that the market information will not be reported in a fraudulent or manipulative manner.

Each such plan shall also provide that every vendor who receives any information reported pursuant to this section must agree to make available to its subscribers, on a current and continuing basis, through a moving, real-time last sale reporting system (composite tape) or an interrogation system, reports of prices and volume of all completed transactions from all reporting markets in any listed security reported on by such vendor. The plans also shall require that any person displaying information reported pursuant to this section shall agree not to exclude last sale reports based upon the market in which a transaction was executed and that any public display of selected transaction information be clearly identified as only reporting selected transactions classified as to size, category of security or other criteria. Each such composite tape or interrogation system, in displaying such information, shall identify the marketplace where each such transaction was executed.

(c) A "vendor" of market transaction information shall include any person engaged in the business of disseminating to brokers and dealers, on a real-time or other current and continuing basis, reports of transactions in listed securities, whether distributed through an electronic communications network or shown on a terminal or other display device.

(d) Every member of an exchange or association shall make and keep current, and promptly transmit to the exchange or association of which it is a member, information and records required by such exchange or association pursuant to the plan declared effective under paragraph (a) of this section.

(e) Every broker or dealer who is not a member of an exchange or association and who effects transactions in listed securities, which transactions are not reported by any exchange or association pursuant to this section, shall file a plan meeting the requirements of paragraph (a) of this section, and such plan shall become effective in the manner specified in such paragraph.

(f) Nothing in this section shall preclude any exchange or association, separately or jointly, from imposing reasonable, uniform charges (irrespective of geographic location) for distribution of the information provided in connection with compliance with this section, nor from requiring vendors to make the information they distribute available to all qualified subscribers throughout the continental United States and to impose uniform distribution charges on their subscribers (irrespective of geographic location).

(g) No broker or dealer shall operate or maintain any display of information reported pursuant to this section which excludes last sale reports based upon the market in which a transaction was executed.

(h) The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any exchange, association, broker, dealer, vendor or specified type of security if the Commission determines that it is not necessary in the public interest or for the protection of investors that such exchange, association, broker, dealer, vendor or type of security be subject to the provisions of this section.

(Sec. 10(b), 48 Stat. 891, 15 U.S.C. 78j(b); sec. 15(c), 48 Stat. 895, 15 U.S.C. 78o(c); sec. 17(a), 48 Stat. 897, as amended 49 Stat. 1379; sec. 4, 52 Stat. 1076; sec. 5, 15 U.S.C. 78q; sec. 23(a), 48 Stat. 901, as amended, 49 Stat. 1379; sec. 8, 15 U.S.C. 78w)

All interested persons may submit comments on the above proposal in writing to the Securities and Exchange Commission, 500 North Capitol Street, Washington, DC 20549, on or before September 29, 1972. All communications should refer to File No. S7-433.

By the Commission.

[SEAL] RONALD F. HUNT, *Secretary.*

AUGUST 14, 1972.

[FR Doc.72-15964 Filed 9-18-72;8:47 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 135a, 135c, 141b, 141d, 141e, 146d, 148, 148n]

ANTIBIOTIC DRUGS

Proposed Recodification of Chloramphenicol Monographs

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n), 59 Stat. 463, as amended, 82 Stat. 350-351; 21 U.S.C. 357, 360b(n)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120), it is proposed that Parts 135a, 135c, 141b, 141d, 141e, 146d, 148, and 148n be amended and a new Part 151c be established to provide for the recodification of the chloramphenicol monographs.

Certain monographs, specifically §§ 141d.301, 141d.303, 141d.304, 141d.308, 141d.313, 146d.301, 146d.303, 146d.304, 146d.308, and 146d.313 will not be transferred to Part 151c, but will remain in Parts 141 and 146 until other pending documents affecting these particular monographs are published and become effective. The monographs remaining in Parts 141 and 146 will be updated and revised.

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

1. It is proposed that Part 135a be amended: §§ 135a and 135a.9

§§ 135a.3 and 135a.9 [Amended]

a. In §135a.3 *Chloramphenicol-prednisolone-tetracaine-squalane suspension* by revising the first sentence of paragraph (a) to read as follows: "The suspension conforms to the certification requirements of § 151c.16 of this chapter."

b. In § 135a.9 *Chloramphenicol ophthalmic solution, veterinary* by revising the first sentence of paragraph (a) to read as follows: "The solution conforms to the certification requirements of § 151c.18 of this chapter."

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

§ 135c.63 [Amended]

2. It is proposed that Part 135c be amended in § 135c.63 *Chloramphenicol capsules, veterinary by* revising paragraph (a) to read as follows: "Chloramphenicol capsules, veterinary contain 50, 100, 250, and 500 milligrams of chloramphenical and conform to the certification requirements of § 151c.12 of this chapter."

PART 141b—STREPTOMYCIN (OR DIHYDROSTREPTOMYCIN) AND STREPTOMYCIN-(OR DIHYDROSTREPTOMYCIN-) CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

§ 141b.126 [Amended]

3. It is proposed that Part 141b be amended in § 141b.126 *Streptomycin-erythromycin ointment* by revising paragraph (b) (3) to read as follows: "*Toxicity.* Proceed as directed in § 141.5 of this chapter."

PART 141d—CHLORAMPHENICOL AND CHLORAMPHENICOL-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

4. It is proposed that Part 141d be amended:

a. In § 141d.301 by changing the heading, revising paragraphs (a) through (i), and by adding a new paragraph (j), to read as follows:

§ 141d.301 Sterile chloramphenicol.

(a) *Potency.* Use either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(1) *Microbiological turbidimetric assay.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighted portion of the sample in sufficient ethyl alcohol to give a solution containing 10,000 micrograms of chloramphenicol per milliliter (estimated). Add sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a concentration of 1,000 micrograms of chloramphenicol per milliliter (estimated). Further dilute an aliquot with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(2) *Spectrophotometric method.* Dissolve approximately 50 milligrams each of the sample and working standard in 100 milliliters of distilled water. Warm if necessary to hasten dissolution. Transfer 10 milliliters into a 250-milliliter volumetric flask and fill to volume with distilled water. Using a suitable spectrophotometer equipped with a 1-centimeter cell and distilled water as the blank, determine the absorbance of each solution at 278 nonometers. Calculate the potency of chloramphenicol as follows:

$$\text{Potency of sample in micrograms per milligram} = \frac{\text{Absorbance of sample} \times \text{weight of standard in milligrams} \times \text{potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{weight of sample in milligrams}}$$

(b) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section, except use 50 milligrams in lieu of 300 milligrams.

(c) *Pyrogens.* Proceed as directed in § 141.4(a) of this chapter, using a solution containing 5 milligrams of chloramphenicol per milliliter. Apply sufficient heat to dissolve the chloramphenicol.

(d) *Safety.* Proceed as directed in § 141.5 of this chapter. Apply sufficient heat to dissolve the chloramphenicol.

(e) *Histamine.* Proceed as directed in § 141.7 of this chapter. Apply sufficient heat to dissolve the chloramphenicol.

(f) *pH.* Proceed as directed in § 141.503 of this chapter, using a saturated aqueous solution.

(g) *Specific rotation.* Accurately weigh approximately 1.25 grams of the sample in a 25-milliliter glass-stoppered volumetric flask and dissolve in about 15 milliliters of absolute alcohol, warming if necessary. Dilute the solution to 25 milliliters with absolute alcohol and mix thoroughly. Proceed as directed in § 141.520 of this chapter, using a 2.0 decimeter polarimeter tube.

(h) *Melting range.* Proceed as directed in § 141.515 of this chapter.

(i) *Absorptivity.* Proceed as directed in paragraph (a)(2) of this section except calculate the percent relative absorptivity as follows:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample} \times \text{weight of standard in milligrams} \times \text{potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{weight of sample in milligrams} \times 10}$$

(j) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

b. By revising § 141d.303 to read as follows:

§ 141d.303 Chloramphenicol ointment; potency.

Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows:

(a) *If the ointment is water miscible.* Place an accurately weighed representative portion of the sample into a high-speed glass blender jar containing 1.0 milliliter polysorbate 80 and sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot and further dilute with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(b) *If the ointment is not water miscible.* Place an accurately weighed representative portion of the sample into a separatory funnel containing approximately 50 milliliters of petroleum ether. Shake the sample and ether until homogeneous. Add 20 to 25 milliliters of 1 percent potassium phosphate buffer, pH 6.0 (solution 1), and shake well. Allow the layers to separate. Remove the buffer layer and repeat the extraction procedure with each of three more 20- to 25-milliliter quantities of solution 1. Combine the buffer extractives in a suitable volumetric flask and dilute to volume with solution 1. Remove an aliquot and further dilute with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated). The potency of chloramphenicol ointment is satisfactory if it contains not less than 90 percent and not more than 130 percent of the number of milligrams of chloramphenicol that it is represented to contain.

c. By revising § 141d.304 to read as follows:

§ 141d.304 Chloramphenicol ophthalmic.

(a) *Potency.* Use either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(1) *Microbiological turbidimetric assay.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Reconstitute as directed in the labeling. Dilute an accurately measured representative aliquot of the sample with sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a convenient concentration. Further dilute with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(2) *Spectrophotometric assay.* Reconstitute the sample as directed in the labeling and dilute a 1.0-milliliter aliquot in sufficient distilled water to give a solution containing 20 micrograms of chloramphenicol per milliliter. Dissolve an accurately weighed portion of the working standard in sufficient distilled water to give a solution containing 20 micrograms per milliliter. Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of the sample and standard solutions at 278 nanometers. Calculate the potency of the sample as follows:

$$\text{Milligrams of chloramphenicol per milliliter} = \frac{\text{Absorbance of sample} \times \text{labeled potency per milliliter in milligrams}}{\text{Absorbance of standard}}$$

The potency of chloramphenicol ophthalmic is satisfactory if it contans not less than 90 percent and not more than 130 percent of the number of milligrams that it is represented to contain.

(b) *Sterility.* Use entire contents, and proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section, except if it contains a corticoid use 0.5 milliliter of the suspension prepared according to label directions and proceed as directed in paragraph (e)(2) of that section.

(c) *pH.* Proceed as directed in § 141.503 of this chapter, using the drug reconstituted as directed in the labeling.

d. By revising § 141d.308 to read as follows:

§ 141d.308 Chloramphenicol otic; chloramphenicol topical.

(a) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dilute an accurately measured representative aliquot of the sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a convenient concentration. Further dilute with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated). Its potency is satisfactory if it contains not less than 90 percent and not more than 130 percent of the number of milligrams it is represented to contain.

(b) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(c) *pH.* Proceed as directed in § 141.503 of this chapter, using the sample diluted with an equal volume of distilled water.

e. In § 141d.313, by revising the last sentences in paragraph (a) and (b), to read as follows:

§ 141d.313 Chloramphenicol-polymyxin ointment; potency.

(a) *Chloramphenicol content.* * * * Proceed as directed in § 141d.303. Its chloramphenicol content is satisfactory if it contains not less than 90 percent and not more than 120 percent of the number of milligrams per gram that it is represented to contain.

(b) *Polymyxin content.* * * * Its content of polymyxin is satisfactory if it contains not less than 90 percent and not more than 125 percent of the number of units per gram that it is represented to contain.

§§ 141d.302, 141d.305, 141d.306, 141d.307, 141d.309, 141d.311, 141d.312, 141d.314, 141d.315, 141d.317, 141d.318, 141d.319, and 141d.320 [Revoked]

f. By revoking §§ 141d. 302, 141d.305, 141d.306, 141d.307, 141d.309, 141d.310, 141d.311, 141d.312, 141d.314, 141d.315, 141d.317, 141d.318, 14d.39, and 4d.320 141d.317, 141d.318, 141d.319, and 141d.-320 and reserving them for future use.

PART 141e—BACITRACIN AND BACITRACIN-CONTAINING DRUGS; TESTS AND METHODS OF ASSAY

5. It is proposed that Part 141e be amended in § 141e.416 *Bacitracin methylene disalicylate* by revising paragraph (b) to read as follows:

§ 141e.416 Bacitracin methylene disalicylate.

* * * * *

(b) *Toxicity.* Proceed as directed in § 141.5 of this chapter.

* * * * *

PART 146d—CERTIFICATION OF CHLORAMPHENICOL AND CHLORAMPHENICOL - CONTAINING DRUGS

6. It is proposed that Part 146d be amended:

a. In § 146d.301 by changing the heading and revising paragraphs (b), (c), and (d) to read as follows:

§ 146d.301 Sterile chloramphenicol.

* * * * *

(b) *Packaging.* It shall be packaged in accordance with the requirements of § 148.2 of this chapter.

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

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

(1) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, histamine, pH, specific rotation, melting range, absorptivity, and crystallinity.

(2) Samples required:

(i) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(ii) For sterility testing: 20 packages, each containing approximately 50 milligrams.

§§ 146d.302, 146d.305, 146d.306, 146d.307, 146d.309, 146d.310, 146d.311, 146d.312, 146d.314, 146d.315, 146d.317, 146d.318, 146d.319 and 146d.320 [Revoked]

b. By revoking §§ 146d.302, 146d.305, 146d.306, 146d.307, 146d.309, 146d.310, 146d.311, 146d.312, 146d.314, 146d.315, 146d.317, 146d.318, 146d.319, and 146d.320 and reserving them for future use.

PART 148—ANTIBIOTIC DRUGS; PACKAGING AND LABELING REQUIREMENTS

7. It is proposed that Part 148 be amended in § 148.3 by adding a new paragraph (d) to read as follows:

§ 148.3 Labeling requirements.

* * * * *

(d) If an antibiotic drug is packaged for dispensing and is intended solely for veterinary use, it shall be labeled in accordance with the requirements of § 148.3(a) of this chapter, except in lieu of the requirements of § 148.3(a)(1), it shall be labeled in accordance with the requirements of § 1.106(c) of this chapter.

PART 148n—OXYTETRACYCLINE

8. It is proposed that Part 148n be amended in § 148n.3 *Calcium oxytetracycline* by revising paragraph (b)(2) to read as follows:

§ 148n.3 Calcium oxytetracycline.

* * * * *

(b) *Toxicity.* Proceed as directed in § 141.5 of this chapter.

* * * * *

9. It is proposed that the following new Part 151c be added to this chapter:

PART 151c—CHLORAMPHENICOL

Sec.

151c.1 Sterile chloramphenicol.
151c.2 Chloramphenicol.
151c.3 Chloramphenicol palmitate.
151c.4 Sterile chloramphenicol sodium succinate.
151c.5—151c.10 [Reserved]
151c.11 Chloramphenicol capsules.
151c.12 Chloramphenicol capsules, veterinary.
151c.13 Chloramphenicol injection.
151c.14 Fibrinolysin and desoxyribonuclease, combined (bovine) with chloramphenicol ointment.
151c.15 Chloramphenicol ophthalmic solution.
151c.16 Chloramphenicol - prednisolone-tetracaine-squalane topicol suspension, veterinary.
151c.17 Chloramphenicol palmitate oral suspension.
151c.18 Chloramphenicol ophthalmic solution, veterinary.

AUTHORITY: The provisions of this Part 151c issued under the Federal Food, Drug, and Cosmetic Act (secs. 507, 512(n)), 59 Stat. 463, as amended, 82 Stat. 350–351; 21 U.S.C. 357, 360b(n) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

§ 151c.1 Sterile chloramphenicol.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Sterile chloramphenicol is a white to grayish-white or yellowish-white powder, occurring as needles or elongated plates. It is neutral, slightly soluble in water, but freely soluble in alcohol. It has the chemical formula D-(—)-*threo*-1-*p*-nitrophenyl-2-dichloracetamido-1,3-propanediol. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms per milligram.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) It contains no histamine nor histamine-like substances.

(vi) Its pH in a saturated aqueous solution is not less than 4.5 nor more than 7.5.

(vii) Its specific rotation in absolute ethyl alcohol at 20° C. is +20°±1.5°, and at 25° C. is +18.5°±1.5°.

(viii) Its melting range is 151°±2° C.

(ix) Its absorptivity at 278 nanometers is ±3 percent of that of the chloramphenicol working standard similarly treated.

(x) It is crystalline.

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

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

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, histamine, pH, specific rotation, melting range, absorptivity, and crystallinity.

(ii) Samples required:

(*a*) For all test except sterility: 10 packages, each containing approximately 500 milligrams.

(*b*) For sterility testing: 20 packages, each containing approximately 50 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Use either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed portion of the sample in sufficient ethyl alcohol to give a solution containing 10,000 micrograms of chloramphenicol per milliliter (estimated). Add sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a concentration of 1,000 micrograms of chloramphenicol per milliliter (estimated). Further dilute an aliquot with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(ii) *Spectrophotometric method.* Dissolve approximately 50 milligrams each of the sample and working standard in 100 milliliters of distilled water. Warm if necessary to hasten dissolution. Transfer 10 milliliters into a 250-milliliter volumetric flask and fill to volume with distilled water. Using a suitable spectrophotometer equipped with a 1-centimeter cell and distilled water as the blank, determine the absorbence of each solution at 278 nanometers. Calculate the potency of chloramphenicol as follows:

$$\text{Potency of sample in micrograms per milligram} = \frac{\text{Absorbance of sample} \times \text{weight of standard in milligrams} \times \text{potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{weight of sample in milligrams}}$$

(2) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section, except use 50 milligrams in lieu of 300 milligrams.

(3) *Pyrogens.* Proceed as directed in § 141.4(a) of this chapter, using a solution containing 5 milligrams of chloramphenicol per milliliter. Apply sufficient heat to dissolve the chloramphenicol.

(4) *Safety.* Proceed as directed in § 141.5 of this chapter. Apply sufficient heat to dissolve the chloramphenicol.

(5) *Histamine.* Proceed as directed in § 141.7 of this chapter. Apply sufficient heat to dissolve the chloramphenicol.

(6) *pH.* Proceed as directed in § 141.503 of this chapter, using a saturated aqueous solution.

(7) *Specific rotation.* Accurately weigh approximately 1.25 grams of the sample in a 25-milliliter glass-stoppered volumetric flask and dissolve in about 15 milliliters of absolute alcohol, warming if necessary. Dilute the solution to 25 milliliters with absolute alcohol and mix thoroughly. Proceed as directed in § 141.520 of this chapter, using a 2.0 decimeter polarimeter tube.

(8) *Melting range.* Proceed as directed in § 141.515 of this chapter.

(9) *Absorptivity.* Proceed as directed in subparagraph (1)(ii) of this paragraph except calculate the percent relative absorptivity as follows:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample} \times \text{weight of standard in milligrams} \times \text{potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{weight of sample in milligrams} \times 10}$$

(10) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

§ 151c.2 Chloramphenicol.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol is a white to grayish-white or yellowish-white powder, occurring as needles or elongated plates. It is neutral, slightly soluble in water, but freely soluble in alcohol. It has the chemical formula D-(—)-*threo*-1-*p*-nitrophenyl - 2 - dichloracetamido - 1,3-propanediol. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms per milligram.

(ii) It passes the safety test.

(iii) Its pH in a saturated aqueous solution is not less than 4.5 nor more than 7.5.

(iv) Its specific rotation in absolute ethyl alcohol at 20° C. is +20°±1.5°, and at 25° C. is +18.5°±1.5°.

(v) Its melting range is 151°±2° C.

(vi) Its absorptivity at 278 nanometers is ±3 percent of that of the chloramphenicol working standard similarly treated.

(vii) It is crystalline.

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

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

(i) Results of tests and assays on the batch for potency, safety, pH, specific rotation, melting range, absorptivity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Use either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed portion of the sample in sufficient ethyl alcohol to give a solution containing 10,000 micrograms of chloramphenicol per milliliter (estimated). Add sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a concentration of 1,000 micrograms of chloramphenicol per milliliter (estimated). Further dilute an aliquot with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(ii) *Spectrophotometric method.* Dissolve approximately 50 milligrams each of the sample and working standard in 100 milliliters of distilled water. Warm if necessary to hasten dissolution. Transfer 10 milliliters into a 250-milliliter volumetric flask and fill to volume with distilled water. Using a suitable spectrophotometer equipped with a 1-centimeter cell and distilled water as the blank, determine the absorbance of each solution at 278 nanometers. Calculate the potency of chloramphenicol as follows:

$$\text{Potency of sample in micrograms per milligram} = \frac{\text{Absorbance of sample} \times \text{weight of standard in milligrams} \times \text{potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{weight of sample in milligrams}}$$

(2) *Safety.* Proceed as directed in § 141.5 of this chapter.

(3) *pH.* Proceed as directed in § 141.503 of this chapter, using a saturated aqueous solution.

(4) *Specific rotation.* Accurately weigh approximately 1.25 grams of the sample into a 25-milliliter glass-stoppered volumetric flask and dissolve in about 15 milliliters of absolute alcohol, warming if necessary. Dilute the solution to 25 milliliters with absolute alcohol and mix thoroughly. Proceed as directed in § 141.520 of this chapter, using a 2.0-decimeter polarimeter tube.

(5) *Melting range.* Proceed as directed in § 141.515 of this chapter.

(6) *Absorptivity.* Proceed as directed in subparagraph (1)(ii) of this paragraph, except calculate the percent relative absorptivity as follows:

$$\text{Percent relative absorptivity} = \frac{\text{Absorbance of sample} \times \text{weight of standard in milligrams} \times \text{potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{weight of sample in milligrams} \times 10}$$

(7) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

§ 151c.3 Chloramphenicol palmitate.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol palmitate is the white to grayish-white, tasteless palmitic acid ester of chloramphenicol. It is so purified and dried that:

(i) It contains not less than 555 micrograms nor more than 595 micrograms of chloramphenicol per milligram.

(ii) It passes the safety test.

(iii) Its melting range is 91°±4° C.

(iv) Its specific rotation in absolute ethyl alcohol at 25° C. is +23°±2°.

(v) It is crystalline.

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

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

(i) Results of tests and assays on the batch for potency, safety, melting range, specific rotation, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Dissolve approximately 90 milligrams of the sample and 50 milligrams of the chloramphenicol working standard in separate 100-milliliter volumetric flasks with absolute ethyl alcohol. Fill to volume with absolute ethyl alcohol. Transfer 10.0 milliliters of each solution into separate 250-milliliter volumetric flasks and fill to volume with absolute

ethyl alcohol. Using a suitable spectrophotometer equipped with a 1.0-centimeter cell and absolute ethyl alcohol as a blank, determine the absorbance of the sample at 271 nanometers and that of the chloramphenical working standard at 276 nanometers. Calculate the potency of the chloramphenical palmitate as follows:

$$\text{Potency of sample in micrograms per milligram} = \frac{\text{Absorbance of sample} \times \text{weight of standard in milligrams} \times \text{potency of standard in micrograms per milligram}}{\text{Absorbance of standard} \times \text{weight of sample in milligrams}}$$

(2) *Safety.* Proceed as directed in § 141.5 of this chapter. Apply sufficient heat to dissolve the chloramphenicol.

(3) *Melting range.* Proceed as directed in § 141.515 of this chapter.

(4) *Specific rotation.* Accurately weigh approximately 1.25 grams of sample in a 25-milliliter, glass-stoppered volumetric flask and dissolve in about 15 milliliters of absolute alcohol, warming if necessary to effect solution. Bring the solution to 25° C. Dilute the solution to 25 milliliters with absolute alcohol and mix thoroughly. Proceed as directed in § 141.520 of this chapter, using a 2.0-decimeter polarimeter tube.

(5) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

§ 151c.4 Sterile chloramphenicol sodium succinate.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol sodium succinate is the light-yellow, water-soluble, ethanol-soluble sodium salt of the 3-monosuccinate ester of chloramphenicol. It is so purified and dried that:

(i) Its potency is not less than 650 and not more than 765 micrograms per milligram. If it is packaged for dispensing, its potency when reconstituted as directed in the labeling is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of chloramphenicol per milliliter that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) It contains no histamine nor histamine-like substances.

(vi) Its moisture content is not more than 5.0 percent.

(vii) Its pH in an aqueous solution containing 250 milligrams of chloramphenicol per milliliter is not less than 6.4 and not more than 7.0.

(viii) Its specific rotation in an aqueous solution containing 50 milligrams per milliliter at 25° C. is +6.5°±1.5°.

(ix) It is crystalline.

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

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

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, histamine, moisture, pH, specific rotation, and crystallinity.

(ii) Samples required:

(*a*) If the batch is packaged for repacking or for use in the manufacture of another drug:

(*1*) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

(*2*) For sterility testing: 20 packages, each containing approximately 500 milligrams.

(*b*) If the batch is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 8 immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay—*(1) *Potency—*(i) *Working standard.* Dissolve an accurately weighed portion of the chloramphenicol working standard in sufficient distilled water to give a solution containing 20 micrograms per milliliter. Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of this solution in a 1-centimeter cell at a wavelength of 278 nanometers.

(ii) *Procedure.* Dissolve an accurately weighed portion of the sample to be tested in sufficient distilled water to give a solution containing 30 micrograms of the sample per milliliter (estimated); and also if it is packaged for dispensing, reconstitute as directed in the labeling. Remove an accurately measured representative portion from each container and further dilute this portion with sufficient distilled water to give a concentration of 20 micrograms of chloramphenicol per milliliter (estimated). Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of this solution in a 1-centimeter cell at a wavelength of 276 nanometers. Calculate the micrograms per milligram of the dry powder as follows:

$$\text{Micrograms of chloramphenicol per milligram} = \frac{\text{Absorbance of sample at 276 nanometers} \times \text{micrograms of standard per milliliter} \times \text{potency of chloramphenicol working standard in micrograms per milligram}}{\text{Absorbance of standard at 278 nanometers} \times \text{micrograms of sample per milliliter}}$$

Calculate the milligrams per milliliter of the reconstituted solution in the dispensing container as follows:

$$\text{Milligrams per milliliter of the reconstituted vial} = \frac{\text{Absorbance of sample at 276 nanometers} \times \text{micrograms of standard per milliliter} \times \text{labeled content of reconstituted vial in milligrams per milliliter}}{\text{Absorbance of standard at 278 nanometers} \times 20}$$

(2) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e) (1) of that section.

(3) *Pyrogens.* Proceed as directed in § 141.4(a) of this chapter, using a solution containing 5 milligrams of chloramphenicol per milliliter.

(4) *Safety.* Proceed as directed in § 141.5 of this chapter.

(5) *Histamine.* Proceed as directed in § 141.7 of this chapter.

(6) *Moisture.* Proceed as directed in § 141.502 of this chapter.

(7) *pH.* Proceed as directed in § 141.503 of this chapter, using an aqueous solution containing 250 milligrams of chloramphenicol per milliliter.

(8) *Specific rotation.* Dilute the sample with sufficient distilled water to give a solution containing approximately 50 milligrams per milliliter. Proceed as directed in § 141.520 of this chapter, using a 1.0-decimeter polarimeter tube.

(9) *Crystallinity.* Proceed as directed in § 141.504(a) of this chapter.

§ 151c.11 Chloramphenicol capsules.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol capsules are composed of chloramphenicol with or without one or more suitable and harmless diluents and lubricants. Each capsule contains 50, 100, or 250 milligrams of chloramphenicol. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of chloramphenicol that it is represented to contain. The chloramphenicol used conforms to the standards prescribed by § 151c.2 (a) (1).

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

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

(i) Results of tests and assays on:

(*a*) The chloramphenicol used in making the batch for potency, safety, pH, specific rotation, melting range, absorptivity, and crystallinity.

(*b*) The batch for potency.

(ii) Samples required:

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

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay; potency.* Use either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(1) *Microbiological turbidimetric assay.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed, glass blender jar containing 100 milliliters of 95 percent ethyl alcohol. Blend for 2 minutes. Then add 400 milliliters of 1 percent potassium phosphate buffer, pH 6.0 (solution 1), and blend again for 2 minutes. Remove an aliquot and further dilute with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(2) *Spectrophotometric assay*—(i) *Preparation of working standard solution.* Dissolve approximately 50 milligrams of the working standard in 100 milliliters of distilled water. Warm if necessary to hasten dissolution. Transfer 10 milliliters into a 250-milliliter volumetric flask and fill to volume with distilled water.

(ii) *Procedure.* Place the contents of 10 capsules into a 250-milliliter volumetric flask. Add 50 milliliters of pure methyl alcohol to the flask and shake for at least 1 minute. Fill to volume with distilled water and mix thoroughly. Withdraw an aliquot and dilute with sufficient distilled water to give a concentration of 20 micrograms per milliliter. Using a suitable spectrophotometer equipped with a 1.0-centimeter cell and distilled water as the blank, determine the absorbance of the working standard and sample solutions at 278 nanometers. Calculate the potency as follows:

$$\text{Milligrams per capsule} = \frac{\text{Absorbance of sample} \times \text{labeled potency per capsule in milligrams}}{\text{Absorbance of standard}}$$

§ 151c.12 Chloramphenicol capsules, veterinary.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol capsules, veterinary are composed of chloramphenicol with or without one or more suitable diluents and lubricants. Each capsule contains 50, 100, 250, or 500 milligrams of chloramphenicol. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of chloramphenicol that it is represented to contain. The chloramphenicol used conforms to the standards prescribed by § 151c.2(a)(1).

