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Latest Edition

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[Revised as of January 1, 1972]

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PROCLAMATION 4157

National Coaches Day

By the President of the United States of America

A Proclamation

Over the years, we as a Nation have become increasingly sports-minded. We are intensely aware of the achievements of our professional athletes and have given them well-deserved recognition. We are especially proud this year of the members of our Olympic teams. And we are also enthusiastic about the fine athletes in our high schools, colleges, and universities.

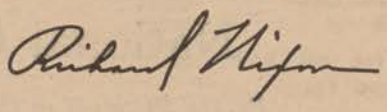
Yet, despite the talent of these men and women and their initial promise, many of them could not have risen to their current performance levels without the guidance and encouragement of those who have coached them at every stage of their progression. Whether or not they achieve athletic distinction, most of those who participate in organized sports will become better citizens because of the lessons they have learned from their coaches and because of the example which their coaches have set for them.

Coaches are highly qualified teachers—in highly specialized fields. But more than that, they are friends and counselors who help to instill in their charges important attitudes that will serve them all their lives. I know from my own experience how much an understanding coach can do to shape the life of a young person. For a coach can help to teach a student the value of teamwork, discipline, and a healthy attitude toward competition. A coach can help a young person learn how to win gracefully and how to grow from defeat. A coach can help build that moral fiber on which our future as a Nation depends.

The coaches of America, in sports and in many other fields of endeavor, do not work for personal glory. Their satisfaction usually comes through the achievements of others whom they have helped. It is appropriate that our Nation join in according them the recognition and honor which they so richly deserve, for they represent the finest elements in the American character.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, in consonance with Senate Joint Resolution 213, do hereby proclaim October 6, 1972, as National Coaches Day. I call upon the people of the United States and interested groups and organizations to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth 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.72-16163 Filed 9-19-72;12:27 pm]

Rules and Regulations

Title 7—AGRICULTURE

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

APPENDIX—COUNTIES DESIGNATED FOR COTTON CROP INSURANCE

Pursuant to authority contained in § 401.101 of the above-identified regulations, as amended, the following counties have been designated for cotton crop insurance for the 1973 crop year.

ALABAMA

Barbour.
Blount.
Cherokee.
Chilton.
Coffee.
Colbert.
Conecuh.
Covington.
Crenshaw.
Cullman.
Dale.
Dallas.
De Kalb.
Escambia.
Etowah.
Geneva.
Hale.
Henry.
Houston.
Jackson.
Lauderdale.
Lawrence.
Limestone.
Madison.
Marshall.
Morgan.
Pickens.
Pike.
Shelby.
Talladega.
Tuscaloosa.

ARIZONA

Maricopa.
Pinal.
Yuma.

ARKANSAS

Arkansas.
Ashley.
Chicot.
Clay.
Craighead.
Crittenden.
Cross.
Desha.
Greene.
Jackson.
Jefferson.
Lawrence.
Lee.
Lincoln.
Lonoke.
Mississippi.
Monroe.
Phillips.
Poinsett.
Prairie.
Randolph.
Saint Francis.
Woodruff.

CALIFORNIA

Fresno.
Imperial.
Kern.
Kings.
Madera.
Merced.
Riverside.
Tulare.

FLORIDA

Jackson.

GEORGIA

Baker.
Ben Hill.
Brooks.
Bulloch.
Calhoun.
Candler.
Clay.
Coffee.
Colquitt.
Cook.
Crisp.
Decatur.
Dooly.
Early.
Irwin.
Lee.
Miller.
Mitchell.
Randolph.
Sumter.
Tattnall.
Terrell.
Thomas.
Tift.
Toombs.
Turner.
Worth.

KENTUCKY

Fulton.

LOUISIANA

Acadia.
Avoyelles.
Bossier.
Caddo.
Caldwell.
Catahoula.
Concordia.
East Carroll.
Evangeline.
Franklin.
Madison.
Morehouse.
Natchitoches.
Pointe Coupee.
Rapides.
Red River.
Richland.
Saint Landry.
Tensas.
West Carroll.

MISSISSIPPI

Alcorn.
Benton.
Bolivar.
Calhoun.
Carroll.
Chickasaw.
Coahoma.
De Soto.
Hinds.
Holmes.
Humphreys.
Issaquena.
Jefferson Davis.
Lee.
Leflore.
Madison.
Monroe.
Panola.
Pontotoc.
Prentiss.
Quitman.
Sharkey.
Sunflower.
Tallahatchie.
Tippah.
Tunica.
Union.
Washington.
Yazoo.

MISSOURI

Butler.
Dunklin.
Mississippi.
New Madrid.
Pemiscot.
Scott.
Stoddard.

NEW MEXICO

Chaves.
Dona Ana.
Eddy.
Lea.