(2) *Labeling.* In addition to the labeling requirements of § 148.3 of this chapter, its label and labeling shall bear the statement, "Warning: Not for use in animals which are raised for food production."

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

(i) Results of tests and assays on:

(*a*) The chloramphenicol used in making the batch for potency, safety, pH, specific rotation, melting range, absorptivity, and crystallinity.

(*b*) The batch for potency.

(ii) Samples required:

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

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay; potency.* Proceed as directed in § 151c.11(b).

§ 151c.13 Chloramphenicol injection.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol injection is chloramphenicol, with or without one more suitable and harmless buffer substances, dissolved in one or more suitable and harmless solvents. Each milliliter contains 250 milligrams of chloramphenicol. Its potency is satisfactory if it is not less than 90 percent and not more than 130 percent of the number of milligrams of chloramphenicol that it is represented to contain. It is sterile. It is nonpyrogenic. It passes the safety test. It contains no histamine nor histamine-like substances. Its pH is not less than 4.7 and not more than 5.0. The chloramphenicol used conforms to the standards prescribed by § 151c.1(a)(1).

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

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

(i) Results of tests and assays on:

(*a*) The chloramphenicol used in making the batch for potency, pH, specific rotation, melting range, absorptivity, and crystallinity.

(*b*) The batch for potency, sterility, pyrogens, safety, histamine, and pH.

(ii) Samples required:

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

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of eight immediate containers.

(*2*) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dilute an accurately measured representative aliquot of the sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a convenient concentration. Further dilute with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(2) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section, except add the contents of each container directly to the dry filter, thus eliminating the preliminary solubilization step.

(3) *Pyrogens.* Proceed as directed in § 141.4(a) of this chapter, using a solution containing 5 milligrams per milliliter.

(4) *Safety.* Proceed as directed in § 141.5 of this chapter.

(5) *Histamine.* Proceed as directed in § 141.7 of this chapter.

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

§ 151c.14 Fibrinolysin and desoxyribonuclease, combined (bovine) with chloramphenicol ointment.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Fibrinolysin and desoxyribonuclease, combined (bovine) with chloramphenicol ointment is fibrinolysin, desoxyribonuclease, and chloramphenicol in a suitable and harmless ointment base. It contains a suitable and harmless preservative. Each gram contains 1 unit of fibrinolysin, 666 units of desoxyribonuclease, and 10 milligrams of chloramphenicol. Its chloramphenicol content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of chloramphenicol that it is represented to contain. The chloramphenicol used conforms to the standards prescribed by § 151c.2(a)(1), except safety. In addition to the requirements prescribed by this paragraph, the drug satisfies the requirements designated therefor by the Division of Biologics Standards, National Institutes of Health, Department of Health, Education, and Welfare.

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

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

(i) Results of tests and assays on:

(*a*) The chloramphenicol used in making the batch for potency, pH, specific rotation, melting range, absorptivity, and crystallinity.

(*b*) The batch for potency.

(ii) Samples required:

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

(*b*) The batch: A minimum of 5 containers if it is packaged in immediate containers of tin or glass, and a minimum of 20 immediate containers if it is packaged in immediate containers other than tin or glass.

(b) *Tests and methods of assay; potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Place an accurately weighed representative portion of the sample into a high-speed glass blender jar containing 1 milliliter polysorbate 80 and sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Blend 3 to 5 minutes. Remove an aliquot and further dilute with solution 1 to the reference concentration of 2.5 micrograms or chloramphenicol per milliliter (estimated).

§ 151c.15 Chloramphenicol ophthalmic solution.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenical opthalmic solution contains in each milliliter 5 milligrams of chloramphenicol with or without one or more suitable and harmless preservatives, buffer substances, and surfactants in an aqueous solution. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of chloramphenicol that it is represented to contain. It is sterile. Its pH is not less than 3 nor more than 6; however, if the solution is buffered, its pH is not less than 7.0 nor more than 7.5. The chloramphenicol used conforms to the standards prescribed by § 151c.2(a)(1).

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

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

(i) Results of tests and assays on:

(*a*) The chloramphenicol used in making the batch for potency, safety, pH, specific rotation, melting range, absorptivity, and crystallinity.

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

(ii) Samples required:

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

(*b*) The batch:

(*1*) For all tests except sterility: A minimum of five immediate containers.

(2) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dilute an accurately measured representative aliquot of the sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(ii) *Spectrophotometric assay.* Dilute a 1-milliliter aliquot of the sample in sufficient distilled water to make a solution containing 20 milligrams of chloramphenicol per milliliter. Dissolve an accurately weighed portion of the working standard in sufficient distilled water to give a solution containing 20 milligrams per milliliter. Warm if necessary to hasten solution of the working standard. Cool. Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of the sample and standard solution at 278 nanometers. Calculate the potency of the sample as follows:

$$\text{Milligrams of chloramphenicol per milliliter} = \frac{\text{Absorbance of sample} \times \text{labeled potency per milliliter in milligrams}}{\text{Absorbance of standard}}$$

(2) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section.

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

§ 151c.16 Chloramphenicol-prednisolone-tetracaine-squalane topical suspension, veterinary.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* This drug is a suspension composed of chloramphenicol, prednisolone, tetracaine, and squalane in a suitable and harmless vehicle. Each milliliter contains 4.2 milligrams of chloramphenicol, 1.7 milligrams of prednisolone, 4.2 milligrams of tetracaine, and 0.21 milliliter of squalane. Its moisture content is not more than 1 percent. Its antibiotic potency is not less than 90 percent and not more than 125 percent of the number of milligrams of chloramphenicol that it is represented to contain. The chloramphenicol used conforms to the standards prescribed by § 151c.2(a)(1), except safety.

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

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

(i) Results of tests and assays on:

(*a*) The chloramphenicol used in making the batch for potency, pH, specific rotation, melting range, absorptivity, and crystallinity.

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

(ii) Samples required:

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

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

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Transfer an accurately measured portion of the sample into a separatory funnel containing 50 milliliters of petroleum ether. Shake the separatory funnel vigorously to bring about complete mixing of the sample and the petroleum ether. Add 20 milliliters of 1 percent potassium phosphate buffer, pH 6.0 (solution 1), and shake well. Remove the buffer layer and repeat the extraction with three additional 20-milliliter portions of solution 1. Combine the extractives and dilute to an appropriate volume with solution 1. Further dilute in solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 141.502 of this chapter, using 1 or 2 milliliters of the suspension.

§ 151c.17 Chloramphenicol palmitate oral suspension.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol palmitate oral suspension is chloramphenicol palmitate and one or more suitable and harmless buffer substances, suspending agents, preservatives, colorings, and flavorings suspended in a suitable and harmless vehicle. Each milliliter contains 31.25 milligrams of chloramphenicol. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of chloramphenicol that it is represented to contain. Its pH is not less than 4.5 nor more than 7.0. Its content of polymorph A crystals does not exceed 10 percent. The chloramphenicol palmitate used conforms to the standards prescribed by § 151c.3(a)(1).

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

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

(i) Results of tests and assays on:

(*a*) The chloramphenicol palmitate used in making the batch for potency, safety, melting range, specific rotation, and crystallinity.

(*b*) The batch for potency, pH, and content of polymorph A crystals.

(ii) Samples required:

(*a*) The chloramphenicol palmitate used in making the batch: 10 packages, each containing approximately 500 milligrams.

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

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Preparation of chloramphenicol working standard solution.* Dissolve approximately 50 milligrams of the chloramphenicol working standard, accurately weighed, in a 100-milliliter volumetric flask with absolute ethyl alcohol. Fill to volume with absolute ethyl alcohol. Transfer 10.0 milliliters into a 250-milliliter volumetric flask and fill to volume with absolute ethyl alcohol.

(ii) *Procedure.* Transfer an accurately measured amount of the suspension, equivalent to about 125 milligrams of chloramphenicol, to a separatory funnel. Add 10 milliliters of water and then extract completely with 25-milliliter portions of chloroform, allowing the layers to separate and filtering each successive chloroform extract through a pledget of cotton into a 250-milliliter volumetric flask, then add chloroform to volume, and mix. Pipette 4 milliliters of the clear

chloroform solution into a 100-milliliter volumetric flask, dilute with ethyl alcohol to volume, and mix. Using a suitable spectrophotometer equipped with a 1.0-centimeter cell and a blank composed of 1.0 milliliter of chloroform, U.S.P. diluted to 25 milliliters with absolute ethyl alcohol, determine the absorbance of the chloroform working standard solution at 276 nanometers and that of the sample solution at 271 nanometers. Calculate the potency of the sample as follows:

$$\text{Milligrams of chloramphenicol per milliliter} = \frac{\text{Absorbance of sample} \times \text{labeled potency per milliliter in milligrams}}{\text{Absorbance of standard}}$$

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

(3) *Content of polymorph A crystals*—(i) *Preparation of standards*—(a) *Standard containing 20 percent of polymorph A.* Prepare a thoroughly mixed, dry powder composed by weight of 1 part of polymorph A crystals of chloramphenicol palmitate and 4 parts of nonpolymorph A crystals of chloramphenicol palmitatt.

(b) *Standard containing 10 percent of polymorph A.* Prepare a thoroughly mixed, dry powder composed by weight of 1 part of polymorph A crystals of chloramphenicol palmitate and 9 parts of nonpolymorph A crystals of chloramphenicol palmitate.

(ii) *Preparation of sample.* Place 20 milliliters of thoroughly mixed oral suspension into a 50-milliliter centrifuge tube. Add 20 milliliters of water and mix. Centrifuge for 10 to 15 minutes at a speed not less than 18,000 revolutions per minute. Decant the supernatant liquid. Wash the residue as follows: Add 2 milliliters of water to the residue, mix to make paste, add 18 milliliters of water, and mix thoroughly. Centrifuge, decant the supernatant liquid, and wash the residue two more times. Remove the washed residue from the centrifuge tube and dry it at least 14 hours in a vacuum desiccator at room temperature.

(iii) *Procedure.* Weigh 150 to 200 milligrams of liquid petrolatum into an agate mortar and add about 100 milligrams of standard or sample. Mix with a small spatula and then mull thoroughly with a pestle until a uniform consistency is obtained. Adjust a suitable infrared spectrophotometer so that 100 percent transmittance is recorded over the range of 11.0 to 13.0 microns. Use two rock salt plates as an absorption cell. Place a small drop of the mull in the center of one of the plates. Gently put the other plate on the mull and slowly squeeze the plates together to spread the mull uniformly. Clamp the two plates firmly together in a metal cell holder. Examine the assembled cell by holding it up to the light. It should appear smooth and free of any air bubbles and when placed in the instrument it should give a percent transmittance of 20 to 30 percent at 12.3 microns. Place the cell in the infrared spectrophotometer and record the absorption spectrum from 11.0 to 13.0 microns.

(iv) *Treatment of spectra*—(a) *Standard containing 20 percent of polymorph A.* Determine by inspection of the recorded spectrum the exact wavelengths of minimum absorption at approximately 11.3 and 12.65 microns. Also determine by inspection the exact wavelengths of maximum absorption at approximately 11.65 and 11.86 microns. In the following subdivision, references to these four nominal wavelengths are to the exact wavelengths observed on the particular instrument being used.

(b) *Standard containing 10 percent of polymorph A.* Draw a straight baseline between the minima occurring at 11.3 and 12.65 microns. Draw straight lines at 11.65 and 11.86 microns intersecting both the recorded spectrum and the baseline. Obtain the corrected absorbances at 11.65 and 11.86 mircons and calculate the absorbance ratios as follows:

$$\text{Absorbance ratio} = \frac{{}^{s}11.65 - {}^{B}11.65}{{}^{s}11.86 - {}^{B}11.86}$$

where:

$^{s}11.65$ = Absorbance value of recorded spectrum at 11.65 microns;

$^{B}11.65$ = Absorbance value at point of intersection of the 11.65-micron line with the baseline;

$^{s}11.86$ = Absorbance value of recorded spectrum at 11.86 microns;

$^{B}11.86$ = Absorbance value at point of intersection of the 11.86-micron line with the baseline.

(c) *Sample.* Proceed as described in subdivision (iv) (b) of this subparagraph.

(v) *Calculation.* The absorbance ratio of the sample must be greater than the absorbance ratio of the standard containing 10 percent of polymorph A.

§ 151c.18 Chloramphenicol ophthalmic solution, veterinary.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Chloramphenicol ophthalmic solution contains in each milliliter 5 milligrams of chloramphenicol with or without one or more suitable and harmless preservatives and surfactants in an aqueous solution. Its potency is not less than 90 percent and not more than 130 percent of the number of milligrams of chloramphenicol that it is represented to contain. It is sterile. Its pH is not less than 3 nor more than 6. The chloramphenicol used conforms to the standards prescribed by § 151c.2(a)(1).

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

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

(i) Results of tests and assays on:

(a) The chloramphenicol used in making the batch for potency, safety, pH, specific rotation, melting range, absorptivity, and crystallinity.

(b) The batch for potency, sterility, and pH.

(ii) Samples required:

(a) The chloramphenicol used in making the batch: 10 containers, each containing not less than 300 milligrams.

(b) The batch:

(1) For all tests except sterility: A minimum of five immediate containers.

(2) For sterility testing: 20 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the microbiological turbidimetric assay shall be conclusive.

(i) *Microbiological turbidimetric assay.* Proceed as directed in § 141.111 of this chapter, preparing the sample for assay as follows: Dilute an accurately measured representative portion of the sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 2.5 micrograms of chloramphenicol per milliliter (estimated).

(ii) *Spectrophotometric assay.* Dilute a 1-milliliter aliquot of the sample in sufficient distilled water to make a solution containing 20 milligrams of chloramphenicol per milliliter. Dissolve an accurately weighed portion of the working standard in sufficient distilled water to give a solution containing 20 milligrams per milliliter. Warm if necessary to hasten solution of the working standard. Cool. Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of the sample and standard solutions at 278 nanometers. Calculate the potency of the sample as follows:

$$\text{Milligrams of chloramphenicol per milliliter} = \frac{\text{Absorbance of sample} \times \text{labeled potency per milliliter in milligrams}}{\text{Absorbance of standard}}$$

(2) *Sterility.* Proceed as directed in § 141.2 of this chapter, using the method described in paragraph (e)(1) of that section.

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

Interested persons may, within 60 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-88, 5600 Fishers Lane, Rockville, Md. 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments 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: September 11, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72-15816 Filed 9-18-72;8:45 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Colorado 12610]

COLORADO

Notice of a Partial Termination of Proposed Withdrawal and Reservation of Lands

SEPTEMBER 7, 1972.

Notice of a Bureau of Sport Fisheries and Wildlife, U.S. Department of the Interior application, Colorado 12610, for withdrawal and reservation of lands for use in connection with the Arapaho National Wildlife Refuge, was published as F.R. Doc. 71-4462, on page 6019 of the issue for April 1, 1971. The applicant agency has canceled its application insofar as it affects the following described lands:

SIXTH PRINCIPAL MERIDIAN

T. 7 N., R. 79 W.,
Sec. 3, all;
Sec. 4, E½, E½W½;
Sec. 9, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 10, all;
Sec. 15, N½N½, SE¼NE¼.
T. 8 N., R. 79 W.,
Sec. 21, E½SE¼;
Sec. 22, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 27, all;
Sec. 28, E½E½, W½SE¼;
Sec. 33, E½, SE¼NW¼, E½SW¼;
Sec. 34, all.

The above area aggregates 4,912.36 acres.

Therefore, pursuant to the regulations contained in 43 CFR Part 2091, such lands at 10 a.m., on October 13, 1972, will be relieved of the segregative effect of the above mentioned application.

ALLAN E. ARNOLD,
Acting Chief, Division of Technical Services.

[FR Doc.72-15866 Filed 9-18-72;8:45 am]

[Wyoming 35498]

WYOMING

Notice of Classification

Correction

In F.R. Doc. 72-14816 appearing on page 17771 of the issue of Thursday, August 31, 1972, the following changes should be made in the land description:

1. The 12th line should read "E½" instead of "SE¼".

2. In the 14th line, "N½ of lot 7," should read "E½SW¼, and".

3. In the 15th line, "E½;" should read "SE¼;".

Office of the Secretary

[INT FES 72-30]

PROPOSED BRANTLEY PROJECT, NEW MEXICO

Notice of Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a final environmental statement for the proposed Brantley project, New Mexico.

The environmental statement concerns a water project for the purposes of safety of dams, irrigation, flood, and sediment control, fish and wildlife, and recreation. Brantley Dam would be located on the Pecos River in Eddy County 20 miles north of Carlsbad, N. Mex.

Copies are available for inspection at the following locations:

Office of Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington D.C. 20240, Telephone 202—343-4991.

Division of Engineering Support, Technical Services Branch, E & R Center, Denver Federal Center, Denver, Colo. 80225, Telephone 303—234-3007.

Office of the Regional Director, Bureau of Reclamation, Herring Plaza, Box H-4377, Amarillo, TX 79101, Telephone 806—376-2408.

Albuquerque Development Office, Bureau of Reclamation, Post Office Box 252, Albuquerque, NM 87103, Telephone 505—843-2272.

Single copies of the final statement may be obtained on request to the Commissioner of Reclamation, Regional Director, or Albuquerque Planning Officer. In addition, copies may be purchased from the National Technical Information Service, Department of Commerce, Springfield, Va. 22151. Please refer to the statement number above.

Dated: September 11, 1972.

W. W. LYONS,
Deputy Assistant Secretary of the Interior.

[FR Doc.72-15867 Filed 9-18-72;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

OPERATING-DIFFERENTIAL SUBSIDY FOR BULK CARRIAGE OF GRAIN BETWEEN UNITED STATES AND UNION OF SOVIET SOCIALIST REPUBLICS

Notice of Intent

Notice is hereby given of the intent of the Maritime Administration/Maritime Subsidy Board to provide operating-differential subsidy to American-flag bulk cargo vessels for the carriage of grain from the United States to the Union of Soviet Socialist Republics. Under the provisions of section 603(b), Merchant Marine Act, 1936, as amended, subsidy will be paid to make the cost of operating U.S.-flag bulk vessels competitive with the cost of operating foreign flag bulk vessels participating in such trade.

Because of the recent consummation of the grain sale agreement with the Union of Soviet Socialist Republics, it is requested that applications for participation in this program be received by the Secretary, Maritime Subsidy Board, by September 29, 1972.

Any person, firm or corporation having any interest in this program may request further information and application forms from the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20235.

Dated: September 15, 1972.

By order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.72-16033 Filed 9-15-72;4:51 pm]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[FAP 3B2824]

CONTINENTAL OIL CO.

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 3B2824) has been filed by Continental Oil Co., High Ridge Park, Stamford, Conn. 06904, proposing that § 121.2511 *Plasticizers in polymeric substances* (21 CFR 121.2511) be amended to provide for the safe use of di-*n*-alkyl adipate made from synthetic fatty alcohols intended for use as a plasticizer in polymeric substances intended to contact food.

Dated September 10, 1972.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.72-15892 Filed 9-18-72;8:48 am]

Health Services and Mental Health Administration

OCCUPATIONAL SAFETY AND HEALTH

Request for Information on Coal Tar Pitch Volatiles

Section 20(a)(3) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(3)) provides that the Secretary of Health, Education, and Welfare, on the basis of information available to him, shall develop criteria dealing with toxic materials and harmful physical agents and substances which will describe exposure levels that are safe for various periods of employment. Section 22(c) of the Act authorizes the National Institute for Occupational Safety and Health to develop recommended occupational safety and health standards and to perform all functions of the Secretary of Health, Education, and Welfare, under sections 20 and 21 of the Act. The Institute is developing a criterial document and recommendations for the protection of coke oven workers.

The recommendations may include, among other items, an evaluation of available information relative to the seven areas listed below:

1. Engineering controls, including ventilation, environmental temperature, humidity, and housekeeping, and sanitation procedures, with attention to the technological feasibility of such controls.

2. Specifications for the conditions under which personal protective devices should be required.

3. Methodology, including instrumentation, for air sampling and sample analysis of coal tar pitch volatiles.

4. The need for medical examinations for workers exposed to such agents, the frequency of such examinations, and the specific diagnostic tests which should be used, and the rationale for their selection.

5. Work practices or procedures which may be instituted for control of the workplace environment in normal operations, and those which may be instituted when environmental levels are temporarily exceeded, or where peak concentrations of such agents in man are reached.

6. The types of records concerning occupational exposure to such agents that employers should be required to maintain.

7. Warning devices and labels which should be required for the prevention of occupational diseases and hazards caused by coal tar pitch volatiles.

Any person having information or data which is not readily available in "open scientific literature" in any of the seven areas listed, or in other areas which the person considers relevant to the development of recommendations for the protection of coke oven workers is invited to submit such information, with accompanying documentation, to the Assistant Director for Research and Standards Development, National Institute for Occupational Safety and Health, Room 10-28, 5600 Fishers Lane, Rockville, MD 20852, within 45 days after publication of this notice.

All information submitted concerning any agent will be available for public inspection after the development of the criteria document.

Dated: September 11, 1972.

MARCUS M. KEY,
Director, National Institute for Occupational Safety and Health.

[FR Doc.72-15893 Filed 9-18-72;8:47 am]

National Institutes of Health

NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given of the meeting of the Pharmacology-Toxicology Program Committee on October 2-3, 1972, at 9 a.m., National Institutes of Health, Building 31C, Conference Room 6.

The following is the agenda:

October 2, 1972—9 a.m. to 10:30 a.m.—closed to the public, 10:30 a.m. to 12:30 p.m.—open to the public, "Discussion of Developing Areas of Research."
October 3, 1972—9 a.m. to 5 p.m.—closed to the public.

The closed portion of this meeting will be reserved for review, discussion, and/or ranking grant applications in accordance with section 13(d) of Executive Order 11671 and the Secretary's determination.

Name of the person from whom rosters of the Pharmacology-Toxicology Program Committee and/or summary of the meeting may be obtained: Dr. George J. Cosmides.

Dated: September 12, 1972.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.72-15883 Filed 9-18-72;8:47 am]

Office of the Secretary

NATIONAL INSTITUTE OF EDUCATION

Statement of Organization, Functions, and Delegations of Authority

The statement of organization, functions, and delegations of authority of the Department of Health, Education, and Welfare is amended to add a new Part 7 for the National Institute of Education. The National Institute of Education was established by Public Law 92-318, approved June 23, 1972 and effective July 1, 1972. It is anticipated that the organizational structure described below will be subject to changes and additions, with corresponding amendments to this statement, as programs administered by the National Institute of Education develop.

SECTION 7.00 *Mission.* The National Institute of Education carries out the policies set forth by Congress in Public Law 92-318 as follows: To provide to every person an equal opportunity to receive an education of high quality regardless of his race, color, religion, sex, national origin, or social class; to help to solve or to alleviate the problems of, and promote the reform and renewal of American education; to advance the practice of education, as an art, science, and profession; to strengthen the scientific and technological foundations of education; and to build an effective educational research and development system.

SEC. 7.10 *Organization.* The National Institute of Education consists of a National Council on Educational Research and a Director of the Institute. The Director is responsible to the Assistant Secretary for Education, and reports to the Secretary through this Assistant Secretary.

SEC. 7.20 *Functions.* a. The National Council on Educational Research: Establishes general policies for, and reviews the conduct of, the Institute; advises the Assistant Secretary for Education and the Director of the Institute on development of programs to be carried out by the Institute; presents to the Assistant Secretary for Education and the Director such recommendations as it may deem appropriate for the strengthening of educational research, the improvement of methods of collecting and disseminating the findings of educational research and of insuring the implementation of educational renewal and reform based upon the findings of educational research; conducts such studies as may be necessary to fulfill its functions under this section; prepares an annual report to the Assistant Secretary for Education on the current status and needs of educational research in the United States; submits an annual report to the President on the activities of the Institute, and on education and educational research in general which (i) shall include such recommendations and comments as the Council may deem appropriate, and (ii) shall be submitted to the Congress not later than March 31 of each year.

b. The Director of the Institute, through the Institute: Conducts educational research; collects and disseminates the findings of educational research; trains individuals in educational research; assists and fosters such research, collection, dissemination, or training through grants, or technical assistance to, or jointly financed cooperative arrangements with, public or private organizations, institutions, agencies, or individuals; promotes the coordination of such research and research support within the Federal Government; and constructs or provides (by grant or otherwise) for such facilities as he determines may be required to accomplish such purpose.

Dated: September 12, 1972.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc.72-15898 Filed 9-18-72;8:47 am]

SOCIAL AND REHABILITATION SERVICE

Statement of Organization, Functions, and Delegations of Authority

Part 5 of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare, Social and Rehabilitation Service (34 F.R. 1279, January 25, 1969, as amended) is hereby further amended with regard to section 5-B, Organizations and Functions as follows:

Under the Office of Public Affairs, strike out the heading "Division of Special Projects" and the paragraph that follows thereunder.

Dated: September 12, 1972.

LEO J. HOLLAND, Jr.,
Acting Deputy Assistant Secretary for Management.

[FR Doc.72-15880 Filed 9-18-72;8:46 am]

ATOMIC ENERGY COMMISSION

PREPARATION OF ENVIRONMENTAL REPORTS FOR NUCLEAR POWERPLANTS

Notice of Public Meeting

On August 9, 1972, the Atomic Energy Commission published a notice in the FEDERAL REGISTER (37 F.R. 16035) that the Commission has issued for public comment a proposed "Guide to the Preparation of Enviromental Reports for Nuclear Powerplants." This document would provide guidance to applicants on the preparation of environmental reports required to be submitted by AEC regulations in 10 CFR Part 50, Appendix D, implementing the National Environmental Policy Act of 1969.

Under the Commission's revised regulations implementing the National Environmental Policy Act of 1969 (NEPA), each applicant for a nuclear powerplant construction permit or operating license is required to submit an environmental report. The proposed new guide would cover all aspects of preparation of the applicant's environmental report, including the benefit-cost analysis. It is directed at proposed nuclear powerplants for which construction has not been initiated or is in the very early stages. Because of this the benefit-cost analysis in the proposed guide differs from the corresponding discussion in the benefit-cost guide dealing with completed or partially completed nuclear powerplants issued on January 13, 1972 (37 F.R. 548).

The notice published in the FEDERAL REGISTER on August 9, 1972, invited comments and suggestions on the proposed "Guide to the Preparation of Environmental Reports for Nuclear Powerplants" by September 23, 1972.

Notice is hereby given that a public meeting will be held on Thursday, October 12, 1972, beginning at 10 a.m., in Room P-110 of the offices of the Atomic Energy Commission, 7920 Norfolk Avenue, Bethesda, MD. The meeting will be conducted informally for the purpose of obtaining the views of interested persons on the guide to aid the Commission in evaluating the guide. Interested members of the public are invited to attend the meeting and participate in the discussion. Any person may also submit written statements, opinions, comments, and questions on matters relevant to the proposed guide. The Commission's regulatory staff will participate in the meeting to explain the purpose and scope of the proposed guide and to answer questions on the general purpose and objectives, and specific provisions of the proposed guide, as appropriate.

For the convenience of persons attending the meeting on October 12, 1972, the Commission will provide transportation, without charge, by bus between the Commission's offices at 1717 H Street NW., Washington, D.C., and the Commission's offices in Bethesda, Md. The bus will leave 1717 H Street at 9 a.m.

Persons desiring additional information regarding the meeting should contact Mr. J. J. Davis of the Commission's Directorate of Regulatory Standards, telephone 301—973-7366.

Dated at Bethesda, Md., this 14th day of September 1972.

For the Atomic Energy Commission.

LESTER ROGERS,
Director of Regulatory Standards.

[FR Doc.72-15969 Filed 9-18-72; 8:50 am]

CIVIL AERONAUTICS BOARD

[Docket Nos. 24150, etc.; Order 72-9-36]

SEDALIA, MARSHALL, BOONVILLE STAGE LINE, INC.

Order To Show Cause Regarding Establishment of Mail Service Rates

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 in the appendix[1] 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 (Dockets 24150, 24151, 24154, 24155).

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 24, 1972, the Postmaster General requested a 30-day extension of time in which to file a reply to Sedalia's petition, 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.[2]

Answer to Sedalia's petition was filed March 23, 1972, by the Postmaster General opposing the increase in the service mail rate, 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, 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 increases 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 proposed rate reflecting fuel and overhead cost increases not previously documented,[3] but disallowing that part of the fuel cost alleged to represent refundable Kansas State tax. On July 21, 1972, Sedalia filed an answer documenting the fact that the fuel price did not contain refundable Kansas State tax.

On August 9, 1972, the Postal Service filed a petition increasing its proposed rate, reflecting Sedalia's findings of July 21, 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 service mail rates per great circle aircraft mile for the transportation of mail by aircraft as shown in the appendix.

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[1] Filed as part of the original document.

[2] The Postmaster General, on Feb. 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 petition by regional personnel of the Postal Service. Extension was granted Feb. 22, 1972, extending the due date for answer to Mar. 23, 1972.

[3] All the adjustments made herein by the Postal Service are in compliance with Regional Instruction 530-A, "Air Taxi Transportation Rate Adjustments, Part 398 Operators."

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 petition and other matters officially noticed, it is proposed to issue an order [4] to include the following findings and conclusions:

The fair and reasonable final service mail rates to be paid to Sedalia, Marshall, Boonville State 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	Effective on and after	Rate cents per mile
Topeka and Dodge City, Kans., via Kansas City, Mo., and Wichita and Hays, Kans.	Mar. 26, 1972	62.83
Independence and Wichita, via Fort Scott, Kans.	Mar. 16, 1972	53.09
Muskogee, Okla., and Wichita, Kans., via Tulsa and Oklahoma City, Okla.	Mar. 26, 1972	55.44
Grand Island, Nebr., and Salina, Kans., via Wichita, Kans.	Mar. 25, 1972	58.14

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, American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Frontier Airlines, Inc., Trans World Airlines, 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 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, American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Frontier Airlines, Inc., and Trans World Airlines, Inc.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-15912 Filed 9-18-72;8:49 am]

[4] 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 § 385.16(g).

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN COTTON TEXTILE PRODUCTS PRODUCED OR MANUFACTURED IN BRITISH HONDURAS

Entry or Withdrawal From Warehouse for Consumption

SEPTEMBER 14, 1972.

On June 29, 1972, the U.S. Government requested the Government of British Honduras to enter into consultations, under Articles 3 and 6(c) of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, concerning exports to the United States of cotton textile products in Category 63 produced or manufactured in British Honduras. Public notice of this request was published in the FEDERAL REGISTER on July 11, 1972 (37 F.R. 13569). Consultations were held between the two Governments during the month of August 1972.

As a result of these consultations, the Government of British Honduras will limit its exports of Category 63 to a level of 601,660 pounds for the 12-month period beginning June 29, 1972 and extending through June 28, 1973 and the Government of the United States will assist the Government of British Honduras in implementing this limitation by controlling imports of cotton textile products in Category 63 at the designated level for the 12-month period.

This limitation does not apply to cotton textile products in Category 63 produced or manufactured in British Honduras and exported to the United States prior to the beginning of the designated 12-month period.

There is published below a letter of September 14, 1972, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, directing that the amount of cotton textile products in Category 63, produced or manufactured in British Honduras, which may be entered or withdrawn from warehouse for consumption in the United States for the 12-month period beginning June 29, 1972, be limited to 601,660 pounds.

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20226.

SEPTEMBER 14, 1972.

DEAR MR. COMMISSIONER: Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, including Article 6(c) thereof relating to nonparticipants, and in accordance with the procedures outlined in Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective as soon as possible, and for the 12-month period beginning June 29, 1972 and extending through June 28, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton textile products in Category 63, produced or manufactured in British Honduras, in excess of a level of restraint for the period of 601,660 pounds.[1]

Entries of cotton textile products in Category 63, produced or manufactured in British Honduras and which have been exported to the United States from British Honduras prior to June 29, 1972, shall not be subject to this directive.

Cotton textile products in Category 63 which have been released from the custody of the Bureau of Customs under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of Category 63, in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on April 29, 1972 (37 F.R. 8802).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of British Honduras and with respect to imports of cotton textile products from British Honduras have

[1] This level has not been adjusted to reflect any entries made on or after June 29, 1972.

been determined by the Committee for the Implementation of Textile Agreements, to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources.

[FR Doc.72-15954 Filed 9-18-72;8:50 am]

FEDERAL COMMUNICATIONS COMMISSION

AT&T APPLICATION FOR PERMISSION TO MAKE EFFECTIVE INCREASED RATES FOR INTERSTATE LONG DISTANCE TELEPHONE SERVICE

Notice of Closing Date for Comments

SEPTEMBER 7, 1972.

The FCC has requested that all parties to the A.T. & T. rate case, Docket No. 19129, and any other party, file by September 22, 1972 whatever comments they may have concerning A.T. & T.'s Application No. 898 for special permission dated September 1, 1972. This application, which was served on all parties to the docket, requests permission to make effective on September 15, 1972, on not less than 1 day's notice, increased rates for Interstate Long Distance Message Telecommunications Service. It also requests the Commission to waive sections 61.38 and 61.58 of the Commission's rules and paragraph 11 of the Commission's order of February 3, 1972 in Docket No. 18128, although A.T. & T. questions the applicability of these requirements to its request for special permission.

The rates which A.T. & T. seeks to make effective were originally filed on November 20, 1970 to become effective January 19, 1971. However, they were postponed by A.T. & T. at the request of the FCC pending the outcome of expedited hearings in Docket No. 19129 in which the lawfulness of the rates as being examined. A reargument before the Commission was recently set for September 19, 1972 in this proceeding.

The Commission recognizes that the requested date of September 15, 1972 allows insufficient time for the public to file comments or the Commission to properly consider the A.T. & T. request, and therefore announces that it will consider all comments and pleadings received by September 22, 1972 before acting on the application. It should be noted that any rate filing will be subject to suspension by the Commission for the full statutory period of three months as well as subject to the decisions of the Commission in the pending proceedings in Docket No. 19129.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-15911 Filed 9-18-72;8:49 am]

FORFEITURE PROVISIONS, COMMUNICATIONS ACT

Notice of Petition for Reorganization

SEPTEMBER 8, 1972.

Legislation to reorganize the forfeiture provisions of the Communications Act has been requested from Congress by the FCC. The Commission said "common procedures with uniform sanctions" are needed for common carriers, broadcast entities, and electronic communications businesses, as well as for many forms of nonbroadcast licensee misconduct not now covered by the Act.

The FCC asked that the forfeiture provisions be extended to cover cable systems, or other communications businesses that may become subject to Commission authority. Forfeiture authority was asked for users of restricted radiation devices, radio frequency oscillator devices, equipment manufacturers, persons operating without holding a required license and others subject to Commission regulations. (This would cover any person subject to the Communications Act or FCC rules, persons operating without a valid station or operator's license, operators not required to have a license and licensed radio operators now subject only to suspension.)

The commission asked that the limitations period for issuing notices of apparent liability be extended, for broadcast station licensees, to 1 year or the current license term, whichever is greater, and for nonbroadcast station licensees, to 3 years. The limitations period would be 3 years for all other persons subject to forfeiture. (Present limitations periods are 1 year for broadcast licensees and 90 days for nonbroadcast licensees.)

The FCC called for a maximum forfeiture of $2,000 for a single offense; a $20,000 maximum for multiple offenses by a common carrier, broadcast station licensee or permittee, or a person engaged in distributing to the public broadcast signals or other program services by wire; and a $5,000 maximum for all others. (Existing maximum forfeiture amounts are $1,000 for single offenses by a broadcast station, $10,000 for multiple offenses, $100 for single offenses by persons covered by nonbroadcast regulations and $500 for multiple offenses by these persons.)

Authority to reduce or remit forfeitures levied against common carriers was also requested by the FCC. (The Communications Act now permits reduction of all other forfeitures.)

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-15910 Filed 9-18-72;8:49 am]

VARIOUS ASPECTS OF CHILDREN'S TELEVISION

Notice of Public Panel Discussions

SEPTEMBER 8, 1972.

Public panel discussions on the various aspects of children's television have been scheduled by the FCC from October 2 through October 4, 1972. The meetings will take place in Room 856 of the FCC Offices, 1919 M Street NW., Washington, DC.

The panels will allow educators, broadcast and citizen representatives, advertisers, and other experts to present their views on children's TV programing. The discussions will be similar in format to previous public panels conducted by the FCC on cable television and common carrier matters. The Commission initiated an inquiry into children's TV programing on January 21, 1971 (Docket 19142).

Lee Polk, television producer, director and writer, will serve as facilitator of the panels. Polk is a former director of children's programing for the National Educational Television Network (NET), New York, N.Y., and has had extensive experience in producing children's TV programs. He is a member of the Board of Advisors for "Sesame Street" and "The Electric Company" and participated in the White House Conference on Children in 1970.

Names of the participants will be announced later.

Panel times and subjects are: Monday, October 2, Content Diversification, 9:30 a.m.–noon, Age Specificity, 2–4:30 p.m.; Tuesday, October 3, Responsive Scheduling, 9–11:30 a.m., Advertising Practices, 1–2:30 p.m. and 2:45–3:45 p.m.; and Wednesday, October 4, Alternative Methods of Financing and Modifications of Current Advertising Practices, 9–11:30 a.m., Self-regulation, 1–3:00 p.m.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[FR Doc.72-15909 Filed 9-18-72;8:49 am]

FEDERAL MARITIME COMMISSION

BERMUDA RATE AGREEMENT

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the field offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after

publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

S. Doolos, General Traffic Manager, Chester, Blackburn & Roder, Inc., 1 World Trade Center, Suite 1035, New York, N.Y. 10048.

Agreement No. 9998, between Atlantic Lines, Ltd., and Bermuda Express Service, operating cargo services between ports in Bermuda and Atlantic and gulf ports of the United States, provides that the parties will confer and discuss with each other the rates, charges, credit, classifications, practices, and related tariff matters to be charged or observed by them in the above trade for the purpose of promoting the commerce and stability of such trade all in accordance with the terms and conditions set forth in the agreement.

By order of the Federal Maritime Commission.

Dated: September 14, 1972.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.72-15919 Filed 9-18-72;8:49 am]

[Docket No. 72-51]

NEW YORK SHIPPING ASSOCIATION AND INTERNATIONAL LONGSHOREMEN'S ASSOCIATION

Declaratory Order To Show Cause

New York Shipping Association, Inc. (NYSA) and the International Longshoremen's Association, AFL-CIO (ILA) have petitioned this Commission for a declaratory order, pursuant to rule 5(h) of the Commission's rules of practice and procedure, 46 CFR 502.68, that the NYSA-ILA man-hour/tonnage assessment formula, contained in the collective bargaining agreement between NYSA and ILA (attachment "B" of said agreement), is not an agreement subject to section 15 of the Shipping Act, 1916 (the Act).

This petition was noticed in the FEDERAL REGISTER on August 9, 1972 (37 F.R. 16045), wherein comments thereon were invited. Comments were received from eight parties, all of whom were opposed to the granting of the requested declaratory order. In addition, one party was granted an extension of time in which to file, and another filed a petition for institution of an investigation of the subject agreement.

NYSA is a nonprofit corporation, organized and existing under the laws of the State of New York whose members include steamship lines, steamship agents, stevedoring companies, and marine terminal operators.

ILA is an unincorporated labor organization certified by the NLRB as the collective bargaining representative for all longshore labor in the Port of Greater New York.

The agreement that NYSA would have the Commission exempt from the requirements of section 15 of the Act is an agreement known as attachment "B" and attached to the NYSA-ILA collective bargaining agreement, which provides for the method of assessment of employers and vessel carriers for purposes of meeting the obligations of the NYSA-ILA collective bargaining agreement with respect to pension, welfare and clinic, guaranteed annual income (GAI), etc.

NYSA argues in its petition that this agreement is not subject to section 15 since it is part and parcel of a collective bargaining agreement and as such constitutes an agreement between a person subject to the Act (NYSA) and a person not subject to the Act (ILA).

This agreement is on its face no different from the previous NYSA Agreement No. T-2390, the subject of Docket No. 69-57, served June 14, 1972. The mere fact that such an agreement is embodied in a collective bargaining agreement would not in itself have the effect of exempting that agreement from the requirements of section 15. See Volkswagenwerk Aktiengesellschaft v. F.M.C. 390 U.S. 261 (1968).

The various responses to the petition argue that, since this new agreement is seemingly no different from the prior agreement which this Commission found would be in violation of the Act if not subjected to certain modifications, it is therefore violative of sections 16 and 17 as well as section 15.

These respondents argue that the failure to allow "excepted status" to be conferred upon newsprint, automobiles, and the trades of Alaska, Hawaii, and Puerto Rico causes this agreement to violate section 16 first of the Act with respect to subjecting particular persons, localities, and descriptions of traffic to undue and unreasonable prejudice and disadvantage.

Furthermore, the agreement is said to constitute an unjust and unreasonable practice relating to or connected with the receiving, handling, storing, or delivering of property in violation of section 17 of the Act.

Therefore, *it is ordered*, Pursuant to section 22 of the Shipping Act, 1916, that New York Shipping Association, Inc., and International Longshoremen's Association show cause why the subject agreement (attachment "B," NYSA-ILA Man-Hour/Tonnage Method of Assessment) should not be subject to section 15 of the Shipping Act, 1916; and

It is further ordered, That New York Shipping Association, Inc., and International Longshoremen's Association show cause why the subject agreement should not be found to be in violation of sections 16 first and 17 of the Shipping Act, 1916; and

It is further ordered, That New York Shipping Association and International Longshoremen's Association and their members are hereby made respondents in this proceeding; and

It is further ordered, That there appearing to be no material issues of fact in dispute that this proceeding shall be limited to the submission of affidavits and memoranda of law, replies, and oral argument. Should any party feel that an evidentiary hearing be required, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed on or before October 6, 1972. Affidavits of fact and memoranda of law shall be filed by respondent parties no later than the close of business October 6, 1972. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel and intervenors, if any, no later than close of business October 20, 1972. An original and 15 copies of affidavits of fact, memoranda of law, and replies are required to be filed with the Secretary, Federal Maritime Commission, Washington, D.C. 20573. Copies of any papers filed with the Secretary should also be served upon all parties hereto. Time and date of oral argument if requested and/or deemed necessary by the Commission will be announced at a later date; and

It is further ordered, That notice of this order be published in the FEDERAL REGISTER and a copy thereof be served upon NYSA and ILA, individually, and on behalf of their members; and

It is further ordered, That notice of this order and notice of hearing, if any, be mailed directly to the Department of Justice, the Department of Labor, and the National Labor Relations Board; and

It is further ordered, That any person other than those named respondents herein who desires to become a party to this proceeding and participate herein, shall file a petition to intervene in accordance with rule 5(1), 46 CFR 502.72, of the Commission's rules of practice and procedure; and

It is further ordered, That all future notices issued by or on behalf of the Commission in this proceeding shall be mailed directly to NYSA and ILA, individually, and on behalf of their members, and any other person made a party of record to this proceeding; and

It is further ordered, That the petition for investigation filed on behalf of the Pineapple Shippers Association is hereby denied inasmuch as the matters set forth therein are the subject of this order; and

It is further ordered, That the NYSA motion for permission to file memoranda in support of its petition for a declaratory order is hereby denied; and

It is further ordered, That the NYSA and ILA petition for a declaratory order

is hereby denied in light of this proceeding.

By the Commission.

[SEAL] FRANCIS C. HURNEY, *Secretary.*

[FR Doc.72-15918 Filed 9-18-72;8:49 am]

FEDERAL POWER COMMISSION

[Docket No. CS73-131, etc.]

POLARIS PRODUCTION CORP. ET AL.

Notice of Applications for "Small Producer" Certificates [1]

SEPTEMBER 12, 1972.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before October 10, 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 a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB, *Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Name of applicant
CS73-131...	8-17-72	Polaris Production Corp., Post Office Box 1703, Midland, TX 79701.
CS73-158...	8-28-72	Partnership Properties Co., Suite 1400, 1600 Broadway, Denver, CO 80202.
CS73-159...	8-28-72	Detra Producing Co., Post Office Box 1709, Borger, TX 79007.
CS73-160...	8-28-72	Jack Evans Blake, Post Office Box 1086, Midland, TX 79701.
CS73-161...	8-29-72	Pathfinder Petroleum, Inc., 537 Houston Natural Gas Bldg., Houston, Tex. 77002.
CS73-162...	8-25-72	Pecos Western, Inc., Post Office Box 305, Missouri City, TX 77459.
CS73-163...	8-25-72	Graham E. Jones, Post Office Box 82, Midland, TX 79701.
CS73-164...	8-25-72	James D. Conner, Post Office Box 82, Midland, TX 79701.
CS73-165...	8-25-72	Chatham Associates, Post Office Box 82, Midland TX 79701.
CS73-166...	8-25-72	George R. Locker, Post Office Box 82, Midland, TX 79701.
CS73-167...	8-25-72	Ross K. Skoolroy, Post Office Box 82, Midland, TX 79701.
CS73-168...	8-30-72	Kedco Management Corp., Suite 320, 220 West Douglas, Witchita, KS 67202.
CS73-169...	8-30-72	Victory Petroleum Co., Post Office Box 36666, Houston, TX 77036.

[FR Doc.72-15825 Filed 9-18-72;8:45 am]

[Docket No. CI73-184]

PHILLIPS PETROLEUM CO.

Notice of Application

SEPTEMBER 14, 1972.

Take notice that on September 11, 1972, Phillips Petroleum Co. (applicant), Bartlesville, Okla. 74004, filed in Docket No. CI73-184 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 Pipe Line Co. from the Anadarko Basin Area, Moore County, Tex., all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on August 1, 1972, within the contemplation of §157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and that it proposes to continue said sale for 120 days from September 29, 1972, within the contemplation of § 2.70 of the Commission's general policy and interpretations (18 CFR 2.70). Applicant proposes to sell up to 20,000 Mcf of gas per day at 35 cents per Mcf at 14.65 p.s.i.a.

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.72-15907 Filed 9-18-72;8:48 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. F-156]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in an electric service rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Michigan Public Service Commission in a proceeding (Docket No. U-4174) involving the application of the Consumers Power Company for a rate increase.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures,

and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

ARTHUR F. SAMPSON,
Acting Administrator of General Services.

SEPTEMBER 8, 1972.

[FR Doc.72-15889 Filed 9-18-72;8:47 am]

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5303, 34-9778]

"HOT ISSUES" SECURITIES MARKETS; DISTRIBUTION AND TRADING PHASE

Public Fact Finding Investigation

The Securities and Exchange Commission announced today that the next phase of its public investigation in the matter of the hot issues Securities Markets will commence with public hearings scheduled at the Commission's headquarters in Washington, D.C., on September 20, 1972, at 11 a.m. This phase of the hearings will be conducted by the Division of Corporation Finance with the assistance of other Divisions and Offices.

The primary purpose of these hearings, as they relate to specific companies and the distribution of and trading in their securities, is to develop information for rule-making purposes and consideration of disclosure and regulatory policies and not for enforcement purposes.

The first phase of these public hearings concluded in May 1972, and resulted in a number of recent proposals for initial steps to curtail certain aspects of hot issues, to provide more meaningful disclosure relating to new issues and further to integrate the disclosure provisions of the securities laws (Releases 33-5274, 33-5275, 33-5276, 33-5277, 33-5278, 33-5279, and 34-9673). (37 F.R. 15985-15989, 16005-16023.) The Commission indicated on July 26, 1972, when it issued those proposals that imperfections in the methods and patterns of distribution and aftermarket trading may be a major cause of difficulties in hot issues markets. The current phase of the public investigation will focus on these areas, and, for purposes of analysis, several case studies will be selected from among the 64 companies previously identified in the public hearings which had first-time public offerings during the hot issues market of 1968 and 1969. Several more recent first-time offerings which experienced dramatic aftermarket price increases also will be the subject of further public hearings.

The hearings will begin with an analysis of Metropolitan Quarterback, Inc., whose registration statement became effective on November 26, 1968. The identity of the remaining companies to be studied will be announced later, at an early stage in the hearings. The individual company studied may be supplemented by more general testimony from representative industry groups, firms or individuals.

In addition to a study of the general process of distribution and trading of securities of the selected companies, it is presently intended that the hearings will focus on the following more specific subjects, among others:

1. The considerations involved in an underwriter's determination to underwrite securities of a new company and in a dealer's decision to trade in such securities once distributed;

2. The use of supplemental sales literature in addition to statutory prospectuses in connection with the distribution and trading of such securities;

3. The nature of oral communications between customers and associates of underwriters and dealers participating in distribution and trading of such securities;

4. The classes of investors purchasing or selling such securities at different stages of an offering, i.e., in the distribution, or in various stages of aftermarket trading, and the bases for underwriters' allocations of such securities to customers;

5. Considerations involved in such investor's investment decisions, including the weight given by them to various forms of disclosure available to them including statutory prospectuses and supplemental sales literature; and

6. Prospectus delivery practices of underwriters and dealers, including distribution of preliminary prospectuses.

Persons having information or wishing to express views relating to the companies selected in the areas under study or more general information concerning distribution of and trading in new issues should submit such information or views in writing to Richard H. Rowe, Associate Director, Division of Corporation Finance, 500 North Capitol Street, Washington, DC. Such submissions may be used in connection with the public hearings. Persons desiring to submit written statements directly for the record should submit such statements to the Hearing Officer, Edward B. Wagner, Esq. Persons desiring to appear and make an oral presentation at the public hearing should submit to the Hearing Officer a summary of his presentation including the amount of time which it is anticipated that the presentation will take and the date and time at which they desire to appear. Copies of such statements and summaries also should be submitted to Mr. Rowe.

The appearance of such persons will be permitted at the discretion of the Hearing Officer, after considering, among other factors, the purposes for which the hearing is intended, the relevance of the proposed presentation of such purposes and extent to which similar presentations previously have been made or are scheduled.

By the Commission, September 18, 1972.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-15965 Filed 9-18-72;8:47 am]

TARIFF COMMISSION

[337-L-54]

EXPANDED, UNSINTERED POLYTETRAFLUOROETHYLENE IN TAPE FORM FOR SEALING THREADED JOINTS

Notice of Complaint Received

The U.S. Tariff Commission hereby gives notice of the receipt on August 29, 1972, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by W. L. Gore & Associates, Inc., of Newark, Del., alleging unfair methods of competition and unfair acts in the importation and sale of expanded, unsintered polytetrafluoroethylene in tape form for sealing threaded joints which is embraced within the claims of U.S. Patent No. 3,644,915 owned by the complainant. Johnson & Johnson, Inc., 501 George Street, New Brunswick, NJ; Anchor Packing Co., 895 Terminal Commerce Building, Philadelphia, Pa.; Globe Tool & Engineering Co., 5071 Kitridge Road, Dayton, OH; TiteFlex Division, Atlas Corp., 603 Hendee Street, Springfield, MA; U.S. Indestructible Gasket Co., 50 West Street, New York, NY; Nopi Tape, 25 Green Street, Hackensack, NJ; and United Pan Am, UPA International 15209 Stag, Van Nuys, CA, have been named as importers and/or marketers of the subject products.

In accordance with the provisions of § 203.3 of its rules of practice and procedure (19 CFR 203.3), the Commission has initiated a preliminary inquiry into the allegations of the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary order of exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, D.C., and at the New York office of the Tariff Commission located in Room 437 of the Customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than October 16, 1972. Extensions of time for submitting information will not be granted unless good and sufficient cause is shown thereon. Such information should be sent to the Secretary, U.S. Tariff Commission, Eighth and E Streets NW., Washington, DC 20436. A signed original and nineteen (19) true copies of each document must be filed.

By order of the Commission.

Issued: September 14, 1972.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.72-15895 Filed 9-18-72;8:48 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[S–72–4]

BETHLEHEM STEEL CORP.

Notice of Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that Bethlehem Steel Corp., Seattle Plant, 23d Avenue SW., and Southwest Charlestown Street, Seattle, Wash. 98124, made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and for an interim order pending a decision on the application for a variance, from the standard prescribed in 29 CFR 1910.23 (c) (1) and (2), concerning the protection of open-sided floors, platforms, and runways.

The applicant states that the address of the facility directly affected by the application is: Bethlehem Steel Corp., Seattle Plant, 23d Avenue SW., and Southwest Charlestown Street, Seattle, Wash. 98124.

In making the application, applicant certifies that this application has been posted where notices to employees are normally posted and a copy of the application has been sent to the authorized employee representative, Mr. B. Cocanower, President, United Steelworkers of America, Local No. 1208.

Included also is a statement by the applicant that the company has notified its employees of their right to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing, by providing a copy of its application to the authorized employee representative, Mr. Cocanower.

Regarding the merits of the application, the applicant states that the type of work performed in the mould preparation area requires employees to inspect, clean, and spray the ingot moulds. In order to carry out these duties, the employees must work from the edge of the mould preparation platforms in order to see the bottom of the moulds. The applicant also states that if standard railings were in place, as specified by § 1910.23(c) (1) and (2), they would interfere with the employees' functions. Finally, the applicant states that it would not be possible for the employees to perform all their functions without working outside such guardrails, which position would negate the purpose of the railing.

The applicant has proposed an alternative method which it asserts would provide a place of employment to his employees as safe and healthful as that which would prevail if it complied with the standard. This method would be a tie-off system whereby the employees would be tethered by means of safety belts, life lines, and pendant chains to overhead tracks which would allow the necessary mobility.

The tie-off system would consist of:

(1) Three tracks attached to the overhead truss cord angles of the building structure;

(2) A series of pendant chains that would run freely in the overhead tracks; and

(3) Rings on the bottom ends of the pendant chains to which the safety lines from the safety belts would be secured.

A copy of the application will be made available for inspection and copying upon request at the Office of Standards, U.S. Department of Labor, Room 500, Railway Labor Building, 400 First Street NW., Washington, DC 20210, and at the Seattle office of the Occupational Safety and Health Administration, 1804 Smith Tower Building, 506 Second Avenue, Seattle, WA 98104.

Interested persons are invited to submit written data, views, and arguments regarding the application for a variance within 30 days following the publication of this notice in the FEDERAL REGISTER. In addition, employers and employees who believe they would be affected by a grant or denial of the variance may request a hearing on the application for a variance within 30 days after the publication of this notice in the FEDERAL REGISTER, in conformity with the requirements of 29 CFR 1905.15. Submissions of written comments and requests for a hearing should be in quadruplicate, and shall be addressed to the Office of Standards at the above address.

II. *Interim order.* It appears from the application for a variance and interim order, and supporting data, filed by Bethlehem Steel Corp. that the practices, means, methods, and operations proposed to be used will provide employment and a place of employment which would be at least as safe and healthful as that which would prevail if the company were to comply with the requirements of 29 CFR 1910.23(c) (1) and (2). It further appears from the application that an interim variance is necessary to prevent undue hardships to the applicant and to assure greater safety to employees whose job duties require them to stand outside guardrails. Therefore,

It is ordered, Pursuant to authority in section 6(d) of the Occupational Safety and Health Act of 1970 and 29 CFR 1905.11(c), that Bethlehem Steel Corp. be, and it is hereby, authorized to conduct its work performed in the mould preparation area of its Seattle plant involving the inspecting, cleaning, and spraying of the ingot moulds, in accordance with the tie-off system described above and the following conditions, in lieu of the requirements of 29 CFR 1910.23(c) (1) and (2):

(a) A properly secured safety belt is to be worn by each employee when working on the mould preparation platform;

(b) The safety belt, lifeline, and pendant chain, together, shall not be of such length as to extend below the level of the platform;

(c) All unauthorized personnel are to be prohibited from the mould preparation platform;

(d) Bethlehem Steel Corp. shall give notice to affected employees of the terms of this interim order by the same means required to be used to inform them of the application for the variance.

Effective date. This interim order shall be effective as of September 19, 1972, and shall remain in effect until a decision is rendered on the application for a variance.

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

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72–15885 Filed 9–18–72;8:47 am]

NEW JERSEY DEVELOPMENTAL PLAN

Notice of Change of Address of Office of State Programs

Notice is hereby given that effective September 7, 1972, the New Jersey Development Plan, and written public comments thereon, may be inspected and copied at the National Office of the Office of State Programs, Occupational Safety and Health Administration, at Room 305, 400 First Street NW., Washington, DC, instead of the address previously published for such office in the notice of the submission of the Plan. (37 F.R. 17447). Any correspondence concerning the Plan should also be directed to the above address.

Signed at Washington, D.C., this 14th day of September 1972.

G. C. GUENTHER,
Assistant Secretary of Labor.

[FR Doc.72–15886 Filed 9–18–72;8:47 am]

Office of the Secretary

FRANK H. PFEIFFER CO., INC.

Investigation Regarding Certification of Eligibility of Workers To Apply for Adjustment Assistance

The Department of Labor has received a Tariff Commission report containing an affirmative finding under section 301(c)(2) of the Trade Expansion Act of 1962 with respect to its investigation of a petition for determination of eligibility to apply for adjustment assistance filed on behalf of workers of Frank H. Pfeiffer Co., Inc. Worcester, Mass. (TEA–W–148). In view of the report and the responsibilities delegated to the Secretary of Labor under section 8 of Executive Order 11075 (28 F.R. 473), the Director, Office of Foreign Economic Policy, Bureau of International Labor Affairs, has instituted an investigation, as provided in 29 CFR 90.5 and this notice. The investigation relates to the determination of whether any of the group of workers covered by the Tariff Commission report should be certified as eligible to apply for adjustment assistance, provided for under title III, chapter 3, of the Trade Expansion Act of 1962, including the determination of related subsidiary subjects and matters, such as the date unemployment or underemployment began or threatened to begin and subdivision of the firm involved to be specified in any

certification to be made, as more specifically provided in Subpart B of 29 CFR Part 90.

Interested persons should submit written data, views, or arguments relating to the subjects of investigation to the Director, Office of Foreign Economic Policy, U.S. Department of Labor, Washington, D.C., on or before September 28, 1972.

Signed at Washington, D.C., this 11th day of September 1972.

GLORIA G. VERNON,
Director, Office of Foreign Economic Policy.