NORTH CAROLINA

Anson.
Bertie.
Chowan.
Cleveland.
Cumberland.
Edgecombe.
Franklin.
Greene.
Halifax.
Harnett.
Hertford.
Hoke.
Iredell.
Johnston.
Lincoln.
Montgomery.
Moore.
Nash.
Northampton.
Pitt.
Richmond.
Robeson.
Rowan.
Rutherford.
Sampson.
Scotland.
Union.
Warren.
Wayne.
Wilson.

OKLAHOMA

Beckham.
Caddo.
Grady.
Harmon.
Jackson.
Kiowa.
Tillman.
Washita.

SOUTH CAROLINA

Aiken.
Allendale.
Anderson.
Bamberg.
Barnwell.
Calhoun.
Chester.
Chesterfield.
Clarendon.
Darlington.
Dillon.
Dorchester.
Edgefield.
Florence.
Greenville.
Hampton.
Kershaw.
Laurens.
Lee.
Lexington.
Marion.
Marlboro.
Orangeburg.
Saluda.
Spartanburg.
Sumter.
Williamsburg.
York.

TENNESSEE

Carroll.
Chester.
Crockett.
Dyer.
Fayette.
Franklin.
Gibson.
Giles.
Hardeman.
Haywood.
Henderson
Lake.
Lauderdale.
Lawrence.
Lincoln.
McNairy.
Madison.
Obion.
Shelby.
Tipton.
Weakley.

TEXAS

Austin.
Bailey.
Bell.
Bosque.
Brazos.
Briscoe.
Burleson.
Calhoun.
Castro.
Cochran.
Collin.
Crosby.
Culberson.
Dawson.
Deaf Smith.
Denton.
Ellis.
El Paso.
Falls.
Fannin.
Floyd.
Fort Bend.
Garza.
Grayson.
Hale.
Haskell.
Hill.
Hockley.
Hudspeth.
Hunt.
Knox.
Lamar.
Lamb.
Limestone.
Lubbock.
Lynn.
McLennan.
Matagorda.
Milam.
Navarro.
Nueces.
Parmer.
Pecos.
Presidio.
Reeves.
Refugio.
Robertson.
San Patricio.
Swisher.
Terry.
Travis.
Victoria.
Wharton.
Wilbarger.
Williamson.

VIRGINIA

Greensville.
Southampton.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] RICHARD H. ASLAKSON,
Manager, Federal Crop Insurance Corporation.

[FR Doc.72-16029 Filed 9-19-72;8:54 am]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

APPENDIX—COUNTIES DESIGNATED FOR GRAIN SORGHUM CROP INSURANCE

Pursuant to authority contained in § 401.101 of the above-identified regulations, as amended, the following counties have been designated for grain sorghum crop insurance for the 1973 crop year.

ARIZONA

Maricopa.
Pinal.
Yuma.

COLORADO

Kit Carson.

KANSAS

Allen.	Marshall.
Anderson.	McPherson.
Atchison.	Meade.
Barton.	Miami.
Bourbon.	Mitchell.
Brown.	Montgomery.
Butler.	Morris.
Chase.	Nemaha.
Clay.	Neosho.
Cloud.	Osage.
Coffey.	Osborne.
Cowley.	Ottawa.
Crawford.	Pawnee.
Dickinson.	Phillips.
Doniphan.	Pottawatomie.
Douglas.	Pratt.
Elk.	Reno.
Ellis.	Republic.
Ellisworth.	Rice.
Finney.	Riley.
Franklin.	Rooks.
Geary.	Rush.
Grant.	Russell.
Gray.	Saline.
Greenwood.	Scott.
Harvey.	Sedgwick.
Haskell.	Seward.
Jackson.	Shawnee.
Jefferson.	Smith.
Jewell.	Stafford.
Johnson.	Stanton.
Kearny.	Stevens.
Kingman.	Sumner.
Labette.	Wabaunsee.
Lincoln.	Washington.
Linn.	Wichita.
Lyon.	Wilson.
Marion.	Woodson.

MISSOURI

Atchison.	Henry.
Bates.	Vernon.

NEBRASKA

Adams.	Madison.
Boone.	Nance.
Butler.	Nemaha.
Cass.	Nuckolls.
Clay.	Otoe.
Colfax.	Pawnee.
Dodge.	Platte.
Fillmore.	Polk.
Franklin.	Richardson.
Gage.	Saline.
Hall.	Saunders.
Hamilton.	Seward.
Jefferson.	Thayer.
Johnson.	Webster.
Kearney.	York.
Lancaster.	

NEW MEXICO

Curry.	Lea.

OKLAHOMA

Alfalfa.	Jackson.
Blaine.	Kay.
Caddo.	Kiowa.
Canadian.	Mayes.
Craig.	Nowata.
Delaware.	Ottawa.
Garfield.	Texas.
Grady.	Tillman.
Grant.	Washita.