[FR Doc.72-15887 Filed 9-18-72;8:47 am]

INTERSTATE COMMERCE COMMISSION

[Notice 78]

ASSIGNMENT OF HEARINGS

SEPTEMBER 14, 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 notified of cancellation or postponements of hearings in which they are interested.

MC 2835 Sub 36, Adirondack Transit Lines, Inc., now assigned September 25, 1972, at New York, N.Y., is canceled and the application is dismissed.

MC-107496 Sub 839, Ruan Transport Corp., now being assigned hearing October 30, 1972 (3 days), MC-108449 Sub 337, Indianhead Truck Line, Inc., MC-124078 Sub 518, Schwerman Trucking Co. now being assigned hearing October 30, 1972 (3 days), at St. Paul, Minn., in a hearing room to be later designated.

MC-114211 Sub 168, Warren Transport, Inc., MC-118806 Sub 23, Arnold Bros. Transport, Ltd., now being assigned hearing November 6, 1972 (1 week), at St. Paul, Minn., in a hearing room to be later designated.

I&S-M-25960, General Increase, from, to, and between southern terrritory, now assigned September 19, 1972, at Washington, D.C. is postponed to October 10, 1972, same time and place.

MC 87720 Sub 124, Bass Transportation, Inc., now assigned September 20, 1972, at Washington, D.C., is canceled and the application dismissed.

MC 98499 Subs 9 and 10, White Truck Line, Inc., now assigned October 9, 1972, at Atlanta, Ga., postponed to October 10, 1972, at the Albert Pick Motor Inn, 1152 Spring Street NW., Atlanta, GA.

MC 135895, Don Ray Boyd and Jackie Rogers Common Carrier application, assigned October 2, 1972, will be held in Room 536, U.S. Courthouse and Post Office, Corner of Capital and North West Street, Jackson, Miss.

MC 120981 Sub 13, Bestway Express, Inc., assigned October 25, 1972, at Lexington, Ky., will be held at the Holiday Inn East, New Circle Road.

MC 21958 Sub 8, Starck Van Lines, Inc., assigned October 2, 1972, at Pittsburgh, Pa., will be held in Room 2218, Federal Building, 1000 Liberty Avenue.

MC 116544 Sub 129, Wilson Brothers Truck Line, Inc., now being assigned November 6, 1972 (1 day), at New Orleans, La., in a hearing room to be later designated.

MC 105566 Sub 53, Sam Tanksley Trucking, Inc., Extension—Bananas, now being assigned November 7, 1972 (2 days), at New Orleans, La., in a hearing room to be later designated.

MC 107002 Sub 416, Miller Transporters, Inc., now being assigned November 9, 1972 (2 days), at New Orleans, La., in a hearing room to be later designated.

MC 115162 Sub 212, Poole Truck Line, Inc., now being assigned November 13, 1972 (1 week), at Mobile, Ala., in a hearing room to be later designated.

MC 118989 Sub 70, Container Transit, Inc., now assigned September 18, 1972, at Chicago, Ill., is canceled and the application dismissed.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-15899 Filed 9-18-72;8:48 am]

FOURTH SECTION APPLICATIONS FOR RELIEF

SEPTEMBER 14, 1972.

Protests to the granting of an application must be prepared in accordance with § 1100.40 of the general rules of practice (49 CFR 1100.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 42531—*Chemicals between points in Louisiana and Texas, also Delaware, North Carolina, South Carolina, and Virginia.* Filed by Southwestern Freight Bureau, agent (No. B-350), for interested rail carriers. Rates on chemicals, in tank car loads, as described in the application, between points in Louisiana and Texas, also between points in Delaware, North Carolina, South Carolina, and Virginia.

Grounds for relief—Market competition.

Tariffs—Supplements 11 and 3 to Southwestern Freight Bureau, agent, tariffs ICC 5002 and 5043, respectively. Rates are published to become effective on October 14, 1972.

FSA No. 42532—*Sugar, beet or cane to points in Iowa and Wisconsin.* Filed by Western Trunk Line Committee, agent (No. A-2675), for interested rail carriers. Rates on sugar, beet or cane, dry, in bulk, in carloads, as described in the application, from points in Montana, Trans-Continental Freight Bureau, and western trunkline territories, to New Hampton, Iowa, Fond du Lac, and Green Bay, Wis.

Grounds for relief—Market competition and rate relationship.

Tariffs—Supplement 132 to Western Trunk Line Committee, agent tariff ICC A-4481, and 3 other schedules named in the application. Rates are published to become effective on October 15, 1972.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-15900 Filed 9-18-72;8:48 am]

[Notice 123]

MOTOR CARRIER TRANSFER PROCEEDINGS

SEPTEMBER 12, 1972.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and transfer rules, 49 CFR Part 1132:

No. MC-FC-73952. By application filed September 8, 1972, BROWN'S LIMOUSINE SERVICE, INC., 161-15 Rockaway Boulevard, Jamaica, NY 11434, seeks temporary authority to lease the operating rights of WILDER CONNECTICUT AIRPORT COACH, INC., 259 South Regent Street, Port Chester, NY, under section 210a(b). The transfer to BROWN'S LIMOUSINE SERVICE, INC., of the operating rights of WILDER CONNECTICUT AIRPORT COACH, INC., is presently pending.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-15901 Filed 9-18-72;8:48 am]

[Ex Parte 241; Rule 19, Exemption 20]

EXEMPTION FROM MANDATORY CAR SERVICE RULES

It appearing, that here is an emergency movement of military impedimenta from Camp Lejeune, N.C., to Fort Stewart, Ga.; that the originating carrier has insufficient system cars of suitable dimensions immediately available for loading with this traffic; that sufficient cars of other ownerships having suitable dimensions are available on the lines of the originating carrier and on its connections; and that compliance with Car Service Rules 1 and 2 would prevent the timely assembly and use of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, the Car Service Division of the Association of American Railroads is authorized to direct the movement to the Seaboard Coast Line Railroad Co., the railroads designated by the Car Service Division are authorized to move to, and the Seaboard Coast Line Railroad Co. is authorized to accept, assemble, and load not to exceed forty (40) empty cars with military impedimenta from Camp Lejeune, N.C., to Fort Stewart, Ga., regardless of the provisions of Car Service Rules 1(b), 2(c), 2(d), or 2(e).

Effective September 12, 1972.

Expires September 22, 1972.

Issued at Washington, D.C., September 11, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent

[FR Doc.72-15902 Filed 9-18-72;8:48 am]

DEPARTMENT OF STATE

[Public Notice 364]

ENVIRONMENTAL IMPACT STATEMENTS

Issuance of Final Department Procedures for Compliance With Federal Environmental Statutes

Notice is hereby given of the publication of final procedures of the Department of State for compliance with Federal environmental statutes, in accordance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), and section 309 of the Clean Air Act (42 U.S.C. 1857).

These final procedures supersede the proposed procedures published by the Department in the FEDERAL REGISTER on February 16, 1972 (37 F.R. 3448). These final procedures will be effective upon the date of publication of this notice (9-19-72), and will be published in the Foreign Affairs Manual of the Department of State. The procedures are as follows:

1. *General.* Attention is called to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); section 309 of the Clean Air Act (42 U.S.C. 1857); Executive Order 11514 of March 5, 1970; and the Guidelines for Federal Agencies under the National Environmental Policy Act (NEPA) issued by the Council on Environmental Quality (CEQ) April 23, 1971 (36 F.R. 7724), incorporated herein by reference. Except as modified by the present policy guides, the CEQ guidelines will be followed by the responsible Department officials in complying with policies and provisions of the NEPA and section 309 of the Clean Air Act. These procedures do not apply to the Agency for International Development, the Arms Control and Disarmament Agency, and the U.S. Information Agency. These procedures likewise do not apply to the United States section of the International Boundary and Water Commission (U.S.-Mexico) which operates under compatible and more specialized procedures. The requirements of these procedures are in addition to, and not a substitute for, any environmental analyses or consultations required by any international obligations of the United States.

2. *Determining the need for environmental impact statements.* (a) Whether or not an environmental impact statement is required under section 102(2)(C) of the NEPA and filed for any Department action, the policies and provisions of the act require that the environmental effects of proposed actions, and reasonable alternatives thereto (including those not within the authority of the Department), be considered. The process of deciding on the need for an environmental impact statement on any Department action will itself require an analysis of the effects that the proposed action will have on the human environment. The inquiry into environmental effects is mandated, independent of the requirement to file environmental impact statements, by section 102(2)(B) of the act, which requires procedures to insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic, technical and other considerations. CEQ Guideline No. 1 underscores this by recognizing that the purpose of section 102(2)(C) is to build into the agency decision-making process an appropriate and careful consideration of the environmental aspects of proposed actions, and to assist agencies in implementing not only the letter, but the spirit, of the act. While the procedural requirements of section 102(2)(C) must be carefully complied with, it must also be emphasized that the essence of the act is the need for real consideration of environmental effects.

(b) Section 102(2)(C) of NEPA requires an environmental impact statement on "every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment." Therefore, an activity which is both a major Federal action and which has a potentially significant effect on the environment requires an impact statement. For a general elaboration of the terms, see the CEQ guidelines, especially CEQ Guidelines 5(a) and 5(b).

3. *Responsibility within the Department.* The Office of Environmental Affairs (SCI/EN) has primary responsibility for the Department's compliance with the requirements of NEPA and for determining whether any proposed action requires an environmental impact statement.

Each Department bureau (including the United States section of the International Boundary Commission and the International Joint Commission (U.S.-Canada)) having operational responsibility over a proposed major action which may significantly affect the environment shall inform SCI/EN of the proposed action, its potential environmental impact and reasonable alternatives thereto. In order to determine whether the proposed action will be a "major Federal action significantly affecting the quality of the human environment," SCI/EN together with the responsible bureau will investigate the direct and indirect environmental effects of the proposed action and shall consult with the Assistant Legal Adviser for Environmental Affairs (L/EN). Where appropriate to supplement work in evaluating the environmental impact of the proposed action, they will solicit information from other parts of the Department, from other government agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, or from private organizations.

In each instance where it is determined, after this investigation, that no environmental impact statement will be prepared by the Department, a memorandum will be prepared for Department files indicating the extent of the investigation conducted and the reasons for the determination that no impact statement will be prepared. A list of such actions will be available to Government agencies or members of the public on request to SCI/EN. In assessing the need for impact statements regarding any particular action, the following guides will be considered:

(a) Not every Department activity will be considered a major Federal action, for the purposes of the act. For example, the following general classes of actions ordinarily do not require the filing of an environmental impact statement:

(i) Participation in research or study projects;

(ii) Mandatory actions required under any treaty or international agreement to which the United States is a party, or required by the decisions of international organizations, authorities, or consultations in which the United States is a member or participant;

(iii) The payment of contributions to any organization pursuant to the obligation of a treaty or other international agreement; or acquiescence in the expenditure of funds of an international organization where the United States has no unilateral right to control such expenditures.

(b) Indirect effects of U.S. activities can lead to a need to file an environmental impact statement. Agreements which influence resource allocations, population trends, and trade and development patterns, may have a significant environmental impact and therefore may require a statement. For example, an agreement to construct a canal connecting hitherto unconnected bodies of water, which may substantially alter shipping and trade patterns, may require a statement. Such secondary effects must be considered, and included, if necessary, in the statement itself.

(c) The Department is responsible for determining whether an environmental impact statement is required and for preparing an environmental impact statement only with respect to the Federal actions as to which it is the "lead agency," as defined in CEQ Guideline 5(b). Projects such as the completion of the Pan American Highway through the Darien Gap would be the subject of environmental impact statements, if otherwise required, prepared by the Department of Transportation or other lead agency. In some cases, joint preparation of the statement by two or more agencies may be appropriate.

Where it is determined that an environmental impact statement will be prepared by the Department, SCI/EN and the responsible bureau will prepare the statement. In doing so, they may, where appropriate, solicit information and comment from private organizations and government agencies with special expertise or interest, and engage in consultations, as appropriate, with foreign governments whose environments are substantially affected by the proposed action. Advice on legal requirements for

filing environmental impact statements and on legal requirements regarding their contents will be obtained from the Assistant Legal Adviser for Environmental Affairs (L/EN).

4. *Responsibility for investigation into environmental effects of all proposed actions.* Even where it is clear from the start that a proposed action will not require an environmental impact statement, the consideration of possible environmental effects will still be made, and, as required by the act, the results of that investigation will be an integral part of the decisionmaking process. Furthermore, where no impact statement will be prepared, SCI/EN and the responsible bureau will nonetheless submit for review and concurrence to EPA all proposals for legislation, regulations, and construction projects which are related to the statutory responsibilities of the Administrator of the EPA, as indicated in CEQ Guideline No. 8.

5. *General procedure.* Unless excluded under section 3, actions of the Department which are covered by the act will require an environmental impact statement. The departures described herein from normal procedure for filing and reviewing statements embodied in CEQ guidelines reflect the peculiar problems of carrying on international relations, especially when negotiations or discussions with foreign countries are involved.

(a) CEQ Guideline 10(b) requires "that draft environmental statements be prepared and circulated for comment and furnished to the Council early enough in the agency review process before an action is taken in order to permit meaningful consideration of the environmental issued involved." In the case of interenational agreements, draft statements will, where possible, normally be prepared, circulated for comment, and forwarded to the CEQ prior to the commencement of negotiations intended to produce a final agreement. Where possible, the draft statement should accompany the request under the Department's regulations (Circular 175 authority, 11 FAM 720) for authority to negotiate the agreement. Where appropriate, a draft statement may be prepared prior to the establishment of a U.S. position, indicating that two or more alternatives are under consideration without specifying the Department's preference. The statements will reflect the research and independent assessments of the Department personnel charged with their preparation and the studies, reports, or information considered in preparing the statement, and will comply with the requirements of section 102(2)(C) of the act as to content, as set forth in CEQ Guideline No. 6, but subject to section 6 of these procedures. In particular, the draft should discuss all reasonable alternatives to the proposed course of action. The draft should indicate whether and to what extent interests and considerations of Federal policy outweigh any potentially harmful impact on the environment.

(b) The draft statements will be distributed by SCI/EN and the responsible bureau for comment to government agencies with jurisdiction by law or special expertise with respect to any environmental impact involved, as determined by CEQ in Appendix II of the CEQ guidelines, and, in accordance with section 6(d) below, made available to the public. Upon circulation of draft statements to the Environmental Protection Agency, comments shall be requested under both the NEPA and section 309 of the Clean Air Act. Notice of the draft statement's availability will be published in the FEDERAL REGISTER as a public notice. SCI/EN and the responsible bureau shall arrange for this publication.

Any comments received will be considered in final policy decisions and in the preparation of a final environmental impact statement. All such comments should be attached to the final statement, and those responsible comments not adequately discussed in the draft statement should be appropriately dealt with in the final statement. In any case where comments are not received in sufficient time to allow consideration in final policy decisions, they should be considered in future decisionmaking in similar areas of policy.

6. *Exceptions.* The nature of negotiations and relations at the international level may make it necessary to depart in some instances from the procedures in the CEQ guidelines. CEQ foresaw the need for such departures in CEQ Guidelines 4 and 10. Exceptions applicable to the Department are set forth below:

(a) The statements which are written to comply with the act should not normally include any classified or administratively controlled material. However, there may be situations where such statements cannot adequately discuss environmental effects without including material classified or administratively controlled under the provisions of 22 CFR Part 9 et seq. The handling and disclosure of such material shall be governed by 22 CFR Part 9 et seq. In any event, however, those portions of any statement which are not classified or administratively controlled shall be made available to the public unless the material thus disclosed would be distorted or incomprehensible.

(b) Every attempt will be made to comply with the 30-day and 90-day periods which CEQ Guideline 10(b) requires between submission of statements and final action. Where schedules of international conferences or other factors make this impossible, the Department will consult with the CEQ concerning appropriate modifications by the Department of these minimum periods for the case in question and any appropriate special arrangements for the availability of environmental impact statements. In any event, where advice and consent to a proposed treaty will be sought or where substantial delay between negotiation and signature of a proposed executive agreement is envisioned, the final statement should be made available as soon as possible after the conclusion of an agreed text.

(c) Normally, agencies consulted in accordance with CEQ Guideline 7 shall be allowed 30 days for reply, and the EPA shall be allowed 45 days. However, the procedure in section 6(b) above will be followed if it becomes necessary to reduce these periods. When this is the case, all agencies to whom the draft statement has been sent will be informed by the responsible bureau of the reduced time period. The reduced time period must also be included in the public notice published in the FEDERAL REGISTER.

(d) Section 2(b) of Executive Order 11514 establishes requirements for providing public information on Federal actions and impact statements and envisions use of public hearings wherever appropriate. Public hearings will be employed by the Department following the circulation of each draft impact statement unless it is determined that the requirements of carrying on international relations, including the constraints of time and the posture of the United States in negotiation, do not allow such hearings to be carried out without prejudice to the national interest. The provisions of the Administrative Procedures Act do not apply to hearings involving "foreign affairs functions"; however, in each case where hearings are employed in accordance with this paragraph, a public notice of the hearing shall be published in the FEDERAL REGISTER indicating the time and place of the hearing and the matters to be considered, and the draft environmental impact statement shall be made available to the public at least 15 days prior to the hearing. SCI/EN and the responsible bureau shall arrange for the hearing and the publication of the prescribed notice, and shall conduct the hearing. If such hearings cannot be carried out, arrangements should still be made, where practicable, for an expedited opportunity for members of the public to present their views orally.

For the Secretary of State.

Dated: August 31, 1972.

WILLIAM B. MACOMBER, Jr.,
Deputy Under Secretary for Management.

[FR Doc.72-15991 Filed 9-18-72;8:59 am]

[Public Notice 365]

INTERNATIONAL CONVENTIONS AND IMPLEMENTING LEGISLATION ON LIABILITY AND COMPENSATION FOR OIL POLLUTION DAMAGE

Availability of Draft Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of State has prepared a draft environmental impact statement for the proposed ratification

of the International Convention on Civil Liability for Oil Pollution Damage and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, and the proposed enactment of the Act to implement these Conventions.

The proposed Act and Conventions together provide for strict liability, within certain monetary limits, on the part of the owners of vessels carrying oil for oil pollution damage, and create a fund from mandatory contributions of receivers of oil carried by sea to further compensate victims of oil pollution damage.

Copies may be obtained by writing to the National Technical Information Service, Department of Commerce, Springfield, Va. 22151.

For the Secretary of State.

Dated: September 11, 1972.

CHRISTIAN A. HERTER, JR.,
Special Assistant to the Secretary for Environmental Affairs.

[FR Doc.72-15990 Filed 9-18-72;8:59 am]

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federal register

TUESDAY, SEPTEMBER 19, 1972
WASHINGTON, D.C.
Volume 37 ■ Number 182
PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN RED RIVER VALLEY 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 1104, 1106, 1120, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1138]

[Dockets Nos. AO–298–A19, etc.]

MILK IN RED RIVER VALLEY 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 II	
1104	Red River Valley	AO–298–A19.
1106	Oklahoma Metropolitan	AO–210–A31.
1120	Lubbock-Plainview, Tex	AO–328–A13.
1126	North Texas	AO–231–A37.
1127	San Antonio, Tex	AO–232–A23.
1128	Central West Tex	AO–238–A26.
1129	Austin-Waco, Tex	AO–256–A19.
1130	Corpus Christi, Tex	AO–259–A23.
1131	Central Arizona	AO–271–A15.
1132	Texas Panhandle	AO–262–A22.
1138	Rio Grande Valley	AO–335–A18.

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 I

Georgia	Memphis, Tenn.
Neosho Valley	Nashville, Tenn.
Wichita, Kans.	Fort Smith, Ark.
Chattanooga, Tenn.	Mississippi
New Orleans, La.	Central Arkansas
Northern Louisiana	

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 multistate 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 discernible 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 milkshake 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

[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.

accounted for in Class II or Class III, other than shrinkage permitted a 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 milkshake 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 milkshake 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 classification 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 foodstores 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 desserts in Class III.

It is possible that a product very similar in composition and form to chocolate milk could be marketed under the label of a 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 consumers.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are being marketed for the same beverage use. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products, which are being sold in sterilized form, are now excluded from the Class I classification and, as proposed by cooperatives and handlers, such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Proponents recognized, however, that their proposed fluid milk product definition would include some products not intended by them to be in Class I, and, at the same time, would exclude certain products that they wanted in this classification. To overcome this problem, proponents stated that certain products should be listed by name, either as inclusions or exclusions, to assure that the fluid milk product definition would include those products, and only those products, warranting a Class I classification.

Handlers 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."

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 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.

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 the finished form. A product may be modified yb 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, and 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.[2]

[2] Official notice is taken of the Assistant Secretary's decision issued on October 13, 1969 (34 F.R. 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

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.

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 11 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, eggnog, 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 ultilization in the respective order. Under its proposal, milk used in butter, nonfat 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 alinement 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 four 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 II 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

[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.

the present procedure is inappropriate, it should be continued. The present procedure is used under Federal orders generally and, therefore, carries out the objective of uniformity in this respect.

Handlers may add nonfat milk solids to several of the proposed Class II products, such as half and half and light cream. 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 an other order plant or a producer-handler plant. To determine such classification, the nonpool plant's utilization must be assigned to its receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the 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 classificiation provisions for the 33 orders, provision 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 an-

other 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 shrinkage allowance for such milk from producers in the receiving and processing operations.

The provisions adopted herein are designed to carryout 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 shrinkage 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 break down, 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 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 seven 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 utiliza-

tion 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 nonfat dry milk relative to producer milk would tend to limit its use to only those situations where the nonfat dry milk has a distinct processing advantage for handlers.

No provision should be made for the direct allocation to a handler's Class II utilization of other source milk received in fluid form. Unlike the handling of nonfat dry milk, it would not be unusual for a handler to commingle in his plant any receipts of fluid other source milk with his receipts of producer milk. In this circumstance, it would not be possible to know just how much of the other source milk may have been used in the processing of a Class II product. The difficulty which a handler would have in demonstrating that he actually used fluid other source milk in a Class II product, and the administrative difficulty in verifying such claimed use, warrants the allocation of such milk in essentially the same manner as now provided by the orders.

In 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 refuse 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 provisions 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 procedure, 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

[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.

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 receipt and making a corresponding reduction 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 sub-

mitted 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 0.1 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 0.5 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 Fort Smith and Austin-Waco markets are not available.

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 handlers (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 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 proposed 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

[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.

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 resale 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 one 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, Tenn. 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 product 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 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 1104—MILK IN RED RIVER VALLEY MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1104.1 General provisions.

DEFINITIONS

1104.2 Red River Valley marketing area.
1104.3 Route disposition.
1104.4 [Reserved]
1104.5 Distributing plant.
1104.6 Supply plant.
1104.7 Pool plant.
1104.8 Nonpool plant.
1104.9 Handler.
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1104.11 [Reserved]
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AUTHORITY: The provisions of this Part 1104 issued under Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1104.1 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

§ 1104.2 Red River Valley marketing area.

"Red River Valley marketing area", hereinafter called "the marketing area", means all territory within the following counties, including all municipal corporations; Federal reservations, facilities, and installations; and State institutions located therein:

OKLAHOMA COUNTIES

Bryan.
Caddo.
Carter.
Choctaw.
Comanche.
Cotton.
Grady.
Jackson.
Jefferson.
Johnston.
Kiowa.
Love.
Marshall.
Murray.
Pushmataha.
Stephens.
Tillman.

TEXAS COUNTIES

Archer.
Baylor.
Clay.
Hardeman.
Montague.
Wichita.
Wilbarger.

§ 1104.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk, other than a delivery to a milk or filled milk plant.

§ 1104.4 [Reserved]

§ 1104.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

§ 1104.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

§ 1104.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means a plant specified in paragraph (a) or (b) of this section:

(a) A distributing plant from which during the month there is:

(1) Total route disposition of fluid milk products (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1104.13; and

(2) Route disposition of fluid milk products (except filled milk) in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1104.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of an other Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institution;

(3) A distributing 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, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(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.

§ 1104.8 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, except an other order plant or 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 § 1104.7 and which is not an other order plant or a producer-handler plant.

§ 1104.9 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 the milk of producers diverted for the account of such association pursuant to § 1104.13;

(c) A cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association, or under the control of such association, by contract or otherwise, to the extent that such association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(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 § 1104.7(c)

§ 1104.10 Producer-handler.

"Producer-handler" means any person who produces milk and who operates a plant from which the route disposition in the marketing area does not exceed such person's own production and fluid milk products received from a pool plant regulated under either this Part or Part 1106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

§ 1104.11 [Reserved]

§ 1104.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted health authority, which milk is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1104.13 by a handler for his account.

(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 § 1104.44 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.

§ 1104.13 Producer milk.

"Producer milk" means skim milk and butterfat in milk from producers that is:

(a) Received by the operator of a pool plant at such pool plant from producers;

(b) Received by the operator of a pool plant at such pool plant from a handler described in § 1104.9(c);

(c) Diverted by the operator of a pool plant from such pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (f) of this section;

(d) Received from producers by a handler described in § 1104.9(c) in an amount in excess of the quantity delivered by such handler to pool plants pursuant to paragraph (b) of this section; or

(e) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (f) of this section;

(f) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of subparagraph (3) of this paragraph, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of subparagraph (3) of this paragraph, milk of producers not members of a cooperative association diverting milk pursuant to subparagraph (1) of this paragraph, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for as received by the diverting handler at the location of the nonpool plant.

§ 1104.14 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 § 1104.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1104.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1104.40(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 § 1104.40(b)(1)) for which the handler fails to establish a disposition.

§ 1104.15 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 § 1104.40 (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.

§ 1104.16 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.

§ 1104.17 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).

§ 1104.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) Has and is exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1104.30 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 mlik, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1104.9(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 § 1104.40(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 § 1104.9 (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.

§ 1104.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1104.9 (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 § 1104.76 (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.

§ 1104.32 Other reports.

(a) Each handler who causes milk to be diverted 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 plant to which it is to be diverted.

(b) In addition to the reports required pursuant to §§ 1104.30 and 1104.31 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

§ 1104.40 Classes of utilization.

Except as provided in § 1104.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1104.30 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 paragarph (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 product 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 § 1104.41(a) to the receipts specified in § 1104.41(a)(2) and in shrinkage specified in § 1104.41 (b) and (c).

§ 1104.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1104.30, 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 § 1104.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1104.9(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. If farm weights and tests are not used as the basis for any such milk commingled in a tank truck with milk of producers who are not members of the cooperative association, the milk received from the cooperative association shall be the proportion of the total receipts at the plant that such milk was of the total receipts determined at the respective farms;

(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 § 1104.9 (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.

§ 1104.42 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 § 1104.44(a) (12) and the corresponding step of § 1104.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1104.44(a) (7) or the corresponding step of § 1104.44(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 § 1104.44(a) (11) or (12) or the corresponding steps of § 1104.44(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 § 1104.40.

(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 (*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 § 1104.30 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.

§ 1104.43 General classification rules.

In determining the classification of producer milk pursuant to § 1104.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1104.30 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 § 1104.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1104.40, 1104.41, and 1104.42;

(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 § 1104.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1104.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1104.9(a) for each of his pool plants separately and of each handler described in § 1104.9 (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 § 1104.41(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 § 1104.40(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 § 1104.40(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 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 § 1104.40(c)(6)), any product specified in § 1104.40(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 § 1104.40(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 (*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 § 1104.40(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 § 1104.45(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 § 1104.42(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 paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1104.45 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 § 1104.44(a)(12) and the corresponding step of § 1104.44(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 § 1104.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the vertification 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 and the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports the milk so received from members of such association shall be prorated to each class in accordance with the same percentage as the total receipts of producer milk bear to such utilization of milk by such handler.

CLASS PRICES

§ 1104.50 Class prices.

Subject to the provisions of § 1104.52, 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 price for Class I milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area at Oklahoma City, plus 22 cents.

(b) *Class II price.* The Class II price shall be the price for Class II milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

(c) *Class III price.* The Class III price shall be the price for Class III milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

§ 1104.51 [Reserved]

§ 1104.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Texas and more than 40 miles from Wichita Falls, Tex., and classified as Class I milk or assigned a Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1104.50(a) shall be reduced at the rate set forth in the following schedule. The distance shall be based on the shortest highway distance, as determined by the market administrator, that the plant is from the City Hall in Wichita Falls, Tex.

Distance (miles)	*Rate per hundredweight (cents)*
40.1–70	12
70.1–100	15
For each additional 10 miles or fraction thereof in excess of 100 miles an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent 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 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.

§ 1104.53 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.

§ 1104.54 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

§ 1104.60 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 § 1104.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1104.44 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 § 1104.44(a)(14) and the corresponding step of § 1104.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1104.74, 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 § 1104.44(a)(9) and the corresponding step of § 1104.44(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 § 1104.44(a)(7) (i) through (iv) 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 § 1104.44(a)(7) (v) and (vi) and the corresponding step of § 1104.44(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 § 1104.44(a)(11) and the corresponding step of § 1104.44(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.

§ 1104.61 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 as follows:

(a) Combine into one total the values computed pursuant to §1104.60 for all handlers who filed the reports prescribed by §1104.30 for the month and who made the payments pursuant to §§1104.71 and 1104.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to §1104.75;

(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 § 1104.6(f); and

(e) Substract not less than 4 cents nor more than 5 cents per hundredweight. The results shall be the "uniform price" for milk received from producers.

§ 1104.62 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

§ 1104.70 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 §§ 1104.71, 1104.76, and 1104.77 and from which he shall make all payments to handlers pursuant to §§ 1104.72 and 1104.77: *Provided,* That any payments due to any handler may be offset by any payments due from such handler.

§ 1104.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each person 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 § 1104.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1104.75, 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 § 1104.60(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.

§ 1104.72 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 § 1104.71(a)(2) exceeds the amount computed pursuant to § 1104.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the necessary funds are available.

§ 1104.73 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 during 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;

(2) On or before the 15th day of the following month, an amount equal to not less than the applicable uniform price, as adjusted pursuant to §§ 1104.74 and 1104.75, multiplied by the hundredweight of 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 § 1104.86, (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 pursuant to § 1104.72, 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)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 27th and 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member-producer (*a*) the total pounds of milk received during the preceding month, (*b*) the total pounds of butterfat contained in such milk, (c) the number of days of production included in such receipts, and (*d*) the amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month written information which shows for each such member-producer the total pounds of milk received during the first 15 days of the current month.

The foregoing payment and submission of information shall be made with respect to the milk, of each producer who the cooperative association certifies is a member, which is received on and after the first day of the calendar 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

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a handler described in § 1104.9(c), shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(i) Partial payment for milk received during the first 15 days of the month at the rate specified in paragraph (a) of this section; and

(ii) In making final settlement, the value of such milk at the uniform price, as adjusted pursuant to §§ 1104.74 and 1104.75, less the amount of partial payment made for such milk.

§ 1104.74 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.

§ 1104.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1104.73 for producer milk received at a pool plant, the uniform price computed pursuant to § 1104.61 shall be reduced according to the location of the pool plant at the rate set forth in § 1104.52(a);

(b) For the purpose of computations pursuant to §§1104.71 and 1104.72, the uniform price shall be adjusted at the rate set forth in § 1104.52(a) applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1104.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1104.61 shall be reduced according to the location of the nonpool plant at which the milk is received at the rate set forth in § 1104.52(a).

§ 1104.76 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 §§ 1104.30(b) and 1104.31(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 II 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 § 1104.60 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 § 1104.60 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 § 1104.60 for such handler shall include, in lieu of the value of other source milk specified in § 1104.60(f) less the value of such other source milk specified in § 1104.71(a)(2)(ii), a value of milk determined pursuant to § 1104.60 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 § 1104.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1104.30 (b) and 1104.31(b) similar reports for each 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 § 1104.60 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.

§ 1104.77 Adjustment of accounts.

(a) Whenever audit by the market administrator or other verification discloses errors resulting in moneys due (1) the market administrator from a handler, (2) a handler from the market administrator, or (3) 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 errors occurred.

(b) Any unpaid obligation of a handler pursuant to § 1104.71, § 1104.85, § 1104.86, or paragraph (a)(1) of this section shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and compounded on the first day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1104.85 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 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 that pursuant to § 1104.13(b) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1104.44(a) (7) and (11) and the corresponding steps of § 1104.44(b), except such other source milk that is excluded from the computations pursuant to § 1104.60 (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 § 1104.76(a)(2).

§ 1104.86 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 § 1104.73 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 such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1106.85 Assessment for order administration.
1106.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1106 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1106.1 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

§ 1106.2 Oklahoma Metropolitan marketing area.

"Oklahoma Metropolitan marketing area", hereinafter called the "Marketing Area", means all the territory within Tulsa County, the city of Sapulpa, and the township of Sapulpa in Creek County; that part of Black Dog Township in 20 North. Ranges 10, 11, and 12 East in Osage County; the cities of Muskogee, McAlester, Ponca City, and Tahlequah; Oklahoma County, except Deer Creek, Deep Fork, and Luther Townships; Moore, Taylor, Case, Liberty, Norman, and Noble Townships in Cleveland County; Bales, Davis, Dent, Brinton, Rock Creek, Forest, and Earlsboro Townships in Pottawatomie County; the city and township of Guthrie in Logan County; the city and township of Stillwater and Union Township, including the city of Cushing in Payne County; and the city of Enid and Vance Air Force Base in Garfield County; all in the State of Oklahoma.

§ 1106.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery in bulk to a milk or filled milk plant.

§ 1106.4 [Reserved]

§ 1106.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

§ 1106.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

§ 1106.7 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 there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1106.13; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1106.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under

this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein.

(c) A plant(s) operated by a cooperative association and located not more than 50 miles from the City Hall of Tulsa or Oklahoma City, Okla., at which milk is received from dairy farmers producing milk approved by a duly constituted health authority for fluid consumption if the total of fluid milk products described in subparagraphs (1) and (2) of this paragraph received at plants described pursuant to paragraph (a) of this section is not less than 50 percent of total milk of member producers during the month:

(1) Fluid milk products (except filed milk) transferred from such cooperative association plant(s); and

(2) Milk of member producers received from such producers.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph 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 pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(4) A supply plant qualified pursuant to paragraph (b) of this section which 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.

§ 1106.8 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, a governmental agency 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, except an other order plant, a governmental agency plant, or a producer-handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.7

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1106.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants: *Provided,* That in the case of recognized divisions of a corporation which are operated as separate business units, each such division shall be deemed to be a handler;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1106.13 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of its member producers delivered to the pool plant of another handler in a tank truck owned or operated by such cooperative association for the account of such cooperative association. Such milk shall be considered to have been received by such 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 § 1106.7(d).

§ 1106.10 Producer-handler.

"Producer-handler" means any person who produces milk and operates a plant which meets the standards in § 1106.5(a) from which there is route disposition in the marketing area, but who receives no milk from producers or other dairy farmers, and whose disposition of Class I milk does not exceed his own production and fluid milk products received from pool plants.

§ 1106.11 [Reserved]

§ 1106.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted health authority, which is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1106.13 by a handler for his account.

(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 this order and such milk is allocated pursuant to § 1106.44 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.

§ 1106.13 Producer milk.

"Producer milk" means skim milk and butterfat in milk from producers that is:

(a) Received by the operator of a pool plant at such pool plant from producers.

(b) Diverted by the operator of a pool plant from such pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(c) Received from producers by a handler described in § 1106.9(c).

(d) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(e) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of subpaargraph (3) of this paragraph, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section

shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of subparagraph (3) of this paragraph, milk of producers not members of a cooperative association diverting milk pursuant to subparagraph (1) of this paragraph, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for as received by the diverting handler at the location of the nonpool plant.

§ 1106.14 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 § 1106.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1106.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1106.40(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 § 1106.40(b)(1)) for which the handler fails to establish a disposition.

§ 1106.15 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 § 1106.40 (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.

§ 1106.16 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.

§ 1106.7 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk products, and contains less than 6 percent nonmilk fat (or oil).

§ 1106.18 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";

(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.

§ 1106.19 Accounting period.

"Accounting period" shall mean a calendar month unless the handler during any calendar month makes a request in writing to the market administrator requesting two accounting periods during the month. No accounting period shall be of less than 5 days duration and the request for two accounting periods must be made at least 48 hours prior to the end of the first accounting period in the month.

Handler Reports

§ 1106.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for each accounting period in the 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 § 1106.9(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 accounting period of fluid milk products and products specified in § 1106.40(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 § 1106.9 (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.

§ 1106.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1106.9 (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 § 1106.76 (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.

§ 1106.32 Other reports.

(a) Each handler who causes milk to be diverted to a nonpool plant, shall, prior to such diversion, report to the market administrator and to the co-

operative 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 §§ 1106.30 and 1106.31 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

§ 1106.40 Classes of utilization.

Except as provided in § 1106.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1106.30 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 accounting period 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 accounting period 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 § 1106.41(a) to the receipts specified in § 1106.41(a)(2) and in shrinkage specified in § 1106.41 (b) and (c).

§ 1106.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1106.30, 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 § 1106.9(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 § 1106.9 (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.

§ 1106.42 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 buttterfat 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 § 1106.44(a)(12) and the corresponding step of § 1106.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1106.44(a) (7) or the corresponding step of § 1106.44(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 tranferor-handler received during the month other source milk to be allocated pursuant to § 1106.44(a) (11) or (12) or the corresponding steps of § 1106.44(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 § 1106.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency 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, a producer-handler plant, or a governmental agency 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 (*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 § 1106.30 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.

§ 1106.43 General classification rules.

In determining the classification of producer milk pursuant to § 1106.44, the following rules shall apply:

(a) Each accounting period the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1106.30 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 § 1106.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1106.40, 1106.41, and 1106.42;

(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 § 1106.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1106.44 Classification of producer milk.

For each accounting period the market administrator shall determine the classification of producer milk of each handler described in § 1106.9(a) for each of his pool plants separately and of each handler described in § 1106.9 (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 § 1106.41(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 § 1106.40(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 § 1106.40(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 § 1106.40(c) (6)), any product specified in § 1106.40(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 § 1106.40(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 a governmental agency 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 (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 location 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 § 1106.9(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 § 1106.40(b) (1) in inventory at the beginning of the accounting period 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 § 1106.45(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 § 1106.42(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 § 1106.44(a)(14) and the corresponding step of § 1106.44(b).

§ 1106.45 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 § 1106.44(a)(12) and the corresponding step of § 1106.44(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 avavilable 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 § 1106.44 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 amount and class utilization of milk caused to be delivered by such cooperative association either directly or from producers who are members of such cooperative association, to each handler to whom the cooperative association sells milk. For the purposes of this report, the milk caused to be so delivered by a cooperative association 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

§ 1106.50 Class prices.

Subject to the provisions of § 1106.52, the class prices for the month per hundred weight 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 $1.98.

(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.

§ 1106.51 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 $4.32.

§ 1106.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Texas and that portion of the State of Oklahoma that is south of the northern boundaries of Beckham, Washita, Caddo, Canadian, Oklahoma, Pottawatomie, and Seminole Counties and west of the eastern boundaries of Seminole, Pontotoc, Johnston, and Marshall Counties, and 50 or more miles from the city hall in Oklahoma City, by the shortest hard-surfaced highway distance as determined by the market administrator, and classified as Class I milk or assigned location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1106.50(a) shall be subject to a location adjustment credit computed as follows:

Distance from the city hall in Oklahoma City (miles)	*Cents per hundredweight*
50 to 150	10
150.1 to 165	12
165.1 to 180	14
180.1 to 195	16
195.1 to 210	18
210.1 to 225	20
225.1 to 240	22

Plus 1 cent for each additional 15 miles or fraction thereof in excess of 240 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant in an amount 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 § 1106.9(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.

§ 1106.53 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.

§ 1106.54 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

§ 1106.60 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 § 1106.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1106.44 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 § 1106.44(a)(14) and the corresponding step of § 1106.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1106.74, 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 § 1106.44 (a)(9) and the corresponding step of § 1106.44(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 § 1106.44(a)(7) (i) through (iv) and the corresponding step of § 1106.44(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 § 1106.44(a)(7) (v) and (vi) and the corresponding step of § 1106.44(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 § 1106.44(a)(11) and the corresponding step of § 1106.44(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 § 1106.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1106.61 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 § 1106.60 for all handlers who made the reports prescribed in § 1106.30 and who made the payments pursuant to §§ 1106.71 and 1106.73 for the preceding month.

(b) Add the aggregate of the values of all allowable location adjustments to producers pursuant to § 1106.75.

(c) Add not less than one-half of the cash balance on hand in the producer-settlement fund less the total amount of the contingent obligations to handlers pursuant to § 1106.72.

(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 § 1106.60(f).

(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.

§ 1106.62 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

§ 1106.70 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 §§ 1106.71, 1106.76, and 1106.77 and from which he shall make all payments to handlers pursuant to §§ 1106.72 and 1106.77.

§ 1106.71 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 § 1106.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1106.75, 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 § 1106.60(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.

§ 1106.72 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 including a cooperative association which is a handler the amount, if any, by which the amount computed pursuant to § 1106.71(a)(2) exceeds the amount computed pursuant to § 1106.71(a)(1). 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.

§ 1106.73 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 the month during which the milk was received, to each producer to whom payment is not made pursuant to paragraph (c) of this section, at not less than the applicable uniform price(s) for such month computed pursuant to § 1106.61, as adjusted pursuant to §§ 1106.74 and 1106.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided,* That if by such date such handler has not received full payment pursuant to § 1106.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payment from 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 last day of each month, to each producer for whom payment is not made pursuant to paragraph (d) of this section for milk received from him during the first 15 days of the month at not less than the Class III price for the preceding month;

(c) To a cooperative association with respect to milk for which the cooperative association is a handler on or before the 10th day of each month for milk which is caused to be delivered to such handler during the preceding month at not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the receiving handler's pool plant; and

(d)(1) Upon receipt of written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 13th and 27th days of each month in lieu of payments pursuant to paragraphs (a) and (b), respectively of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member producer:

(*a*) The total pounds of milk received during the preceding month;

(*b*) The total pounds of butterfat contained in such milk;

(*c*) The number of days on which milk was received; and

(*d*) The amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month, written information which shows for each member producer the total pounds of milk received during the first 15 days of the current month. The foregoing payment and submission of information shall be made with respect to milk of each producer, who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following the 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

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1106.74 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.

§ 1106.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1106.73 for producer milk received at a pool plant, the uniform price computed pursuant to § 1106.61 shall be reduced according to the location of the pool plant at the rate set forth in § 1106.52(a);

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.72, the uniform price shall be adjusted at the rate set forth in § 1106.52(a) applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1106.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1106.61 shall be reduced according to the location of the nonpool plant at which the milk is received at the rate set forth in § 1106.52(a).

§ 1106.76 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 §§ 1106.30(b) and 1106.31(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) And 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 § 1106.60 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 § 1106.60 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 § 1106.60 for such handler shall include, in lieu of the value of other source milk specified in § 1106.60(f) less the value of such other source milk specified in § 1106.71(a)(2)(ii), a value of milk determined pursuant to § 1106.60 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 § 1106.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1106.30 (b) and 1106.31(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 § 1106.60 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.

§ 1106.77 Adjustments of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts 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 in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1106.85 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 the milk described in paragraphs (a), (b), and (c) of this section. For each handler using two accounting periods in a month, the rate of payment shall be twice the rate for monthly accounting periods, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting period:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1106.44(a) (7) and (11) and the corresponding steps of § 1106.44(b), except such other source milk that is excluded from the computations pursuant to § 1106.60 (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 § 1106.76(a)(2).

§ 1106.86 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 § 1106.73 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 money 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) 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 deductions 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 and on or before the 15th day after the end of the month pay such deduction to the cooperative association rendering such services, identified by a statement showing for each such producer the information required to be reported to the market administrator pursuant to § 1106.31(a). 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 § 1106.31(a).

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEXAS, MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1120.85 Assessment for order administration.
1120.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1120 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1120.1 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

§ 1120.2 Lubbock-Plainview, Tex., marketing area.

"Lubbock-Plainview, Tex., marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the counties of:

Bailey.	Hale.
Castro.	Hockley.
Cochran.	Lamb.
Cottle.	Lubbock.
Crosby.	Lynn.
Dickens.	Motley.
Floyd.	Terry.
Gaines.	Yoakum.
Garza.	

all within the State of Texas, including all territory within such boundaries occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments.

§ 1120.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product 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 a plant.

§ 1120.4 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 from dairy farmers or processed or packaged: *Provided,* That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit on routes shall not be a plant under this definition.

§ 1120.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of any Grade A fluid milk product during the month in the marketing area.

§ 1120.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable for distribution under a Grade A label is moved during the month to a distributing plant.

§ 1120.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means a plant specified in paragraph (a) or (b) of this section.

(a) A distributing plant from which there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) during the month unless the volume so disposed of in the marketing area is less than 15 percent of such receipts or less than 1,500 pounds on a daily average: *Provided,* That if a portion of such plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be a part of such pool plant pursuant to this paragraph.

(b) A supply plant from which a volume of fluid milk products, except filled milk, equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) is transferred during the month to a distributing plant from which during the month there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants and the volume to disposed of in the marketing area is at least 15 percent of such receipts or a daily average of 1,500 pounds, whichever is less: *Provided,* That if a portion of such supply plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be part of such pool plant pursuant to this paragraph: *And provided further,* That any plant which was a pool plant pursuant to this paragraph in each of the months of September through November shall be a pool plant for the following months of March through June, unless written application is filed with the market administrator on or before the first day of any such months for designation as a nonpool plant for the remaining months through June.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or a State institution 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, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area, unless notwithstanding the provisions of this subparagraph it is regulated under such other order; or

(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 route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is fully regulated under such other Federal order.

§ 1120.8 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 any nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

(e) "State institution plant" means a State owned and operated institution or establishment which processes or packages fluid milk products distributed solely on its premises or those of other State institutions or establishments. Such plant shall be exempt from all provisions of this part.

§ 1120.9 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 producer which it causes to be diverted for its account pursuant to § 1120.12;

(c) A cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under the control of such association, unless the association notifies the market administrator and the operator of the pool plant in writing prior to the time of delivery that the transferee-handler is to be the responsible handler on such milk;

(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 § 1120.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1120.10 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 fluid milk products handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risks of such person.

§ 1120.11 [Reserved]

§ 1120.12 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 either directly or by a handler described in § 1120.9(c); or

(2) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of either the operator of the pool plant or a cooperative association:

(i) Any day during the months of March through June; and

(ii) Not more than 15 days production during any month of July through February: *Provided,* That milk so diverted shall be deemed to have been received at the location of the pool 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 order designates such person as a producer under that order and such milk is allocated pursuant to § 1120.44 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 a person as a producer under that order with respect to such milk.

§ 1120.13 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 § 1120.12; or

(c) Milk received by a handler described in § 1120.9(c): *Provided,* That such milk shall be deemed to have been received by such cooperative association at a pool plant at the location of the pool plant to which it was delivered.

§ 1120.14 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 § 1120.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1120.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1120.40(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 § 1120.40(b)(1)) for which the handler fails to establish a disposition.

§ 1120.15 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 § 1120.40 (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 instant 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.

§ 1120.16 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.

§ 1120.17 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).

§ 1120.18 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.

§ 1120.19 Accounting periods.

A handler may account for receipts, utilization, and classification of skim milk and butterfat at any of his pool plants for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not later than 24 hours prior to

the end of an accounting period notification of his intention to use two accounting periods.

HANDLER REPORTS

§ 1120.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for each accounting period in the 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 § 1120.9(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 § 1120.40(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 § 1120.9 (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.

§ 1120.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1120.9 (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 § 1120.76(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.

§ 1120.32 Other reports.

(a) Each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the first day other source milk is received in the form of any fluid milk product at any of his pool plants 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

(2) Prior to his diversion of producer milk to a nonpool plant, 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 §§ 1120.30 and 1120.31 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

§ 1120.40 Classes of utilization.

Except as provided in § 1120.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1120.30 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 § 1120.41(a) to the receipts specified in § 1120.41(a)(2) and in shrinkage specified in § 1120.41 (b) and (c).

§ 1120.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1120.30, 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 § 1120.9(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 § 1120.9 (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.

§ 1120.42 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 § 1120.9(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 § 1120.44(a)(12) and the corresponding step of § 1120.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1120.44(a)(7) or the corresponding step of § 1120.44(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 § 1120.44(a) (11) or (12) or the corresponding steps of § 1120.44(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 § 1120.40.

(c) *Transfers to producer-handlers and to State institution plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or a State institution plant 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 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 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, a producer-handler plant, or a State institution 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 (*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 § 1120.30 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.

§ 1120.43 General classification rules.

In determining the classification of producer milk pursuant to § 1120.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1120.30 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 § 1120.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1120.40, 1120.41, and 1120.42;

(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 § 1120.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1120.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1120.9(a) for each of his pool plants separately and of each handler described in § 1120.9 (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 § 1120.41(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 § 1120.40(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 § 1120.40(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 § 1120.40(c)(6)), any product specified in § 1120.40(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 § 1120.40(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 a State institution 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 (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 § 1120.9(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 § 1120.40(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 § 1120.45(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;

(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 § 1120.9(c) according to the classification of such products pursuant to § 1120.42(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 § 1120.44(a)(14) and the corresponding step of § 1120.44(b).

§ 1120.45 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 § 1120.44(a)(12) and the corresponding step of § 1120.44(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 utiliza-

tion 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 § 1120.44 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 10th day after the end of each month report to each cooperative association, upon request by such association, the percentage of producer milk caused to be delivered by 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 the proportion that the total receipts of producer milk by such handler were used in each class.

CLASS PRICES

§ 1120.50 Class prices.

Subject to the provisions of § 1120.52, 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 $2.42.

(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.

§ 1120.51 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.

§ 1120.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located either outside of the State of Texas, or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall, Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I pursuant to paragraph (b) of this section or otherwise classified as Class I milk, the price specified in § 1120.50(a) shall be reduced at the rate set forth in the following table according to the location of the plant where such milk is received:

Miles from Lubbock City Hall:	*Rate per hundredweight (cents)*
100 miles but less than 110 miles	10
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 receipts at such plant from producers and handlers described in § 1120.9(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.

§ 1120.53 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.

§ 1120.54 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

§ 1120.60 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 § 1120.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1120.44 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 § 1120.44(a)(14) and the corresponding step of § 1120.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1120.74, 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 § 1120.44 (a)(9) and the corresponding step of § 1120.44(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 § 1120.44(a)(7) (i) through (iv) and the corresponding step of § 1120.44 (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 § 1120.44(a)(7) (v) and (vi) and the corresponding step of § 1120.44(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 § 1120.44(a) (11) and the corresponding step of § 1120.44(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.

§ 1120.61 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 § 1120.60 for all pool handlers who made the reports prescribed in § 1120.30 for the month and who have made the payments required pursuant to § 1120.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1120.75;

(c) Add an amount equal to not less than one-half 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 such computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1120.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for producer milk.

§ 1120.62 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

§ 1120.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" in which he shall deposit all payments made by handlers pursuant to §§ 1120.71, 1120.76, and 1120.77, subject to the provision of § 1120.78, and from which he shall make all payments pursuant to §§ 1120.72 and 1120.77: *Provided,* That payments due to any handler shall be offset by any payment due from such handler.

§ 1120.71 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 § 1120.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1120.75, 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 § 1120.60(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.

§ 1120.72 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 § 1120.71(a)(2) exceeds the amount computed pursuant to § 1120.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments due 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.

§ 1120.73 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 for milk received from such producer as follows:

(1) On or before the last day of each month, to each producer from whom milk is currently being received, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month;

(2) On or before the 15th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1120.61 as adjusted pursuant to § 1120.74; and less

(i) Payments made pursuant to subparagraph (1) of this paragraph;

(ii) Location adjustments pursuant to § 1120.75;

(iii) Deduction for marketing services pursuant to § 1120.86: and

(iv) Proper deductions authorized by such producer;

Provided, That if by the date specified, such handler has not received full payment for such month pursuant to § 1120.72, 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 payment from the market administrator, and payments 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;

(b) Each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk on or before the 26th day of the month and the 13th day of the month following, respectively, the amounts otherwise payable pursuant to paragraph (a) of this section, for milk received from producers whom such association certifies are its members: *Provided,* That such cooperative association submits to the handler and to the market administrator before the first day of the month for which it is to receive such payment, a written request for such payment for milk received from such certified members who are producers together with a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of such association. Such request shall be honored with respect to milk received until the first day of the month in which it receives from such association, in writing, notice either of termination of membership, or of withdrawal of the original request. Exceptions, if any, to the accuracy of certification of membership by the cooperative association, by a producer who is claimed to be a member or by a handler shall be made in writing to the market administrator and shall be subject to his determination;

(c) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association as a handler pursuant to § 1120.9(c) as follows:

(1) On or before the 26th 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 class prices, as adjusted by the butterfat differential specified in § 1120.74, that are applicable at the location of the receiving handler's pool plant, less the amounts paid pursuant to subparagraph (1) of this paragraph; and

(d) In making payments to producers pursuant to paragraph (a)(2) of this section and to a cooperative association pursuant to paragraph (b) of this section each handler shall furnish each producer from whom he has received milk, or each such cooperative association with respect to each producer member, whichever is applicable, with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The applicable month;

(2) The identity of the handler, the Federal milk order under which the producer's milk was priced, and the producer;

(3) The daily and total pounds and the average butterfat content of milk received from such producer;

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

(5) The rate which is used in making the payment;

(6) The amount or the rate per hundredweight, and the nature of each deduction made by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1120.74 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 but-

terfat 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.

§ 1120.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price determined pursuant to § 1120.61 to be paid for milk which is received from producers at pool plants located either outside the State of Texas or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall of Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the table contained in § 1120.52 according to the location of the pool plant at which such milk was received from producers; and

(b) For purposes of computations pursuant to §§ 1120.71 and 1120.72 the uniform price shall be adjusted at the rates set forth in § 1120.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1120.76 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 §§ 1120.30(b) and 1120.31(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 § 1120.60 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 § 1120.60 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 § 1120.60 for such handler shall include, in lieu of the value of other source milk specified in § 1120.60(f) less the value of such other source milk specified in § 1120.71(a)(2)(ii), a value of milk determined pursuant to § 1120.60 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 § 1120.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1120.30(b) and 1120.31(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 § 1120.60 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.

§ 1120.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or account 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 provision under which such error occurred.

§ 1120.78 Charges on overdue accounts.

There shall be added to any balance due to the market administrator pursuant to §§ 1120.71, 1120.76, 1120.77, 1120.85, and 1120.86 an amount equal to one-half of 1 percent of such balance for each month or portion thereof that payment of such balance is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1120.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1120.9(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 re-

spect to the milk specified in paragraphs (a), (b), and (c) of this section: *Provided*, That if a handler elects pursuant to § 1120.19 to use two accounting periods in any month the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1120.9(c);

(b) Other source milk allocated to Class I pursuant to § 1120.44(a) (7) and (11) and the corresponding steps of § 1120.44(b), except such other source milk that is excluded from the computations pursuant to § 1120.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1120.76(a)(2).

§ 1120.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1120.73(a)(2) 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 such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator no later than the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received by handlers from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by or responsible to him.

(b) In the case of a producer for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make in lieu of the deductions specified in said paragraph (a), such deductions from payments to be made directly to such producers pursuant to § 1120.73(a)(2) as are authorized by such producers and on or before the 15th day after the end of each month pay such deductions to the cooperative association rendering such services.

PART 1126—MILK IN NORTH TEXAS MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1126.85 Assessment for order administration.
1126.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1126 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1126.1 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

§ 1126.2 North Texas marketing area.

"North Texas marketing area", hereinafter called the marketing area, means all territory, including all municipal corporations, Federal military reservations, facilities, and State institutions, within the following counties, all in the State of Texas:

Anderson.	Kaufman.
Bosque.	Lamar.
Camp.	Limestone.
Cherokee.	Marion.
Cooke.	Morris.
Collin.	Navarro.
Dallas.	Panola.
Delta.	Parker.
Denton.	Rains.
Ellis.	Red River.
Erath.	Rockwall.
Fannin.	Rusk.
Franklin.	Sabine.
Freestone.	San Augustine.
Grayson.	Shelby.
Gregg.	Smith.
Harrison.	Somervell.
Henderson.	Tarrant.
Hill.	Titus.
Hood.	Upshur.
Hopkins.	Van Zandt.
Hunt.	Wood.
Johnson.	

§ 1126.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product classified as Class I milk other than a delivery in bulk form to a milk processing plant.

§ 1126.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1126.5 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted State or municipal health authority, or acceptable to an agency of the State or Federal Government for the disposition of Grade A fluid milk products in the marketing area, at which milk products are received, processed and/or packaged, and from which there is route disposition of fluid milk products in the marketing area.

§ 1126.6 Supply plant.

"Supply plant" means any plant approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a pool distributing plant as follows:

(a) During the month 50 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19;

(b) During the last month of any four or less consecutive months during which period an average of 50 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19 and 15 percent or more of such receipts are thus moved and assigned during the month; or

(c) During each of the months of January through August, if (1) such plant was a supply plant pursuant to paragraph (a) or (b) of this section during each of the immediately preceding months of September through December: *Provided*, That, to remain a supply plant during August, 15 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19, and (2) the operator of such plant has filed a written request on or before January 31 with the market administrator requesting that such plant be designated as a supply plant through August of such year.

§ 1126.7 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 there is:

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of the receipts of Grade A milk at such plant; and

(2) Total route disposition, except filled milk equal to 50 percent or more of the receipts of Grade A milk at such plant, except that if two or more distributing plants operated by the same handler each meet the performance requirement of subparagraph (1) of this paragraph and total route disposition, except filled milk, of such plants is 50 percent or more of receipts of Grade A milk at such plants, each such plant shall be deemed to have met the requirement of this subparagraph.

(b) Any supply plant.

(c) Any plant operated by a cooperative association which has been approved by any duly constituted state or municipal health authority and at which milk is received from dairy farmers holding permits or authorization from such health authority, and at least 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from the plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A plant qualified pursuant to 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 January through August if such plant retains automatic pooling status under this part.