SOUTH DAKOTA

Bon Homme.	Hanson.
Charles Mix.	Hutchinson.
Davison.	Sanborn.
Douglas.	

TEXAS

Bailey.	Crosby.
Bell.	Dallam.
Bosque.	Deaf Smith.
Briscoe.	Denton.
Calhoun.	Ellis.
Carson.	Falls.
Castro.	Floyd.
Collin.	Fort Bend.

TEXAS—Continued

Grayson.	Nueces.
Hale.	Ochiltree.
Hansford.	Oldham.
Hartley.	Parmer.
Hill.	Randall.
Hunt.	Refugio.
Hutchinson.	San Patricio.
Lamb.	Sherman.
Lubbock.	Swisher.
Matagorda.	Travis.
McLennan.	Victoria.
Milam.	Wharton.
Moore.	Wilbarger.
Navarro.	Williamson.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] RICHARD H. ASLAKSON,
Manager, Federal Crop Insurance Corporation.

[FR Doc.72-16030 Filed 9-19-72;8:54 am]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

APPENDIX—PARISHES DESIGNATED FOR SUGARCANE CROP INSURANCE

Pursuant to authority contained in § 401.101 of the above-identified regulations, the following parishes have been designated for sugarcane crop insurance for the 1973 crop year.

LOUISIANA

Ascension.	St. James.
Assumption.	St. John the Baptist.
Iberia.	St. Martin.
Iberville.	St. Mary.
Lafourche.	Terrebonne.
Pointe Coupee.	West Baton Rouge.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] RICHARD H. ASLAKSON,
Manager, Federal Crop Insurance Corporation.

[FR Doc.72-16031 Filed 9-19-72;8:54 am]

PART 411—GRAPE CROP INSURANCE

Subpart—Regulations for the 1967 and Succeeding Crop Years

APPENDIX—COUNTIES DESIGNATED FOR GRAPE CROP INSURANCE

Pursuant to authority contained in § 411.1 of the above-identified regulations, the following counties have been designated for grape crop insurance for the 1973 crop year.

NEW YORK

Chautauqua.	Seneca.
Niagara.	Steuben.
Ontario.	Yates.
Schuyler.	

PENNSYLVANIA

Erie.

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] RICHARD H. ASLAKSON,
Manager, Federal Crop Insurance Corporation.

[FR Doc.72-16032 Filed 9-19-72;8:54 am]

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

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 2]

PART 719—RECONSTITUTION OF FARMS, ALLOTMENTS, AND BASES

Eminent Domain Acquisitions

This amendment is issued pursuant to the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1281 et seq.), including the amendment in Public Law 92-354, approved July 26, 1972. Public Law 92-354 removes the requirement that allotments established from the eminent domain pool be comparable with allotments determined for other farms in the same area. The purpose of the amendment is to amend the regulations in conformity with the statute and to make it clear that the pooling provisions do not apply if the acquisition of land was for the purpose of continued crop production.

Since farmers for whom allotments and bases are pooled as a result of an eminent domain acquisition may have such allotments and bases transferred to other land acquired by them at any time within the 3-year limitation period, it is essential that this amendment be made effective as soon as possible. It is hereby found that compliance with the notice, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 is impracticable and contrary to the public interest. Accordingly, this amendment shall become effective upon publication in the FEDERAL REGISTER.

Section 719.11 is amended by changing subparagraphs (3) and (4) of paragraph (g) and subparagraph (6) of paragraph (j) to read as follows:

§ 719.11 Eminent domain acquisitions.

* * * * *

(g) *Cases where pooling not permitted or required.* * * *

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

(4) *15 percent or more of cropland acquired.* If an agency acquires part of a farm for nonfarming purposes and the cropland on the land so acquired represents 15 percent or more of the total cropland on the farm, the allotments and bases attributable to the acquired land shall be retained on the portion of the farm not acquired by an agency if the owner files a written request with the county committee for such retention. However, only such amounts of allotments and bases may be retained as can be supported on the available cropland, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation

practices, and the soil and other physical factors affecting the production of the commodity. Allotments and bases not retained shall be pooled.

* * * * *

(j) *Regular transfers from pool.* * * *

(6) *Amount of allotment or feed grain base available for transfer.* Upon completion of all necessary approvals under this paragraph, the receiving county commitee shall issue an appropriate allotment or feed grain base notice under the applicable commodity regulations, taking into consideration the land, labor, and equipment available for the production of the commodity, crop rotation practices, and the soil and other physical factors affecting the production of the commodity. For purposes of determining such amount, the receiving county committee shall consider the receiving tract as a separate farm when such tract is in combination with land under separate ownership. The acreage transferred from the pool shall not exceed the allotment or feed grain base most recently established for the acquired farm and placed in the pool. When all or a part of the allotment or feed grain base placed in the pool is transferred and used to establish or increase the allotment or feed grain base for other farms owned or purchased by the owner, all or the proportionate part of the past acreage history for the acquired farm shall be transferred to and considered for purposes of future allotments or feed grain bases to have been planted on the receiving farm for which an allotment or feed grain base is established or increased under this section. If only a part of the available allotment or feed grain base is transferred from the pool, the remaining part of the allotment and feed grain base and past acreage history shall remain in the pool for transfer to other farms of the owner until all such allotment or feed grain base acreage has been transferred or until the period of eligibility for establishing or increasing allotments or feed grain bases under this section has expired.