§ 1126.8 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) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units (other than to pool plants) in the marketing area during the month.

§ 1126.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk diverted pursuant to § 1126.13 for the account of such cooperative association;

(c) Any cooperative association with respect to:

(1) Producer milk which it causes to be delivered during any period of less than a full month from its members directly to the pool plant of another handler if (i) during the same month such cooperative association is a handler pursuant to paragraph (a) or (b) of this section with respect to any milk of such producer, and (ii) such association notifies the handler and the market administrator in writing of its intent to become a handler with respect to such milk prior to delivery. For the purpose of location adjustments such milk shall be considered to have been received by the cooperative association at the location of the pool plant to which it is delivered; and

(2) The milk of its member producers 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 if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing that it wishes to be the handler for such milk. The cooperative association shall be considered the handler for such milk, effective the first day of the month following receipt of such notice, and milk so delivered shall be considered for purposes of location adjustments to have been received by such cooperative association at the location of the pool plant to which it is delivered; and

(d) Any person in his capacity as the operator of a partially regulated distributing plant.

§ 1126.10 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from producers;

(c) Disposes of no other source milk as Class I milk; and

(d) Receives from pool plants an amount of milk equal to not more than 5 percent of his own production.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which milk is:

(1) Received at a pool plant, including milk of a dairy farmer delivered to the pool plant by a handler described in § 1126.9(c); or

(2) Diverted by a handler for his account pursuant to § 1126.13.

(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 during periods of temporary degrading by any duly constituted State or municipal health authority if such health authority notifies the operator of the pool plant or the market administrator in writing of the effective date or dates of such action and subsequent reapproval;

(3) 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 § 1126.44 to Class II or Class III utilization; and

(4) 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.

§ 1126.13 Producer milk.

"Producer milk" of a handler operating a pool plant means only that skim milk and butterfat contained in milk described in paragraphs (a) and (b) of this section, and producer milk of a handler described in § 1126.9 (b) and (c) means milk described in paragraphs (c) and (d) of this section:

(a) Milk received from producers at a pool plant except that received from a handler described in § 1126.9(c);

(b) Milk of a producer diverted by the operator of a pool plant for his account to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section;

(c) Milk of a producer diverted by a cooperative association from the pool plant of another handler (or the pool plant of the cooperative) to a nonpool plant that is not a producer-handler plant for the account of such cooperative association, subject to the conditions of paragraph (e) of this section;

(d) Milk received from a producer by a handler described in § 1126.9(c);

(e) With respect to milk diverted to nonpool plants, milk diverted in excess of the limit specified herein shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the diverting handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler:

(1) A cooperative association may divert for its account a total quantity of producer milk equal to not more than one-third of the total producer milk of its members physically received at all pool plants during the month;

(2) A handler, other than a cooperative association, operating a pool plant(s) may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to subparagraph (1) of this paragraph, in a total quantity equal to not more than one-third of the milk physically received at such handler's pool plant(s) during the month from producers who are not members of such a cooperative association;

(3) Diverted milk shall be deemed to have been received by the diverting handler at the location of the plant to which it was diverted; and

(4) Milk shall be eligible for diversion as producer milk only if the person producing such milk has been delivering milk as producer milk to a pool plant on a regular basis prior to the diversion.

§ 1126.14 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 § 1126.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1126.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1126.40(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 § 1126.40(b)(1)) for which the handler fails to establish a disposition.

§ 1126.15 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 § 1126.40 (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.

§ 1126.16 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.

§ 1126.17 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).

§ 1126.18 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.

§ 1126.19 Reserve supply credit.

The hundredweight of reserve supply credit that may be assigned to milk moved from a supply plant to a distributing plant shall be calculated as follows: From the total hundredweight of milk classified as Class I milk, except filled milk, at the distributing plant during the month, deduct Class I sales, except filled milk, to other pool plants(s) and from this result deduct an amount equal to 85 percent of the total hundredweight of milk received from producers during the month at such plant. Any plus figure resulting from this calculation shall be assigned pro rata to milk moved to such plant from supply plants unless the operator of the distributing plant notifies the market administrator in writing of a different assignment on or before the seventh day after the end of the month.

HANDLER REPORTS

§ 1126.30 Monthly 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 § 1126.9(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 § 1126.40(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 § 1126.9 (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.

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1126.9 (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 § 1126.76(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.

(c) The market administrator shall furnish a cooperative association for its members the data furnished pursuant to paragraph (a) of this section.

§ 1126.32 Other reports.

(a) Each handler who causes milk to be diverted for his account directly from producers' farms 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 plant to which such milk is to be diverted.

(b) Each handler, with respect to fluid milk products and products specified in § 1126.40(b) disposed of for animal feed, shall report to the market administrator such information and at such time as the market administrator may prescribe.

(c) In addition to the reports required pursuant to §§ 1126.30 and 1126.31 and paragraphs (a) and (b) 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

§ 1126.40 Classes of utilization.

Except as provided in § 1126.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1126.30 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, plus the fluid equivalent of loss of nonfat milk solids occurring in the process of modification in any case where determination of the quantity of added nonfat milk solids disposed of in such products is based upon laboratory analysis by the market administrator, such loss allowable pursuant to this subparagraph not to exceed 2 percent of the fluid equivalent of the quantity of added nonfat milk solids so determined to be added; and

(7) In shrinkage assigned pursuant to § 1126.41(a) to the receipts specified in § 1126.41(a)(2) and in shrinkage specified in § 1126.41 (b) and (c).

§ 1126.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1126.30, 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 re-

ceived from a handler described in § 1126.9(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 § 1126.9 (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.

§ 1126.42 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 § 1126.9(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 § 1126.44(a)(12) and the corresponding step of § 1126.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1126.44(a)(7) or the corresponding step of § 1126.44(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 § 1126.44(a)(11) or (12) or the coresponding steps of § 1126.44(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 mik 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 § 1126.40.

(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 (*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 § 1126.30 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 prod-

ucts 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.

§ 1126.43 General classification rules.

In determining the classification of producer milk pursuant to § 1126.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1126.30 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 § 1126.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1126.40, 1126.41, and 1126.42;

(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 § 1126.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1126.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1126.9(a) for each of his pool plants separately and of each handler described in § 1126.9 (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 § 1126.41(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 § 1126.40(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 § 1126.40(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 § 1126.40(c)(6)), any product specified in § 1126.40(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 § 1126.40(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-handling 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 (*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 § 1126.9(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 § 1126.40(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 § 1126.45(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 or a handler described in § 1126.9(c) according to the classification of such products pursuant to § 1126.42(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 § 1126.44(a)(14) and the corresponding step of § 1126.44(b).

§ 1126.45 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 § 1126.44(a)(12) and the corresponding step of § 1126.44(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 § 1126.44 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 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

§ 1126.50 Class prices.

Subject to the provisions of § 1126.52, 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 $2.32.

(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.

§ 1126.51 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.

§ 1126.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Zone I" means all territory within the following Texas counties in the marketing area:

Bosque.	Hood.
Cooke.	Hopkins.
Collin.	Hunt.
Dallas.	Johnson.
Delta.	Kaufman.
Denton.	Lamar.
Ellis.	Limestone.
Erath.	Navarro.
Fannin.	Parker.
Freestone.	Rockwall.
Grayson.	Somervell.
Hill.	Tarrant.

(2) "Zone II" means all territory in the marketing area outside Zone I and all territory in Bowie and Cass Counties, Tex., and the city of Texarkana, Ark.

(b) For producer milk received at a pool plant which is classified as Class I milk, subject to paragraph (c) of this section, the price specified in § 1126.50 (a) shall be adjusted for the location of such plant as follows:

(1) At a plant located in Zone II, such price shall be increased by any amount by which the applicable Class I price at such location pursuant to Part 1121 regulating the handling of milk in the South Texas marketing area exceeds the price specified in § 1126.50(a); and

(2) At a plant located outside Zones I and II and 110 miles or more from the city hall in Dallas, Tex., such price shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the Dallas city hall by shortest hard-surface highway distance as determined by the market administrator.

(c) For purposes of calculating such location adjustments 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 handlers described in § 1126.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such an assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price and then in sequence to plants having a lower Class I price, beginning with the plant at which the highest Class I price would apply.

(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.

§ 1126.53 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.

§ 1126.54 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

§ 1126.60 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 § 1126.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1126.44 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 § 1126.44(a)(14) and the corresponding step of § 1126.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, 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 § 1126.44 (a)(9) and the corresponding step of § 1126.44(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 § 1126.44(a)(7) (i) through (iv) and the corresponding step of § 1126.44 (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 § 1126.44(a)(7) (v) and (vi) and the corresponding step of § 1126.44(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 § 1126.44(a)(11) and the corresponding step of § 1126.44(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.

§ 1126.61 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 at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers who made the reports prescribed in § 1126.30 and who made the payments pursuant to § 1126.71 for the preceding month;

(b) Add not less than one-fourth of the cash balance on hand in the producer-settlement fund, less the total amount of the contingent obligations to handlers pursuant to § 1126.72;

(c) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1126.75;

(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 § 1126.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents.

§ 1126.62 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

§ 1126.70 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 §§ 1126.71, 1126.76, and 1126.77 and from which he shall make all payments to handlers pursuant to §§ 1126.72 and 1126.77.

§ 1126.71 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 § 1126.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1126.75, 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 § 1126.60(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.

§ 1126.72 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 § 1126.71(a)(2) exceeds the amount computed pursuant to § 1126.71(a)(1): *Provided,* That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available: *And provided further,* That any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator for such handler pursuant to §§ 1126.71, 1126.77, 1126.85, and 1126.86.

§ 1126.73 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 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 for such month computed pursuant to § 1126.61, as adjusted pursuant to §§ 1126.74 and 1126.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided,* That if by such date such handler has not received full payment for such month pursuant to § 1126.72 he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from 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 25th day of each month, to each producer (1) for whom payment is not made pursuant to paragraph (c) of this section and (2) who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month computed at not less than the Class III price for 3.5 percent milk of the preceding month, without deduction for hauling.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b) of this section, respectively, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payments, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1126.31.

(d) On or before the 13th day after the end of the month each handler shall pay to each cooperative association which is also a handler for milk received from it not less than the value of such milk as classified pursuant to § 1126.42 (a) at the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the receiving handler's pool plant.

§ 1126.74 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. § 1126.75 plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1126.73 (a) or (c) the uniform price computed pursuant to § 1126.61 to be paid for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rate set forth in § 1126.52.

(b) For purposes of computation pursuant to §§ 1126.71 and 1126.72 the uniform price shall be adjusted at the rates set forth in § 1126.52 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.

§ 1126.76 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 §§ 1126.30(b) and 1126.31(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 § 1126.60 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 § 1126.60 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 § 1126.60 for such handler shall include, in lieu of the value of other source milk specified in § 1126.60(f) less the value of such other source milk (specified in § 1126.71(a)(2)(ii), a value of milk determined pursuant to § 1126.60 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 § 1126.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1126.30(b) and 1126.31(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 § 1126.60 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.

§ 1126.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts or payments 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 in the provisions under which such error occurred.

§ 1126.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1126.71, 1126.73, 1126.76, 1126.77, 1126.85, or 1126.86 shall be increased three-fourths of 1 percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section; and

(b) For the purpose of this section any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Administrative Assessment and Marketing Service Deduction

§ 1126.85 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 from producers (including such handler's own production) except receipts by a handler described in § 1126.9(c);

(b) Receipts from a handler described in § 1126.9(c);

(c) Other source milk allocated to Class I pursuant to § 1126.44(a) (7) and (11) and the corresponding steps of § 1126.44(b), except such other source milk that is excluded from the computations pursuant to § 1126.60 (d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1126.76(a)(2).

§ 1126.86 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 § 1126.73, 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 co-

operative association and such producers and on or before the 15th day after the end of each month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

PART 1127—MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

Sec.
1127.85 Assessment for order administration.
1127.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1127 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1127.1 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

§ 1127.2 San Antonio, Tex., marketing area.

"San Antonio, Tex., marketing area", hereinafter called the "marketing area", means all the territory including all municipal corporations and all Federal military reservations, facilities and installations located within the boundaries of Bexar County, Tex.

§ 1127.3 Route disposition.

"Route disposition" means any delivery of any fluid milk product classified as Class I milk (including any delivery by a vendor or disposition at a plant store) to wholesale or retail outlets, except deliveries in bulk form to other pool plants.

§ 1127.4 [Reserved]

§ 1127.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Which is approved by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority for the processing of Grade A milk or which is acceptable to an agency of the Federal Government for distribution of milk to its installations in the marketing area;

(b) In which milk or skim milk is processed or packaged; and

(c) From which there is route disposition during the month in the marketing area or from which Class I milk is supplied to installations located in the marketing area of an agency of the Federal Government.

§ 1127.6 Supply plant.

"Supply plant" means all the buildings, premises, and facilities of a plant equipped to either receive or cool milk which is approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area, and from which an amount equal to not less than 50 percent of its receipts from dairy farmers, who would be producers if the plant qualified as a pool plant, are shipped to a distributing plant during the month: *Provided*, That any plant which qualifies as a supply plant for each of the months of July through February shall be considered to be a supply plant for the following months of March through June of such year, except that if the operator of such plant files a written request with the market administrator, supply plant status shall be terminated as of the first of the following month.

§ 1127.7 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 which has route disposition, except filled milk, in the marketing area equal to 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 1127.12.

(b) A supply plant.

(c) Any plant approved by an appropriate health authority having jurisdiction in the marketing area to supply milk for distribution as Grade A milk in the marketing area which is operated by a cooperative association, and 50 percent or more of the producer milk of members is received during the month in the pool plants of other handlers, or is transferred to such plants from the plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements for pooling pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area unless notwithstanding the provisions of this subparagraph it is fully regulated under such other order; and

(3) A plant meeting the requirements for pooling pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area, but which plant is fully regulated under such other Federal order.

§ 1127.8 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 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.

§ 1127.9 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 the milk of a member producer diverted for its account pursuant to § 1127.12 for each day's milk production that such producer's milk is diverted during the month. Milk so diverted shall be deemed to have been received by the association at a pool plant at the location of the pool plant at which the milk was received prior to diversion;

(c) A cooperative association with respect to the producer milk of its members which is delivered directly from the farm to the pool plant of a handler in a tank truck owned and operated by or under contract to such cooperative association unless 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, that it does not desire to be the handler for such milk. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the association at a pool plant at the location of the pool plant to which it is delivered; and

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area.

§ 1127.10 [Reserved]

§ 1127.11 [Reserved]

§ 1127.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk (1) under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk, issued by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority, or (2) which is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases located in the marketing area; which is received directly from the farm at a pool plant or diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of a cooperative association: *Provided*, That if the days of production of such person for which milk is diverted exceed one-third of the days of production that milk is delivered to a pool plant during the month, such milk shall cease to be producer milk for the entire period of such diversion.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order 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 § 1127.44 to Class II or Class III utilization;

(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; and

(4) A dairy farmer during the months of March through June, if milk from the same dairy farmer (or farm) was received at a nonpool plant operated by the same handler, as other than producer milk, on more than half the days of delivery during the preceding months of July through February.

§ 1127.13 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk of a producer received at a pool plant or diverted by a cooperative association in accordance with § 1127.9(b).

§ 1127.14 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 § 1127.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1127.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1127.40(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 § 1127.40(b)(1)) for which the handler fails to establish a disposition.

§ 1127.15 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 § 1127.40 (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.

§ 1127.16 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.

§ 1127.17 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).

§ 1127.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association (a) to have its entire activities under the control of its members, (b) to have full authority in the sale of milk of its members, and (c) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

HANDLER REPORTS

§ 1127.30 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 § 1127.9(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 § 1127.40(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 § 1127.9 (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.

§ 1127.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1127.9 (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 § 1127.76(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.

§ 1127.32 Other reports.

In addition to the reports required pursuant to §§ 1127.30 and 1127.31, 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

§ 1127.40 Classes of utilization.

Except as provided in § 1127.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1127.30 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 § 1127.41(a) to the receipts specified in § 1127.41(a)(2) and in shrinkage specified in § 1127.41 (b) and (c).

§ 1127.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1127.30, 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;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1127.9(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) [Reserved]

(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 § 1127.9 (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.

§ 1127.42 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 § 1127.9(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 § 1127.44(a)(12) and the corresponding step of § 1127.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1127.44(a)(7) or the corresponding step of § 1127.44(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 § 1127.44(a) (11) or (12) or the corresponding steps of § 1127.44(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 § 1127.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under 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 (*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 § 1127.30 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.

§ 1127.43 General classification rules.

In determining the classification of producer milk pursuant to § 1127.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1127.30 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 § 1127.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1127.40, 1127.41, and 1127.42;

(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 § 1127.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1127.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1127.9(a) for each of his pool plants separately and of each handler described in § 1127.9 (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 § 1127.41 (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 § 1127.40(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 § 1127.40(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 § 1127.40(c) (6)), any product specified in § 1127.40(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 § 1127.40(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 (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 § 1127.9(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 § 1127.40(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 § 1127.45(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 § 1127.9(c) according to the classification of such products pursuant to § 1127.42(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 § 1127.44(a)(14) and the corresponding step of § 1127.44(b).

§ 1127.45 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 § 1127.44(a)(12) and the corresponding step of § 1127.44(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 § 1127.44 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 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 assigned to each class in the proportion that the total producer milk in each class is to the total receipts of producer milk by such handler.

Class Prices

§ 1127.50 Class prices.

Subject to the provisions of § 1127.52, 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 $2.74.

(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.

§ 1127.51 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.

§ 1127.52 Plant location adjustments for handlers.

(a) For milk which is received from producers at a pool plant located more than 50 miles from the city hall in San Antonio, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator and which is classified as Class I milk, the price specified in § 1127.50(a) shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the city hall in San Antonio, Tex.

(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 § 1127.9(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.

§ 1127.53 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.

§ 1127.54 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

§ 1127.60 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 § 1127.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1127.44 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 § 1127.44(a)(14) and the corresponding step of § 1127.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1127.74, 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 § 1127.44(a)(9) and the corresponding step of § 1127.44(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 § 1127.44(a)(7) (i) through (iv) and the corresponding step of § 1127.44(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 § 1127.44(a)(7) (v) and (vi) and the corresponding step of § 1127.44(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 § 1127.44(a)(11) and the corresponding step of § 1127.44(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 § 1127.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1127.61 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 § 1127.60 for all handlers who have made the reports prescribed by § 1127.30 for the month and who have made the payment required pursuant to § 1127.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1127.75;

(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 § 1127.60(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.

§ 1127.62 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

§ 1127.70 Producer-settlement fund.

The market administrator shall establish a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1127.71, 1127.76, and 1127.77 and from which he shall make all payments pursuant to §§ 1127.72 and 1127.77.

§ 1127.71 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 § 1127.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1127.75, 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 § 1127.60(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.

§ 1127.72 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, including a cooperative association which is a handler, the amount, if any, by which the amount computed pursuant to § 1127.71(a)(2) exceeds the amount computed pursuant to § 1127.71(a)(1).

§ 1127.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay to a cooperative association on or before the 13th day of the month, for milk received from it during the preceding month for which such association is a handler described in § 1127.9(c), the value of such milk at not less than the class prices as adjusted by the butterfat differential specified in § 1127.74, that are applicable at the location of the receiving handler's pool plant: *Provided, however,* That for each hundredweight of milk so received during the first 15 days of any month, such handler shall, upon written request of the cooperative association make a partial payment to such association by the 26th day of the month at not less than the Class III price of the preceding month, in which case the obligation of the handler otherwise payable on or before the 13th day of the following month shall be reduced by the amount of such partial payment.

(b) Except as provided in subparagraph (3) of this paragraph each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of such month at not less than the price per hundredweight for Class III milk for the preceding month.

(2) On or before the 15th day after the end of the month during which the milk was received at not less than the uniform price per hundredweight computed for such month pursuant to § 1127.61 subject to the following adjustments: (i) The butterfat differential pursuant to § 1127.74, (ii) the location adjustment pursuant to § 1127.75, (iii) the payment made pursuant to subparagraph (1) of this paragraph, (iv) deductions for marketing services pursuant to § 1127.86, and (v) proper deductions authorized by such producer: *Provided,* That if by such date such handler has not received full payment pursuant to § 1127.72 he may reduce his total payment to all producers pro rata by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this subparagraph not later than the date for making such payments next following receipt of the balance due from the market administrator.

(3)(i) Upon receipt of a written request from a cooperative association which the market administrator 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 improper claim on the part of the cooperative association, each handler shall on or before the 20th day of each month furnish the cooperative association information showing the daily and total pounds of milk received from each of the association's member producers for the first 15 days of such month and, on or before the 10th day after the end of each month, such information for the 16th through the end of such month, and shall pay to such association on or before the 26th and 13th day of each month, in lieu of payments pursuant to subparagraphs (1) and (2) respectively, of this paragraph an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day 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 cooperative association.

(ii) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(4) In making the payments to producers pursuant to subparagraphs (2) and (3) of this paragraph, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show:

(i) The month for which payment is made and the identity of the handler and of the producer;

(ii) The total pounds and average butterfat test of milk received from such producer;

(iii) The minimum rate or rates at which payment to such producer is required;

(iv) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(v) The amount or rate per hundredweight of each deduction claimed by the handler; together with a description of the respective deductions; and

(vi) The net amount of payment to such producer.

§ 1127.74 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.

§ 1127.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1127.73 for that milk which is received from producers at a pool plant located more than 50 miles from the city hall in San Antonio, Tex., by the shorfest hard-surfaced highway distance as determined by the market administrator, the handler may deduct an amount equal to not more than 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the city hall in San Antonio, Tex.

(b) For the purposes of computations pursuant to §§ 1127.71 and 1127.72 the uniform price shall be adjusted at the rates set forth in § 1127.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1127.76 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 §§ 1127.30(b) and 1127.31(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 § 1127.60 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 § 1127.60 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 § 1127.60 for such handler shall include, in lieu of the value of other source milk specified in § 1127.60(f) less the value of such other source milk specified in § 1127.71(a)(2)(ii), a value of milk determined pursuant to § 1127.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant my making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1127.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1127.30 (b) and 1127.31(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 § 1127.60 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.

§ 1127.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's books, reports, records, or accounts 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 payment set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1127.85 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) Skim milk and butterfat received from producers (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1127.44(a) (7) and (11) and the corresponding steps of § 1127.44(b), except other source milk that is excluded from the computations pursuant to § 1127.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1127.76(a)(2).

§ 1127.86 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) shall make a deduction of 6 cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe. Such deductions shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for verification of weights and tests of milk received from such producers and in providing market information to such producers.

(b) In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary has determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments to such producer the amount per hundredweight specified by such association which is not in excess of the rate authorized by such producer and shall pay such deduction 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.

PART 1128—MILK IN CENTRAL WEST TEXAS MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1128 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

General Provisions

§ 1128.1 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

§ 1128.2 Central West Texas marketing area.

"Central West Texas marketing area," hereafter called the "marketing area," means all territory within the boundaries of the Abilene Air Force Base and within the corporate limits of the following cities and towns, all in the State of Texas:

Abilene.	Lamesa.
Albany.	Merkel.
Anson.	Midland.
Aspermont.	Mineral Wells.
Ballinger.	Munday.
Big Spring.	Odessa.
Breckenridge.	Ranger.
Brownwood.	Rochester.
Cisco.	Rotan.
Coleman.	Rule.
Colorado City.	San Angelo.
Comanche.	Snyder.
Eastland.	Stamford.
Hamlin.	Sweetwater.
Haskell.	Tye.
Knox City.	Winters.

§ 1128.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or at a plant store) of a fluid milk product classified as Class I milk other than in bulk to a milk or filled milk processing plant.

§ 1128.4 [Reserved]

§ 1128.5 [Reserved]

§ 1128.6 [Reserved]

§ 1128.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means a plant specified in paragraph (a) or (b) of this section.

(a) A milk plant approved by and under the routine inspection of the health authority of any municipality in the marketing area:

(1) From which there is route disposition of Grade A fluid milk products, other than filled milk, in consumer packages in the marketing area; or

(2) At which milk is received from producers as defined in § 1128.12(a) and which serves as a receiving station at which producer milk is received, weighed, and commingled and from which milk or skim milk (i) is moved during the month to a pool plant(s) specified in subparagraph (1) of this paragraph or paragraph (b) of this section, or (ii) was moved to any such plant(s) in an amount equal to 60 percent or more of the total receipts of producer milk during the months of October through January immediately preceding any month of April, May, or June during which no milk was moved to such plant(s).

(b) A milk plant approved by and under the routine inspection of a health authority other than that of a municipality in the marketing area from which there is route disposition of Grade A fluid milk products, other than filled milk, in consumer packages in the marketing area in an amount equal to 10 percent or more of the total disposition of Class I milk, except filled milk, from such plant during the month.

(c) 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)(1) or (b) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than 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 there is a greater proportion of route disposition 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)(1) or (b) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is fully regulated under such other Federal order; and

(4) A plant meeting the requirements of paragraph (a)(2) of this section which (i) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part or (ii) retains automatic pooling status for the month under another Federal order by virtue of its performance in previous months.

§ 1128.8 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.

§ 1128.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted pursuant to § 1128.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm for its own account, in tank truck(s) owned or operated by such association, to the pool plant of another handler described in § 1128.7 (a)(1) or (b): *Provided*, That such milk shall be deemed to have been received by the cooperative association at a pool plant at the location of the plant to which it is delivered; or

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition during the month in the marketing area.

§ 1128.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a milk plant approved by and under the routine inspection of the appropriate health authority from which there is route disposition of Grade A fluid milk products in consumer-type packages in the marketing area; and

(b) Whose disposition of fluid milk products does not exceed his own farm production and receipts of fluid milk products from pool plants.

§ 1128.11 [Reserved]

§ 1128.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person described in subparagraph (1) or (2) of this paragraph whose milk is received by a handler described in § 1128.9 (c) or whose milk is regularly received at a pool plant but is caused to be diverted by a handler to a nonpool plant that is not a producer-handler plant, and milk so diverted shall be deemed to have been received by the handler at the location of the pool plant at which it was received immediately prior to its being so diverted:

(1) Who produces milk under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by the health authority of any municipality in the marketing area, which milk is received at a pool plant described in § 1128.7(a); or

(2) Who produces milk under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by a health authority whose certification is accepted by the appropriate health authority of a municipality in the marketing area, which milk is received at a pool plant described in § 1128.7(b).

(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 § 1128.44 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.

§ 1128.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in:

(a) Milk received at a pool plant directly from producers;

(b) Milk of producers that is diverted pursuant to § 1128.12; or

(c) Milk received by a handler described in § 1128.9(c).

§ 1128.14 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 § 1128.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1128.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1128.40(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 § 1128.40(b)(1)) for which the handler fails to establish a disposition.

§ 1128.15 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 § 1128.40 (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.

§ 1128.16 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.

§ 1128.17 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).

§ 1128.18 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

§ 1128.30 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 § 1128.9(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 § 1128.40(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 § 1128.9 (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.

§ 1128.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1128.9 (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 § 1128.76 (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.

(c) The market administrator shall furnish to a cooperative association upon request the data with respect to milk of its members furnished pursuant to paragraph (a) of this section.

§ 1128.32 Other reports.

(a) Each handler who causes milk to be diverted 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 plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant §§ 1128.30 and 1128.31 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

§ 1128.40 Classes of utilization.

Except as provided in § 1128.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1128.30 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 § 1128.41(a) to the receipts specified in § 1128.41(a) (2) and in shrinkage specified in § 1128.41 (b) and (c).

§ 1128.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1128.30, 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 § 1128.9(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 § 1128.9 (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.

§ 1128.42 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 § 1128.9(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 § 1128.44(a)(12) and the corresponding step of § 1128.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1128.44(a)(7) or the corresponding step of § 1128.44(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 § 1128.44(a)(11) or (12) or the corresponding steps of § 1128.44(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 § 1128.40.

(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 § 1128.30 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.

§ 1128.43 General classification rules.

In determining the classification of producer milk pursuant to § 1128.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1128.30 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 § 1128.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1128.40, 1128.41, and 1128.42;

(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 § 1128.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1128.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1128.9(a) for each of his pool plants separately and of each handler described in § 1128.9 (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 § 1128.41 (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 § 1128.40(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 § 1128.40(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 § 1128.40(c) (6)), any product specified in § 1128.40(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 § 1128.40(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 (*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 § 1128.9(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 § 1128.40(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 § 1128.45(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 § 1128.9(c) according to the classification of such products pursuant to § 1128.42 (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 paragraph (a) (14) of this section and the corresponding step of paragraph (b) of this section.

§ 1128.45 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 § 1128.44(a)(12) and the corresponding step of § 1128.44(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 § 1128.44 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 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

§ 1128.50 Class prices.

Subject to the provisions of § 1128.52, 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 $2.57.

(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.

§ 1128.51 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.

§ 1128.52 Plant location adjustments for handlers.

For producer milk classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price set forth in § 1128.50(a) shall be subject to the following adjustments:

(a) For milk received from producers at a pool plant located (1) east of the 103d principal meridian, (2) more than 180 highway miles from the U.S. Post Office in Midland, Tex., and also (3) at the following highway distances from the U.S. Post Office in Abilene, Tex., such price shall be reduced as follows:

	Cents
More than 70 miles but less than 105 miles	20
105 miles or more	25

(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 § 1128.9(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.

§ 1128.53 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.

§ 1128.54 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

§ 1128.60 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 § 1128.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1128.44 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 § 1128.44(a)(14) and the corresponding step of § 1128.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1128.74, 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 § 1128.44(a)(9) and the corresponding step of § 1128.44(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 § 1128.44(a)(7) (i) through (iv) and the corresponding step of § 1128.44 (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 § 1128.44(a)(7) (v) and (vi) and the corresponding step of § 1128.44(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 § 1128.44(a)(11) and the corresponding step of § 1128.44(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.

§ 1128.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for all milk of 3.5 percent butterfat content received at a pool plant as follows:

(a) Combine into one total the values computed pursuant to § 1128.60 for all handlers who have made the reports prescribed in § 1128.30 and who have made the payments due pursuant to § 1128.71 for the preceding month;

(b) Add the aggregate of the values of all minus location adjustments pursuant to § 1128.75;

(c) Add not less than one-half of the unobligated cash balance on hand in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in such computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1128.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents.

§ 1128.62 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.

PAYMENT FOR MILK

§ 1128.70 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 §§ 1128.71, 1128.76, and 1128.77, and from which he shall make all payments to handlers pursuant to §§ 1128.72 and 1128.77.

§ 1128.71 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 § 1128.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1128.75, 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 § 1128.60(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.

§ 1128.72 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, including a cooperative association which is a handler, the amount, if any, by which the amount computed pursuant to § 1128.71(a)(2) exceeds the amount computed pursuant to § 1128.71(a)(1): *Provided*, That 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.

§ 1128.73 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 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 for such month computed pursuant to § 1128.61, as adjusted pursuant to §§ 1128.74 and 1128.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided*, That if by such date such handler has not received full payment pursuant to § 1128.72, he may reduce his total payments to all producers uniformly by not less than the amount of reduction in payments from 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 25th day of each month, to each producer for whom payment is not made pursuant to paragraph (c) of this section for milk received during the first 15 days of such month at not less than the Class III price of the preceding month.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producer. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1128.31.

§ 1128.74 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.

§ 1128.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1128.73, the uniform price for all milk computed pursuant to § 1128.61 for milk received from producers at a pool plant shall be adjusted at the rates set forth in § 1128.52(a), applicable at the location of such plant.

(b) For purposes of computations pursuant to §§ 1128.71 and 1128.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1128.52(a) 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.

§ 1128.76 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 §§ 1128.30(b) and 1128.31(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 § 1128.60 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 § 1128.60 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 § 1128.60 for such handler shall include, in lieu of the value of other source milk specified in § 1128.60(f) less the value of such other source milk specified in § 1128.71(a)(2)(ii), a value of milk determined pursuant to § 1128.60 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 § 1128.7(a)(2) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1128.30(b) and 1128.31(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 § 1128.60 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.

§ 1128.77 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 amounts 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

§ 1128.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1128.9(c), 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) and milk received from a handler described in § 1128.9(c);

(b) Other source milk allocated to Class I pursuant to § 1128.44(a) (7) and (11) and the corresponding steps of § 1128.44(b), except such other source milk that is excluded from the computations pursuant to § 1128.60 (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 § 1128.76(a)(2).

§ 1128.86 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 § 1128.73(a), 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 asociation is actually performing, as determined by the Secretary, 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 and on or before the 15th day after the end of each month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

PART 1129—MILK IN AUSTIN-WACO, TEX., MARKETING AREA

Subpart—Order Regulating Handling

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1129.86 Deduction for marketing services.

Authority: The provisions of this Part 1129 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

General Provisions

§ 1129.1 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

§ 1129.2 Austin-Waco marketing area.

"Austin-Waco Marketing Area," hereinafter called the marketing area, means all territory, including all municipal corporations and all Federal military reservations, facilities and installations, located within or partially within the boundaries of Travis, Hays, Lampasas, Burnet, Caldwell, Bastrop, Williamson, Bell, Falls, McLennan, Coryell, Comal and Guadalupe Counties, all in the State of Texas.

§ 1129.3 Route disposition.

"Route disposition" means the delivery (including delivery by a vendor or sale at a plant store) of fluid milk products classified as Class I milk other than as follows:

(a) Delivery in bulk to a plant, or

(b) Delivery in consumer packages from a milk processing plant to a distributing plant in an amount not in excess of the amount of producer milk received by such processing plant during the month from the operator of such distributing plant and classified as Class I milk: *Provided*, That for the purposes of this paragraph milk so transferred to such processing plant shall be considered to be producer milk to the extent that total receipts during the month of producer milk by the operator of such distributing plant exceed his gross Class I sales less: (1) Receipts of Class I milk from other fluid milk plants; (2) milk transferred as Class I milk to such milk processing plant; and (3) milk received in consumer packages from such milk processing plant.

§ 1129.4 [Reserved]

§ 1129.5 Distributing plant.

"Distributing plant" means any milk processing or packaging plant from which there is route disposition, except filled milk, in the marketing area during the month equal to more than an average of 500 pounds per day or 5 percent, whichever is less, of the Grade "A" milk and skim milk received from dairy farmers or other plants.

§ 1129.6 Supply plant.

"Supply plant" means any plant from which fluid milk or fluid skim milk is received at a distributing plant:

(a) For any of the months of February through July, on 4 or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month; and

(b) For any of the months of August through January:

(1) On 10 or more days during the month, or in an amount equal to a daily average of not less than 8,300 pounds for such month; or

(2) On 4 or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month, and such plant was a supply plant pursuant to paragraph (a) of this section during any month of the immediately preceding period of February through July.

§ 1129.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, "fluid milk plant" means a plant specified in paragraph (a) or (b) of this section.

(a) A distributing plant or a supply plant.

(b) Any plant approved by the appropriate health authority to supply milk for distribution as Grade A milk in the marketing area if such plant is operated by a cooperative association, and 75 percent or more of the milk of the members of such association, including receipts pursuant to § 1129.9 (b) and (c), is received at the fluid milk plants of other handlers.

(c) The term "fluid milk plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An approved distributing plant which also meets the pooling requirements of another Federal order and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in the Austin-Waco marketing area;

(3) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in the Austin-Waco marketing area than in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) An approved supply plant which (i) meets the pooling requirements of another Federal order and from which greater qualifying shipments, except filled milk, are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (ii) retains automatic pooling status under another Federal order.

§ 1129.7a Approved plant.

"Approved plant" means: (a) A fluid milk plant, or (b) any milk plant from which there is route disposition in the marketing area.

§ 1129.8 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which 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 to a fluid milk plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1129.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants;

(b) Any cooperative association with respect to the milk of any producer which it diverts pursuant to § 1129.12; and

(c) Any cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm in bulk tank pickup truck(s) owned and/or controlled by such association, to the fluid milk plant of another handler. Such milk shall be deemed to have been received by the cooperative association at the location of the fluid milk plant to which it is delivered.

§ 1129.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which milk is received from the dairy farm(s) of such person but from no other dairy farm: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care, and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such producer in his capacity as a handler.

§ 1129.11 [Reserved]

§ 1129.12 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 fluid milk plant; or

(2) Diverted for his account by the operator of a fluid milk plant or cooperative association from such plant to a nonfluid milk plant that is not a producer-handler plant during the period January through July and on not more than one-third of the days of delivery during the month for the period August through December: *Provided*, That milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it was diverted.

(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

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 § 1129.44 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.

§ 1129.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk produced by a producer and received at a fluid milk plant directly from producers or diverted pursuant to § 1129.12.

§ 1129.14 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 § 1129.9(c), fluid milk plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1129.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1129.40(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 § 1129.40(b)(1)) for which the handler fails to establish a disposition.

§ 1129.15 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 § 1129.40 (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.

§ 1129.16 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.

§ 1129.17 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).

§ 1129.18 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 10, 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

§ 1129.30 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 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 § 1129.9(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 § 1129.40(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 § 1129.9 (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.

(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.

§ 1129.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1129.9 (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) The market administrator, upon request, shall furnish to a cooperative association for its members the data reported pursuant to paragraph (a) (1), (2), and (3) of this section.

§ 1129.32 Other reports.

(a) Each handler, who causes milk to be diverted for his account directly from producers' farms to an unapproved 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 plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1129.30 and 1129.31 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

§ 1129.40 Classes of utilization.

Except as provided in § 1129.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1129.30 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 § 1129.41(a) to the receipts specified in § 1129.41(a)(2) and in shrinkage specified in § 1129.41 (b) and (c).

§ 1129.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1129.30, 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 and milk received from a handler described in § 1129.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1129.9(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 § 1129.9 (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.

§ 1129.42 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 or by a handler described in § 1129.9(c) to another handler's fluid milk plant shall be classified as Class I milk unless both handlers request the same classification in another class. The percentage of the total quantities of skim milk and butterfat, respectively, in products thus transferred and assigned to Class I milk shall not be greater than the percentage of skim milk and butterfat in producer milk classified as Class I milk in the plant of the transferee-handler. 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 computation pursuant to § 1129.44(a)(12) and the corresponding step of § 1129.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1129.44(a)(7) or the corresponding step of § 1129.44(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 § 1129.44(a)(11) or (12) or the corresponding steps of § 1129.44(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 but-

terfat 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 § 1129.40.

(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 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 (*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 § 1129.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing 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.

§ 1129.43 General classification rules.

In determining the classification of producer milk pursuant to § 1129.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1129.30 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 § 1129.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1129.40, 1129.41, and 1129.42;

(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 § 1129.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1129.44 Classification of producer milk.

For each month the market administrator shall determine the classifica-

tion of producer milk of each handler described in § 1129.9(a) for each of his fluid milk plants separately and of each handler described in § 1129.9 (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 § 1129.41(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 § 1129.40(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 § 1129.40(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 § 1129.40(c)(6)), any product specified in § 1129.40(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 § 1129.40(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 (a) through (c) of this subdivision. Should the pounds of skim milk to be substracted 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) Subtract 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 § 1129.9(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 § 1129.40(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 and 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;

(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 fluid milk plant or a handler described in § 1129.9(c) according to the classification of such products pursuant to § 1129.42(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 § 1129.44(a)(14) and the corresponding step of § 1129.44(b).

§ 1129.45 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 § 1129.44 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 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 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 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

§ 1129.50 Class prices.

Subject to the provisions of § 1129.52, 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 $2.70.

(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.

§ 1129.51 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.

§ 1129.52 Plant location adjustments for handlers.

For milk received from producers at a fluid milk plant located outside of Zone I (Zone I comprises all the territory south of the northern boundaries of Guadalupe, Comal, Kendall, Kerr, Edwards, and Val Verde Counties, all in the State of Texas, and all territory south of a boundary formed by U.S. Highway 90 east of the marketing area to the Colorado River and thence south along the Colorado River) which is classified as Class I milk, the price specified in § 1129.50(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the county court house of the county in which such plant is located is from the county court house in New Braunfels, Tex.

§ 1129.53 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.

§ 1129.54 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

§ 1129.60 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 § 1129.44 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 § 1129.44(a)(14) and the corresponding step of § 1129.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1129.74, 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 § 1129.44(a)(9) and the corresponding step of § 1129.44(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 § 1129.44(a)(9) and the corresponding step of § 1129.44(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 § 1129.44(a)(11) and the corresponding step of § 1129.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in subparagraph (1) of this paragraph; and

(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 receipts and utilization of skim milk and butterfat for previous months.

§ 1129.61 Computation of uniform price for each handler.

For each month, the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers by each handler as follows:

(a) Add to the amount computed pursuant to § 1129.60 the total of the location adjustments to be made pursuant to § 1129.75;

(b) Add 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; and

(c) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content, at fluid milk plants in Zone I.

§ 1129.62 Announcement of uniform price 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 12th day after the end of each month the uniform price for each handler for such month.

PAYMENTS FOR MILK

§ 1129.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (d) 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 such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1129.61 as adjusted pursuant to §§ 1129.74 and 1129.75; plus or minus adjustments for errors made in previous payments to such producers; and less (1) payment made pursuant to paragraph (a) of this section; (2) deductions for marketing services pursuant to § 1129.86 and (3) proper deductions authorized by such producer.

(c) On or before the 13th and 26th days of each month in lieu of the payments pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association for milk which it caused to be delivered to such handler from producers and for which such cooperative association is not a handler pursuant to § 1129.9 (c), if such cooperative association is authorized to collect such payments for its member-producers and has so requested the handler, an amount equal to the sum of the individual payments otherwise payable to such producers.

(d) On or before the 13th and 26th days of each month, each handler shall pay to a cooperative association for milk which was caused to be delivered to such handler by such cooperative association, and for which it is a handler pursuant to § 1129.9(c), an amount not less than the value of such milk computed by multiplying the pounds of such milk classified in each class pursuant to § 1129.44 by the class prices, as adjusted by the butterfat differential specified in § 1129.74, that are applicable at the location of the receiving handler's fluid milk plant.

(e) In making the payments to producers pursuant to paragraphs (b) and (c) or (d) 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 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.

§ 1129.74 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.

§ 1129.75 Plant location adjustments for producers.

In making payment to producers pursuant to § 1129.73, the uniform price to be paid for producer milk received at a fluid milk plant located outside of Zone I shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the county courthouse of the county in which such plant is located is from the county courthouse in New Braunfels, Tex.

§ 1129.76 [Reserved]

§ 1129.77 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 producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall 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

§ 1129.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1129.9(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) and milk received from a handler described in § 1129.9(c);

(b) Other source milk allocated to Class I pursuant to § 1129.44(a) (7) and (11) and the corresponding steps of § 1129.44(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds Class I milk received during the month at such plant from fluid milk plants and other order plants.

§ 1129.86 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 § 1129.73, 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 each 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 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 13th day after the end of each month and 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 1130—MILK IN CORPUS CHRISTI, TEX., MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

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1130.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1130 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1130.1 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

§ 1130.2 Corpus Christi, Tex., marketing area.

"Corpus Christi, Tex., marketing area", called the "marketing area" in this part, means all the territory within the following counties, all in the State of Texas:

Brooks.
Cameron.
Duval.
Hidalgo.
Jim Wells.
Kleberg.
Live Oak.
Nueces.
San Patricio.

§ 1130.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery to a milk or filled milk plant.

§ 1130.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities without storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1130.5 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.

§ 1130.6 Supply plant.

"Supply plant" means any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a distributing plant.

§ 1130.7 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 from which during the month:

(1) The route disposition of fluid milk products, except filled milk, within the marketing area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total route disposition of fluid milk products, except filled milk, is 50 percent or more of the receipts of Grade A milk at such plant.

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers described in § 1130.9(c) at such plant is moved as fluid milk products, except filled milk, to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the firsit day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant.

(c) Any plant located in the marketing area and operated by a cooperative association approved by any duly constituted State or municipal health authority, and at which milk is received from dairy farmers holding permits to authorizations for such health authority, if 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from a plant of the cooperative association.

(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, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, 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 there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than 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 January through August, if such plant retains automatic pooling status under this part.

§ 1130.8 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 Federal order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means a noonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is

neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

§ 1130.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1130.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producer members 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;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant with route disposition in the marketing area.

§ 1130.10 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk as Class I milk except that represented by nonfat solids used in the fortification of fluid milk products;

(d) Receives during the month from pool plants fluid milk products in a total quantity of not more than 10,000 pounds, or 5 percent of his Class I disposition, whichever is less; and

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care, and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

§ 1130.11 [Reserved]

§ 1130.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1130.13 by a handler for his account.

(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 § 1130.44 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.

§ 1130.13 Producer milk.

"Producer milk" means skim milk and butterfat for each handler's account in milk from producers as follows:

(a) With respect to operations of a pool plant:

(1) Received directly from such producers;

(2) Received from a handler described in § 1130.9(c); or

(3) Diverted by the operator of such pool plant to a nonpool plant that is not a producer-handler plant for his account, subject to the conditions of paragraph (c) of this section.

(b) With respect to additional receipts by a cooperative association handler:

(1) Diverted by such cooperative association from the pool plant of another handler to a nonpool plant that is not a producer-handler plant for the account of such cooperative association, subject to the conditions of paragraph (c) of this section; or

(2) Received by such cooperative association from producers' farms as a handler described in § 1130.9(c) in excess of the quantity delivered to pool plants pursuant to paragraph (a)(2) of this section.

(c) With respect to diversions to nonpool plants:

(1) A cooperative association may divert for its account a total quantity of milk not in excess of one-third of the total producer milk of its members received at all pool plants during the month. Diversions in excess of such quantity shall not be producer milk and the diverting cooperative shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the cooperative association fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such cooperative association;

(2) A handler operating a pool plant may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to subparagraph (1) of this paragraph, in a total quantity not in excess of one-third of the milk at such pool plant during the month from producers who are not members of such a cooperative association. Milk diverted in excess of such quantity shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler;

(3) For the purposes of location adjustments pursuant to §§ 1130.52 and 1130.75, diverted milk shall be priced at the location of the nonpool plant to which diverted; and

(4) For purposes of determining qualification of pool plants pursuant to § 1130.7 (a) and (b), milk diverted pursuant to paragraph (a)(3) of this section shall be considered receipts of Grade A milk at the plant from which diverted.

§ 1130.14 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 § 1130.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1130.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1130.40(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 § 1130.40(b)(1)) for which the handler fails to establish a disposition.

§ 1130.15 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 that 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 § 1130.40 (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.

§ 1130.16 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.

§ 1130.17 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).

§ 1130.18 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

§ 1130.30 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 § 1130.9(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 § 1130.40(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 § 1130.9(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.

§ 1130.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1130.9 (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 § 1130.76(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.

§ 1130.32 Other reports.

(a) Each handler who causes milk to be delivered for his account directly from producers' farms to a nonpool plant shall, prior to such diversion, report to the market administrator 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 in §§ 1130.30 and 1130.31 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

§ 1130.40 Classes of utilization.

Except as provided in § 1130.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1130.30 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 § 1130.41(a) to the recepits specified in § 1130.41(a)(2) and in shrinkage specified in § 1130.41 (b) and (c).

§ 1130.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1130.30, 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 § 1130.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1130.9(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 § 1130.9 (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.

§ 1130.42 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 § 1130.44(a)(12) and the corresponding step of § 1130.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1130.44(a)(7) or the corresponding step of § 1130.44(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 § 1130.44(a) (11) or (12) or the corresponding steps of § 1130.44(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 lowing 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 § 1130.40.

(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 (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 § 1130.30 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.

§ 1130.43 General classification rules.

In determining the classification of producer milk pursuant to § 1130.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1130.30 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 § 1130.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1130.40, 1130.41, and 1130.42;

(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 § 1130.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1130.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1130.9(a) for each of his pool plants separately and of each handler described in § 1130.9 (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 § 1130.41 (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 § 1130.40(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 § 1130.40(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 § 1130.40(c) (6)), any product specified in § 1130.40(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 § 1130.40(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 (*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 § 1130.40(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 § 1130.45(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 § 1130.42(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 § 1130.44(a)(14) and the corresponding step of § 1130.44(b).

§ 1130.45 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 § 1130.44(a)(12) and the corresponding step of § 1130.44(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 § 1130.44 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 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 producer milk by such handler were used in each class.

CLASS PRICES

§ 1130.50 Class prices.

Subject to the provisions of § 1130.52, 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 $3.07.

(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.

§ 1130.51 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.

§ 1130.52 Plant location adjustments for handlers.

(a) For milk which is received from producers or a cooperative association at a pool plant located more than 80 miles, but not more than 150 miles from the city hall in Mercedes, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1130.50(a) shall be reduced 9 cents per hundredweight and for milk which is received from producers or a cooperative association at a pool plant located more than 150 miles from the city hall in Mercedes, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1130.50(a) shall be reduced 1-cent per hundredweight for each 10 miles distance or fraction thereof that such plant is from the city hall in Mercedes, Tex.

(b) For purposes of calculating such location adjustment, transfers between pool plants shall be assigned Class I location credit as follows:

(1) If in packaged form without limit; and

(2) If in bulk form, to the extent that Class I disposition at the transferee-plant exceeds the sum of (i) 95 percent of receipts at such plant from producers and handlers described in § 1130.9(c), (ii) the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and (iii) assignments pursuant to subparagraph (1) of this paragraph, such assignment to be made first to transferor plants having the same location adjustment, then in sequence to plants having a greater location adjustment, 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.

§ 1130.53 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.

§ 1130.54 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

§ 1130.60 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 § 1130.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1130.44 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 § 1130.44(a)(14) and the corresponding step of § 1130.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1130.74, 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 § 1130.44(a)(9) and the corresponding step of § 1130.44(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 § 1130.44(a)(9) and the corresponding step of § 1130.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(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 § 1130.44(a)(7) (i) through (iv) and the corresponding step of § 1130.44(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 § 1130.44(a)(7) (v) and (vi)

and the corresponding step of § 1130.44 (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 § 1130.44(a)(11) and the corresponding step of § 1130.44(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 § 1130.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1130.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight applicable for milk of 3.5 percent butterfat content at pool plants at which no location differential applies as follows:

(a) Combine into one total the values computed pursuant to § 1130.60 for all handlers who have made the reports prescribed in § 1130.30 for the month and who have made the payments required pursuant to § 1130.71 for the preceding month;

(b) Add not less than one-fourth of the unobligated cash balance on hand in the producer-settlement fund;

(c) Add the aggregate of the values of the minus location adjustments pursuant to § 1130.75;

(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 § 1130.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents.

§ 1130.62 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

§ 1130.70 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 §§ 1130.71, 1130.76, and 1130.77, and from which he shall make all payments to handlers pursuant to §§ 1130.72 and 1130.77.

§ 1130.71 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 § 1130.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1130.75, 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 § 1130.60(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.

§ 1130.72 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 § 1130.71(a)(2) exceeds the amount computed pursuant to § 1130.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. Any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator from such handler, pursuant to § 1130.71, 1130.77, 1130.85, or 1130.86.

§ 1130.73 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 for milk received from such producer as follows:

(1) On or before the 25th day of each month, to each producer who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month at not less than the Class III milk price for the preceding month;

(2) On or before the 15th day after the end of each month, for milk received during such month, an amount not less than the uniform price computed pursuant to § 1130.61, subject to adjustments pursuant to §§ 1130.74 and 1130.75, plus or minus adjustments for errors made in previous payments to such producers, and less:

(i) Payments made pursuant to subparagraph (1) of this paragraph;

(ii) Deductions for marketing services pursuant to § 1130.86; and

(iii) Proper deductions authorized by such producer;

(3) If by the date for payment pursuant to subparagraph (2) of this paragraph, a handler has not received full payment for such month pursuant to § 1130.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from 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)(1) Upon receipt of a written request from a cooperative association, which the market administrator 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 improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 23d and 14th days of each month in lieu of payments pursuant to paragraph (a) (1) and (2), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar 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 cooperative association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the co-

operative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) In making the payments pursuant to paragraphs (a)(2) and (b) 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 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 of the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producers.

(d) As follows, to each cooperative association for milk for which it is the handler pursuant to § 1130.9(c):

(1) On or before the 23d day of the month, a partial payment for milk received during the first 15 days of such month, at not less than the amount specified in paragraph (b) of this section; and

(2) On or before the 14th day of the following month, in final settlement, the value of such milk received during the month, at the uniform price, as adjusted pursuant to §§ 1130.74 and 1130.75, less the amount of payment made pursuant to subparagraph (1) of this paragraph.

(e) On or before the 14th day after the end of the month, for milk received from the pool plant of a cooperative association, to such cooperative association not less than the value of such milk at the applicable price(s) for the class(es) at which transferred pursuant to § 1130.42(a), as adjusted by the butterfat differential specified in § 1130.74, that are applicable at the location of the transferee-handler's pool plant.

§ 1130.74 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.

§ 1130.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1130.73, the uniform price computed pursuant to § 1130.61 to be paid for such milk received at a pool plant at which a location adjustment pursuant to § 1130.52 applies may be reduced by the amount of such location adjustments.

(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.

§ 1130.76 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 §§ 1130.30(b) and 1130.31(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 § 1130.60 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 § 1130.60 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 § 1130.60 for such handler shall include, in lieu of the value of other source milk specified in § 1130.60(f) less the value of such other source milk specified in § 1130.71(a)(2)(ii), a value of milk determined pursuant to § 1130.60 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 § 1130.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1130.30(b) and 1130.31(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 § 1130.60 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.

§ 1130.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts, or payments 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 in the provisions under which such error occurred.

§ 1130.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1130.71, 1130.77(a), 1130.85, or 1130.86 shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation and, on the first day of each calendar month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1130.85 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 13th 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 that pursuant to § 1130.13(a)(2) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1130.44(a) (7) and (11) and the corresponding steps of § 1130.44(b), except such other source milk that is excluded from the computations pursuant to § 1130.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1130.76(a)(2).

§ 1130.86 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 § 1130.73, 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 13th 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 milk from 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 make, in lieu of the deductions 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, 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 1131—MILK IN CENTRAL ARIZONA MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1131.85 Assessment for order administration.
1131.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1131 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1131.1 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

§ 1131.2 Central Arizona marketing area.

"Central Arizona marketing area", hereinafter called the "marketing area", means all territory within the counties of Cochise, Graham, Greenlee, Maricopa, Pima, and Pinal, and that part of Yuma County south of 33 degrees latitude (North from the Equator), all in the State of Arizona.

§ 1131.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or a plant store) of a fluid milk product classified as Class I milk other than a delivery to a plant described in § 1131.7(a).

§ 1131.4 [Reserved]

§ 1131.5 [Reserved]

§ 1131.6 [Reserved]

§ 1131.7 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 plant approved by a duly constituted state or municipal health authority for the receipt or processing of Grade A milk or which supplies processed milk to an agency of the U.S. Government located within the marketing area, from which during the month:

(1) There is route disposition, except filled milk, equal to at least 50 percent of the total receipts at the plant (i) of milk qualified by inspection to become producer milk pursuant to § 1131.13(a), and (ii) from other milk plants and handlers described in § 1131.9(c) in the form of fluid milk products, except filled milk, qualified for fluid consumption; and

(2) There is route disposition, except filled milk, in the marketing area in a volume not less than 25 percent of such receipts and also greater than an average of 600 pounds per day.

(b) Any plant which ships 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 dairy farmers who would be producers if this plant qualifies as a pool plant) in the current month during the period of July through October or 20 percent in the current month during the period of November through June to a plant specified in paragraph (a) of this section: *Provided,* That if a plant qualifies in each of the months of July through October in the manner prescribed in this section such plant shall upon written application to the market administrator on or before October 31 following such compliance be designated as a pool plant until the end of the following June.

(c) A milk plant located within the marketing area at which milk may be received from the farms of dairy farmers holding permits or authorization issued by health authorities having jurisdiction in the marketing area and which is operated by a cooperative association qualified under § 1131.18 which has 75 percent or more of its member producers' milk received at the pool plants of other handlers. Milk received by such cooperative, in a truck owned or under contract to the cooperative, from a pool plant and transferred in such truck to an other pool plant for the account of the cooperative shall be considered a receipt at the cooperative's plant and a transfer from such plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Central Arizona marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period November through June, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of an other order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

§ 1131.8 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 in the marketing area 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 and which is not an other order plant nor a producer-handler plant.

§ 1131.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to milk of any producer which such cooperative association causes to be diverted pursuant to § 1131.13 for the account of such association;

(c) A cooperative association with respect to the 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 elects to be the handler for such milk;

(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 described in § 1131.7(d).

§ 1131.10 Producer-handler.

"Producer-handler" means:

(a) Any person who is both a dairy farmer and the operator of a plant from which fluid milk products are disposed of as route disposition in the marketing area and who:

(1) Receives at his plant, or acquires for route disposition fluid milk products only from:

(i) His own farm production; and

(ii) Fluid milk products obtained by transfer from pool plants or other plants in an amount not to exceed 5 percent of his total fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) Does not reprocess or convert milk products into a fluid milk product except to increase the nonfat milk solids content above that of the fluid milk product received;

(3) Furnishes proof satisfactory to the market administrator that:

(i) The maintenance, care, and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled (other than that received from regulated plants) is the personal enterprise of and at the personal risk of such person in his capacity as a producer; and

(ii) The operation of such plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

(b) The governmental agency that operates a milk plant, except that a plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant that is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for 1 month and thereafter resumes the status of a nonpool plant, it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk pursuant to the requirements specified in subparagraph (1) or (2) of this paragraph, and whose milk is received directly from the farm at a pool plant or is diverted as producer milk pursuant to § 1131.13.

(1) Produces milk, on a dairy farm subject to the regular inspection by a duly constituted State or municipal health authority, under a dairy farm permit or rating issued by such authority for the production of milk to be disposed of for fluid consumption.

(2) Produces milk which is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases.

(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 § 1131.44 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.

§ 1131.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat produced by producers:

(a) With respect to receipts at a pool plant:

(1) Received directly from such producers; and

(2) Diverted from such pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant, subject to the limitations and conditions of paragraph (c) of this section;

(b) With respect to additional receipts of a cooperative association:

(1) Diverter from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the limitations and conditions of paragraph (c) of this section; and

(2) For which the cooperative association is the handler pursuant to § 1131.9 (c); and

(c) With respect to diversions to nonpool plants pursuant to paragraphs (a) (2) and (b) (1) of this section:

(1) Such diversions may be without limit during the months of December through April, but shall not be for more than 8 days' production of any producer during any other month, otherwise only milk of such producer received at a pool plant shall be producer milk; and

(2) For purposes of location adjustments pursuant to §§ 1131.52 and 1131.75, milk so diverted shall be priced at the location of the plant to which diverted.

§ 1131.14 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 § 1131.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1131.40(b) (1);

(c) Products (other than fluid milk products and products specified in § 1131.40(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 § 1131.40(b) (1)) for which the handler fails to establish a disposition.

§ 1131.15 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 § 1131.40 (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.

§ 1131.16 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.

§ 1131.17 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).

§ 1131.18 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 for its members.

Handler Reports

§ 1131.30 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 § 1131.9(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 § 1131.40(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 § 1131.9 (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.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1131.9 (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 § 1131.76(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.

§ 1131.32 Other reports.

(a) Each handler, except a producer-handler or a handler making payment pursuant to § 1131.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month, the payments made to a cooperative association pursuant to § 1131.73(d);

(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 § 1131.13 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 §§ 1131.30 and 1131.31, 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

§ 1131.40 Classes of utilization.

Except as provided in § 1131.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1131.30 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 § 1131.41(a) to the receipts specified in § 1131.41(a)(2) and in shrinkage specified in § 1131.41 (b) and (c).

§ 1131.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1131.30, 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 § 1131.9(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 § 1131.9 (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.

§ 1131.42 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 § 1131.9(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 § 1131.44(a)(12) and the corresponding step of § 1131.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1131.44(a)(7) or the corresponding step of § 1131.44(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 § 1131.44(a)(11) or (12) or the corresponding steps of § 1131.44(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) Unless a different utilization is claimed by both handlers, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant described in § 1131.7(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class for such month at the pool plant(s) of the receiving handler after the computations pursuant to § 1131.44(a)(13)(i) and the corresponding step of § 1131.44(b).

(b) *Transfers or 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 § 1131.40.

(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 (*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 § 1131.30 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 trans-

ferred 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.

§ 1131.43 General classification rules.

In determining the classification of producer milk pursuant to § 1131.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1131.30 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 § 1131.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1131.40, 1131.41, and 1131.42;

(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 § 1131.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1131.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1131.9(a) for each of his pool plants separately and of each handler described in § 1131.9 (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 § 1131.41(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 § 1131.40(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 § 1131.40(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 § 1131.40(c)(6)), any product specified in § 1131.40(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 § 1131.40(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 § 1131.9(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 § 1131.40(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 § 1131.45(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 § 1131.9(c) according to the classification of such products pursuant to § 1131.42(a); and

(ii) A cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant described in § 1131.7(c) according to the classification of such products pursuant to § 1131.42(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 § 1131.44(a)(14) and the corresponding step of § 1131.44(b).

§ 1131.45 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 § 1131.44(a)(12) and the corresponding step of § 1131.44(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 § 1131.44 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

§ 1131.50 Class prices.

Subject to the provisions of § 1131.52, 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 $2.52.

(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.

§ 1131.51 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.

§ 1131.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside Pima County and more than 30 miles by shortest highway distance as measured by the market administrator, from the nearer of the Courthouses in Maricopa and Graham Counties, Ariz., 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 § 1131.50(a) shall be reduced

by 10 cents if such plant is located not more than 130 miles from the nearer courthouse and by an additional cent for each 10 miles or fraction thereof that such distance exceeds 130 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1131.9(c), plus 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) For other source milk to which a location adjustment is applicable and for milk received from producers at a plant located in Pima County, Ariz., and which is classified as Class I milk, the price computed under § 1131.50(a) shall be increased 12 cents.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1131.53 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.

§ 1131.54 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

§ 1131.60 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 § 1131.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1131.44 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 § 1131.44(a)(14) and the corresponding step of § 1131.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1131.74, 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 § 1131.44(a)(9) and the corresponding step of § 1131.44(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 § 1131.44(a)(9) and the corresponding step of § 1131.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(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 § 1131.44(a)(7) (i) through (iv) and the corresponding step of § 1131.44 (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 § 1131.44(a)(7) (v) and (vi) and the corresponding step of § 1131.44 (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 § 1131.44(a)(11) and the corresponding step of § 1131.44 (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.

§ 1131.61 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 § 1131.60 for all handlers who filed the reports prescribed by § 1131.30 for the month and who made the payments pursuant to §§ 1131.71 and 1131.73 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75;

(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 § 1131.60(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.

§ 1131.62 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

§ 1131.70 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 §§ 1131.71 and 1131.76 and out of which he shall make all payments pursuant to § 1131.72: *Provided,* That payments due to any handler shall be offset by any payments due from such handler.

§ 1131.71 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 § 1131.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1131.75, 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 § 1131.60(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.

§ 1131.72 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 § 1131.71(a)(2) exceeds the amount computed pursuant to § 1131.71(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.

§ 1131.73 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 27th 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 not less than 1.3 times 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; and

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price as adjusted pursuant to §§ 1131.74 and 1131.75, multiplied by the hundredweight of 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 made for marketing services pursuant to § 1131.86, (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 § 1131.72 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 second 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 total due such producer-members as determined pursuant to paragraph (a) of this section;

(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 seventh 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) the amount or rate and nature of any authorized deductions to be made from payments, and (iii) the amount and nature of payments due pursuant to § 1131.77; and

(d) Each handler who receives milk from a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received from such cooperative association during the first 15 days of the month at not less than 1.3 times the Class III price for the preceding month; and

(2) In final settlement, the value of such milk as classified pursuant to § 1131.44 at the class prices, as adjusted by the butterfat differential specified in § 1131.74, that are applicable at the location of the receiving handler's pool plant, less payment made pursuant to subparagraph (1) of this paragraph.

§ 1131.74 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.

§ 1131.75 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 § 1131.52; and

(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.

§ 1131.76 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 §§ 1131.30(b) and 1131.31(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 § 1131.60 for the partially regulated dis-

tributing 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 § 1131.60 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 § 1131.60 for such handler shall include, in lieu of the value of other source milk specified in § 1131.60(f) less the value of such other source milk specified in § 1131.71(a)(2)(ii), a value of milk determined pursuant to § 1131.60 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 § 1131.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1131.30 (b) and 1131.31(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 § 1131.60 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.

§ 1131.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in monies 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.

§ 1131.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1131.71 or § 1131.77 relative to payments to the producer-settlement fund shall be increased one-half of 1 percent on the second day following the due date of such obligation and on the 15th day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1131.85 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 (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1131.44(a) (7) and (11) and the corresponding steps of § 1131.44(b), except such other source milk that is excluded from the computations pursuant to § 1131.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1131.76(a)(2).

§ 1131.86 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 § 1131.73, 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 such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Subpart—Order Regulating Handling

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1132.85 Assessment for order administration.
1132.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1132 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1132.1 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

§ 1132.2 Texas Panhandle marketing area.

"Texas Panhandle marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas, and Beckham in the State of Oklahoma.

§ 1132.3 [Reserved]

§ 1132.4 [Reserved]

§ 1132.5 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 any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1132.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1132.7(a).

§ 1132.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means a plant described in paragraph (a) or (b) of this section. If a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a plant qualified pursuant to this section.

(a) A distributing plant from which a volume of Class I milk, except filled milk;

(1) Not less than 50 percent of the Grade A milk received at such plant from dairy farmers, from handlers described in § 1132.9(c), and from other plants, is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants); and

(2) Not less than 15 percent of such receipts, or an average of not less than 10,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from handlers described in § 1132.9(c) during such month: *Provided*, That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing 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 on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless notwithstanding the provisions of this subparagraph it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) such Class I disposition made under limited term contracts to governmental bases and institutions; and

(3) A distributing 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 to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order.

§ 1132.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1132.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of producers which is diverted pursuant to § 1132.13 for the account of such association;

(c) Any cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such asso-

ciation or under control of such association, by contract or otherwise, in such a way that the association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(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 § 1132.7(c).

§ 1132.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers and who disposes of no fluid milk products in excess of his own milk production and fluid milk products received from pool plants.

§ 1132.11 [Reserved]

§ 1132.12 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 pool plant, or (2) diverted pursuant to § 1132.13.

(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 § 1132.44 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.

§ 1132.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk from a producer that is handled by a pool plant operator or a handler described in § 1132.9 (b) and (c) as follows:

(a) Producer milk of a handler operating a pool plant is skim milk and butterfat in milk:

(1) Diverted by the operator of such pool plant for his account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section; and

(2) Received at such pool plant directly from producers and from a handler described in § 1132.9(c). If the handler 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 entire truckload shall be considered a receipt of producer milk at the first plant of delivery.

(b) Producer milk of a handler described in § 1132.9(b) is skim milk and butterfat in milk received by such handler from producers' farms and diverted by such handler for its account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section.

(c) Producer milk of a handler described in § 1132.9(c) is skim milk and butterfat in milk received by such handler from producers' farms in excess of the quantity delivered to pool plants. Such milk shall be priced to such handler at the location of the pool plant to which most of the milk in the tank truck was delivered during the month.

(d) Diverted milk is producer milk in any month only to the extent it meets conditions set forth in this paragraph:

(1) It is claimed as producer milk by the diverting handler in his report filed pursuant to § 1132.30;

(2) It is milk received from a dairy farmer who had producer status immediately prior to such diversion;

(3) It is not in excess of 15 days' production of each producer during any of the months July through February; and

(4) Such diverted producer milk shall be priced at the location of the pool plant where the producer's milk was last physically received.

§ 1132.14 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 § 1132.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1132.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1132.40(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 § 1132.40(b)(1)) for which the handler fails to establish a disposition.

§ 1132.15 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 § 1132.40 (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.

§ 1132.16 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.

§ 1132.17 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).

§ 1132.18 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

§ 1132.30 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 § 1132.9(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 § 1132.40(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 of fluid milk products in the marketing area.

(c) Each handler described in § 1132.9 (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.

§ 1132.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1132.9 (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 § 1132.76(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.

§ 1132.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the first day other source milk is received in the form of any 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

(2) Prior to his diversion of producer milk to a nonpool plant, 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 §§ 1132.30 and 1132.31 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

§ 1132.40 Classes of utilization.

Except as provided in § 1132.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1132.30 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 § 1132.41(a) to the receipts specified in § 1132.41(a)(2) and in shrinkage specified in § 1132.41 (b) and (c).

§ 1132.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1132.30, 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 § 1132.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1132.9(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 § 1132.9 (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.

§ 1132.42 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 § 1132.44(a)(12) and the corresponding step of § 1132.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1132.44(a)(7) or the corresponding step of § 1132.44(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 § 1132.44 (a) (11) or (12) or the corresponding steps of § 1132.44(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 § 1132.40.

(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 (*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 § 1132.30 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.

§ 1132.43 General classification rules.

In determining the classification of producer milk pursuant to § 1132.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1132.30 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 § 1132.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1132.40, 1132.41, and 1132.42;

(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 § 1132.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1132.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1132.9(a) for each of his pool plants separately and of each handler described in § 1132.9 (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 § 1132.41(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 subtacted 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 § 1132.40(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 § 1132.40(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 § 1132.40(c)(6)), any product specified in § 1132.40(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 § 1132.40(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 (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 § 1132.40(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 § 1132.45(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 § 1132.42(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 paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1132.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classifications:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(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 § 1132.44 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 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

CLASS PRICES

§ 1132.50 Class prices.

Subject to the provisions of § 1132.52, 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 $2.25.

(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.

§ 1132.51 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.

§ 1132.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers at a pool plant located 100 miles or more from the city hall, Amarillo, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to paragraph (b) of this section, or otherwise classified as Class I milk, the price specified in § 1132.50(a) shall be reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received:

Distance from the Amarillo City Hall (miles):	*Rate per hundredweight (cents)*
100 but less than 110	15.0
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 receipts at such plant from producers and handlers described in § 1132.9(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.

§ 1132.53 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.

§ 1132.54 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

§ 1132.60 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 § 1132.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1132.44 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 § 1132.44(a)(14) and the corresponding step of § 1132.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1132.74, 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 § 1132.44(a)(9) and the corresponding step of § 1132.44(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 § 1132.44(a)(7) (i) through (iv) and the corresponding step of § 1132.44 (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 § 1132.44(a)(7) (v) and (vi) and the corresponding step of § 1132.44 (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 § 1132.44(a)(11) and the corresponding step of § 1132.44(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.

§ 1132.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price for all milk of 3.5 percent butterfat content f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Tex., as follows:

(a) Combine into one total the values computed pursuant to § 1132.60 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustments to be made pursuant to § 1132.75;

(c) Add an amount equal to one-half of the unobligated cash 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 § 1132.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (d) of this section. The result shall be the "uniform price" for producer milk.

§ 1132.62 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

§ 1132.70 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 §§ 1132.71, 1132.76, and 1132.77, and from which he shall make all payments pursuant to §§ 1132.72 and 1132.77: *Pro-*

vided, That payments due to any handler shall be offset by payments due from such handler.

§ 1132.71 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 § 1132.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1132.75, 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 § 1132.60(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 is 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.

§ 1132.72 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 § 1132.71(a)(2) exceeds the amount computed pursuant to § 1132.71(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 per hundredweight such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1132.73 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 last 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 such month, an amount computed at not less than the uniform price for hundredweight pursuant to § 1132.61, subject to the butterfat differential computed pursuant to § 1132.74, and plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location adjustments pursuant to § 1132.75, (3) deductions for marketing services pursuant to § 1132.86, and (4) proper deductions authorized by such producer: *Provided,* That if such handler has not received full payment for such month pursuant to § 1132.72 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 payment from the market administrator. 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.

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator 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 improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 26th and 13th days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar 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 cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a cooperative association which collects payments for its members pursuant to subparagraph (1) of this paragraph shall, on or before the 20th of each month, furnish such association information showing the daily and total pounds milk received from each of the association's member producers for the first 15 days of such month and, on or before the fifth day after the end of each month, such information for the 16th through the end of such month.

(4) For producer milk received from a handler described in § 1132.9(c), each handler shall make payments as follows:

(i) On or before the 26th day of the month, a partial payment for milk received during the first 15 days of such month at not less than the amount specified in paragraph (a) of this section; and

(ii) On or before the 13th day of the following month, in final settlement, the value of such milk received during the month, at the applicable uniform price as adjusted pursuant to §§ 1132.74 and 1132.75, less the amount of payment made pursuant to subdivision (i) of this subparagraph.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and 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 the producer is required pursuant to the order;

(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 or cooperative association.

§ 1132.74 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 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.

§ 1132.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment pursuant to § 1132.73 the uniform price pursuant to § 1132.61 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Tex., by the shortest hard-surfaced highway distance as de-

termined by the market administrator 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:

Distance from the Amarillo City Hall (miles):	*Rate per hundredweight (cents)*
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of computations pursuant to §§ 1132.71 and 1132.72, the uniform price shall be adjusted at the rates set forth in § 1132.52 applicable at the location of the nonpool plant from which the milk was received (but the resulting price shall not be less than the Class III price).

§ 1132.76 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 §§ 1132.30(b) and 1132.31(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 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 § 1132.60 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 § 1132.60 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 § 1132.60 for such handler shall include, in lieu of the value of other source milk specified in § 1132.60(f) less the value of such other source milk specified in § 1132.71(a)(2)(ii), a value of milk determined pursuant to § 1132.60 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 § 1132.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1132.30 (b) and 1132.31(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 § 1132.60 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.

§ 1132.77 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 § 1132.71, 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 § 1132.72, 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 § 1132.73, 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.

§ 1132.78 Charges on overdue accounts.

There shall be added to any balance due the market administrator pursuant to §§ 1132.71, 1132.76, 1132.77, 1132.85, and 1132.86 an amount equal to one-half of 1 percent of such balance for each month or any portion thereof that payment of the balance is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1132.85 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 5 cents per hun-

dredweight, 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 § 1132.44(a) (7) and (11) and the corresponding steps of § 1132.44(b), except such other source milk that is excluded from the computations pursuant to § 1132.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1032.76(a)(2).

§ 1132.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1132.73(b) shall deduct 6 cents per hundredweight or such lesser amounts as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, 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 milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers' cooperative associations: 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, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1138—MILK IN RIO GRANDE VALLEY MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1138.85 Assessment for order administration.
1138.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1138 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1138.1 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

§ 1138.2 Rio Grande Valley marketing area.

"Rio Grande Valley marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the counties of Bernalillo, Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia, all in the State of New Mexico; El Paso in the State of Texas; and Archuleta, Montezuma, and La Plata, in the State of Colorado.

§ 1138.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk products classified as Class I milk, other than a delivery to a pool plant or nonpool plant.

§ 1138.4 [Reserved]

§ 1138.5 [Reserved]

§ 1138.6 [Reserved]

§ 1138.7 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 plant hereinafter referred to as a "distributing pool plant" in which fluid milk products are pasteurized or packaged and from which there is route disposition in the marketing area equal to not less than 15 percent of the total Class I sales of such plant, except filled milk, or 10,000 pounds daily (average), whichever is less: *Provided*, That the total quantity of Class I milk, except filled milk, disposed from such plant during the month is not less than 50 percent of such plant's receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to a nonpool plant by the handler operating such pool plant.

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month not less than 50 percent of its dairy farm supply of Grade A milk is moved to plants from each of which there is route disposition, except filled milk, equal to not less than 50 percent of its receipts of Grade A milk during the month and route disposition, except filled milk, in the marketing area equal to at least 15 percent of such receipts or a daily average of 10,000 pounds, whichever is less.

(c) Any plant, hereinafter referred to as a "cooperative standby pool plant," which is operated by a cooperative association, and is located within the marketing area, if 50 percent or more of the milk delivered during the month by producers who are members of such association is delivered directly or is transferred by the association to pool plants of other handlers.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Rio Grande Valley marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period March through

July, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

§ 1138.8 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 eligible for distribution in the marketing area are moved to a pool plant qualified pursuant to § 1138.7 and which is not an other order plant nor a producer-handler plant.

§ 1138.9 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 the milk of any member producer which such cooperative association causes to be diverted pursuant to § 1138.12 for the account of such cooperative association;

(c) A cooperative association with respect to the 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 notified the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be a handler for such milk. For purposes of location adjustments to producers such milk is considered to have been received from producers by the cooperative association at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area; and

(e) Any person in his capacity as the operator of a nonpool plant from which Grade A milk as shipped to a pool plant pursuant to § 1138.7(a).

§ 1138.10 Producer-handler.

(a) "Producer-handler" means any person who processes and packages milk from his own farm production, who has route disposition within the marketing area consisting of any portion of such milk, and who receives no fluid milk products from other dairy farmers or from any source other than a pool plant and receipts from pool plants shall not be in excess of 11,000 pounds per month or, any person who processes and packages certified milk from his own farm production and disposes of such milk to another plant and who receives no milk from any source except his certified herd: *Provided,* That any person who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

(b) In the case of a producer-handler of certified milk, the certified dairy herd and the milk plant in which the certified milk is handled shall be considered one business unit and shall not include milk which is delivered to other handlers' plants from a noncertified herd maintained on the same farm.

(c) A governmental agency which operates a milk, or filled milk plant shall be considered a producer-handler: *Provided,* That the plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant which is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for one month and thereafter resumes the status of a nonpool plant it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

§ 1138.11 [Reserved]

§ 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is:

(1) Received at a pool plant; or

(2) Diverted for the account of the diverting handler from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(i) A cooperative association may divert for its account the milk of any member producer, whose milk is received at a distributing pool plant for at least 3 days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of its member producer milk received at all pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers provided each association has filed such a request in writing with the market administrator;

(ii) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to subdivision (i) of this subparagraph, whose milk is received at his pool plant for at least 3 days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of the milk received at such pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to subdivision (i) of this subparagraph. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk;

(iii) For purposes of the requirements of § 1138.7, milk diverted for the account of the operator of a pool plant shall be included in the receipts of the pool plant from which diverted; and

(iv) For the purposes of location adjustments pursuant to §§ 1138.52 and 1138.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the pool plant from which diverted when the farm on which the milk is produced is located within the marketing area and at the location of the nonpool plant where received when the farm on which the milk is produced is located outside the marketing area.

(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 § 1138.44 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.

§ 1138.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer and received at a pool plant directly from producers or diverted pur-

suant to § 1138.12. Milk received at a pool plant from a handler described in § 1138.9(c) shall be considered under this part as producer milk of the pool plant operator. Milk received from producers by a handler described in § 1138.9(c) but not delivered to a pool plant shall be considered under this part as producer milk of such handler.

§ 1138.14 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 § 1138.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1138.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1138.40(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 § 1138.40(b)(1) for which the handler fails to establish a disposition.

§ 1138.15 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 § 1138.40 (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.

§ 1138.16 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.

§ 1138.17 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).

§ 1138.18 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";

(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; and

(c) Has its entire activities under the control of its members.

§ 1138.19 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at his pool plant(s) for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not less than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

HANDLER REPORTS

§ 1138.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for the 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 § 1138.9(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 § 1138.40(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 § 1138.9 (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.

§ 1138.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1138.9 (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 § 1138.76(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.

§ 1138.32 Other reports.

In addition to the reports required pursuant to §§ 1138.30 and 1138.31, 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

§ 1138.40 Classes of utilization.

Except as provided in § 1138.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1138.30 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, low-fat 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 § 1138.41(a) to the receipts specified in § 1138.41(a)(2) and in shrinkage specified in § 1138.41 (b) and (c).

§ 1138.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1138.30, 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 § 1138.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1138.9(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 § 1138.9 (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.

§ 1138.42 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 § 1138.44(a)(12) and the corresponding step of § 1138.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1138.44(a)(7) or the corresponding step of § 1138.44(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 § 1138.44(a) (11) or (12) or the corresponding steps of § 1138.44(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 § 1138.40.

(c) *Transfers to producer-handlers.* Skim milk or butter fat 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 (*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 § 1138.30 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.

§ 1138.43 General classification rules.

In determining the classification of producer milk pursuant to § 1138.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1138.30 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 § 1138.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1138.40, 1138.41, and 1138.42;

(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 § 1138.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1138.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1138.9(a) for each of his pool plants separately and of each handler described in § 1138.9 (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 § 1138.41(b);

(2) Subtract in the following order from the total pounds of skim milk in Class I:

(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; and

(ii) The pounds of skim milk in receipts of packaged certified fluid milk products from a producer-handler if disposed of in the same form as received;

(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 § 1138.40(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 § 1138.40(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 § 1138.40(c)(6)), any product specified in § 1138.40(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 § 1138.40(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 that were not subtracted pursuant to subparagraph (2)(ii) of this paragraph;

(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 (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 § 1138.40(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 § 1138.45(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 § 1138.42 (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 paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1138.45 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 § 1138.44(a)(12) and the corresponding step of § 1138.44(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 § 1138.44 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 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 after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to 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

§ 1138.50 Class prices.

Subject to the provisions of § 1138.52, 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 $2.35.

(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.

§ 1138.51 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.

§ 1138.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant in Zone 1 (comprising the counties of Bernalillo, Dona Ana, Grant, Guadalupe, Harding, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, and Valencia, all in the State of New Mexico, and El Paso, Tex.), which is classified as Class I milk, the Class I price shall be the price computed pursuant to § 1138.50(a).

(b) For milk received from producers at a pool plant in Zone II (comprising the counties of Archuleta, La Plata, and Montezuma, Colorado, and San Juan, N. Mex.), and in Zone III (comprising the counties of Eddy, Chaves, Curry, De Baca, Lea, Quay, and Roosevelt, N. Mex.), which is classified as Class I mink or assigned Class I location adjustment credit pursuant to paragraph (d) of this section, the Class I price shall be the price computed pursuant to § 1138.50 (a) minus 15 cents.

(c) For milk received from producers at a pool plant located outside the marketing area and more than 100 miles by the shortest highway distance, as determined by the market administrator, from the nearest of the county courthouses in Bernalillo or Santa Fe Counties, N. Mex., or El Paso, Tex., and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (c) of this section, the price computed pursuant to § 1138.50(a) shall be reduced by 15 cents and by an additional cent for each 10 miles or fraction thereof, that such distance calculated from the Bernalillo, Santa Fe, or El Paso County Courthouse, whichever is nearer, exceeds 110 miles.

(d) For purposes of calculating such adjustment, bulk 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 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.

(e) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (b) and (c) of this section, except that the

adjusted Class I price shall not be less than the Class III price.

§ 1138.53 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.

§ 1138.54 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

§ 1138.60 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 § 1138.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1138.44 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 § 1138.44(a)(14) and the corresponding step of § 1138.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1138.74, 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 § 1138.44(a)(9) and the corresponding step of § 1138.44(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 § 1138.44(a)(7)(i) through (iv) and the corresponding step of § 1138.44(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 § 1138.44(a)(7)(v) and (vi) and the corresponding step of § 1138.44(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 § 1138.44(a)(11) and the corresponding step of § 1138.44(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.

§ 1138.61 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 § 1138.60 for all handlers who filed the reports prescribed by § 1138.30 for the month and who made the payments pursuant to §§ 1138.71 and 1138.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions for location adjustments computed pursuant to § 1138.75;

(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 § 1138.60(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.

§ 1138.62 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

§ 1138.70 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 §§ 1138.71, 1138.76 and 1138.77 and from which he shall make all payments pursuant to §§ 1138.72 and 1138.77: *Provided*, That any payments due any handler shall be offset by any payments due from such handler.

§ 1138.71 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 § 1138.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1138.75, 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 § 1138.60(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.

§ 1138.72 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 § 1138.71(a)(2) exceeds the amount computed pursuant to § 1138.71(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.

§ 1138.73 Payments to producers and to cooperative associations.

Except as provided in paragraphs (c) and (e) of this section, each handler, except a cooperative association, shall make payment to each producer from whom milk is received as specified in paragraphs (a) and (b) of this section:

(a) On or before the last day of the month, to each producer who had not discontinued shipping milk to such handler before the 28th day of the month, a partial payment equal to the uniform price for the preceding month multiplied by the hundredweight of milk delivered during the first 15 days of the current month less authorized deductions.

(b) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1138.61, as adjusted pursuant to §§ 1138.74 and 1138.75, plus or minus adjustments for errors made in previous payments to such producers and less (1) payments made pursuant to paragraph (a) of this section, (2) deductions for marketing services pursuant to § 1138.86 and (3) proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 1138.72 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.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator 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 improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar 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 cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making payments to producers pursuant to paragraphs (b) and (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 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 order;

(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.

(e) Each handler who receives milk from a handler described in § 1138.9(c), shall, on or before the second day prior to the date payments are due individual producer, pay such cooperative association for such milk as follows:

(1) A partial payment in the amount specified in paragraph (a) of this section; and

(2) In making final settlement, the value of such milk at the applicable uniform price as adjusted pursuant to §§ 1138.74 and 1138.75, less the amount of partial payment made on such milk.

(f) Each handler who receives milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report on or before the eighth day after the end of the month to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(a) The days of delivery, the total pounds of milk, and the average butterfat test of milk received from such producer during the month;

(b) The amount or rate and nature of any deductions; and

(c) The amount of any payments due such producer pursuant to § 1138.77.

§ 1138.74 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.

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located in Zones II and III or at pool plants located outside the marketing area and more than 100 miles, as determined by the market administrator, from the nearest of the county courthouses in El Paso County, Tex., or Bernalillo, or Santa Fe Counties, N. Mex., there shall be deducted an adjustment for each such plant for all milk at the rates specified pursuant to § 1138.52.

(b) For purposes of computations pursuant to §§ 1138.71 and 1138.72, the uniform price shall be adjusted at the rates set forth in § 1138.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1138.76 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 §§ 1138.30(b) and 1138.31(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 § 1138.60 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 § 1138.60 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 § 1138.60 for such handler shall include, in lieu of the value of other source milk specified in § 1138.60(f) less the value of such other source milk specified in § 1138.71(a)(2)(ii), a value of milk determined pursuant to § 1138.60 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 § 1138.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1138.30(b) and 1138.31(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 § 1138.60 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.

§ 1138.77 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 moneys due a producer or 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 as set forth in the provisions under which such error occurred. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment 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

§ 1138.85 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 16th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. If a handler elects pursuant to § 1138.19 to use two accounting periods in any month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk including such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1138.44(a) (7) and (11) and the corresponding steps of § 1138.44(b), except such other source milk that is excluded from the computations pursuant to § 1138.60 (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 § 1138.76(a)(2).

§ 1138.86 Deduction for marketing.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself for milk pursuant to § 1138.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 16th 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 milk for producers who are not receiving such services 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 make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount of such deductions to the cooperative association, furnishing a statement showing the amount of the deduction and the quantity of milk on which the deduction was computed from each producer.

Signed at Washington, D.C., on August 28, 1972.

John C. Blum,
Deputy Administrator,
Regulatory Programs.

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