* * * * *

(Secs. 375, 378, 52 Stat. 66, as amended, 72 Stat. 995, as amended; 7 U.S.C. 1375, 1378)

Effective date: Date of publication in the FEDERAL REGISTER (9–20–72).

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

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

[FR Doc.72–15958 Filed 9–19–72;8:49 am]

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

SUBCHAPTER H—DETERMINATION OF WAGE RATES

[Docket No. SH–308]

PART 865—SUGARCANE; TEXAS

Fair and Reasonable Wage Rates

Pursuant to the provisions of section 301(c)(1) of the Sugar Act of 1948, as amended (herein referred to as "act"), after investigation and consideration of the evidence obtained at the public hearing held in San Benito, Tex., on June 23, 1972, the following determination is hereby issued:

Sec.
865.1 Requirements.
865.2 Applicability of wage requirements.
865.3 Payment of wages.
865.4 Evidence of compliance.
865.5 Employment of workers through a labor contractor or crew leader.
865.6 Subterfuge.
865.7 Claim for unpaid wages.
865.8 Failure to pay all wages in full.
865.9 Checking compliance.

AUTHORITY: The provision of these §§ 865.1 to 865.9 issued under secs. 301, 403, 61 Stat. 929, as amended, 932; 7 U.S.C. 1131, 1153.

§ 865.1 Requirements.

A producer of sugarcane in Texas shall be deemed to have complied with the wage provisions of the act if all persons employed on the farm in production, cultivation, or harvesting work, as provided in § 865.2, shall have been paid in accordance with the following:

(a) *Wage rates.* All such persons shall have been paid in full for all such work and shall have been paid wages in cash therefor at rates required by existing legal obligations, regardless of whether those obligations resulted from an agreement (such as a labor union agreement) or were created by State or Federal legislative action, or at rates as agreed upon between the producer and the worker, whichever is higher, but not less than the following, which shall become effective on October 2, 1972, and shall remain in effect until amended, superseded, or terminated:

(1) *Work performed on a time basis.*

Class of worker	Rate per hour
(i) Tractor drivers, truck drivers, and principal operators of mechanical harvesting and loading equipment	$2.10
(ii) All other workers	1.85

(2) *Workers 14 and 15 years of age and full-time students when employed on a time basis.* For workers 14 and 15 years of age and, where the Secretary of Labor has by certificate or order provided for the employment of full-time students 14 years of age or older on a part-time basis (not to exceed 20 hours in any workweek during the time school is in session) or on a part-time or full-time basis during school vacations, the rate shall be not less than 85 percent of the applicable hourly rate for the class of worker prescribed in subparagraph (1) of this paragraph. (The act provides that the employment of workers under 14 years of age, or the employment of workers 14 and 15 years of age for more than 8 hours per day, will result in a deduction from Sugar Act payments to the producer.)

(3) *Apprentice operators of tractors and mechanical harvesting and loading equipment when employed on a time basis.* The hourly wage rate for a learner or apprentice, who is being trained as a tractor driver, truck driver or the principal operator of mechanical harvesting or loading equipment, shall be not less than $1.85. The training period for such workers shall not exceed 6 workweeks.

(4) *Handicapped workers when employed on a time basis.* The wage rate for workers certified by the Regional Director, Wage and Hour Division, U.S. Department of Labor, Room 13F–12, Federal Building, U.S. Courthouse, 1100 Commerce Street, Dallas, TX 75202, to be handicapped because of age or physical or mental deficiency or injury, and whose productive capacity is thereby impaired, shall be not less than 75 percent of the applicable hourly rate for the class of worker prescribed in subparagraph (1) of this paragraph.

(5) *Work performed on a piecework basis.* The piecework rate for any operation shall be as agreed upon between the producer and the worker. The hourly rate of earnings of each worker employed on piecework during each pay period (not to be in excess of 2 weeks) shall average for the time worked at piecework rates during such pay period not less than the applicable hourly rate for the class of worker prescribed in subparagraphs (1), (2), (3), or (4) of this paragraph.

(b) *Compensable working time.* For work performed under paragraph (a) of this section, compensable working time commences at the time the worker is required to start work and ends upon completion of work in the field, except time taken out for meals during the working day. If the producer requires the operator of mechanical equipment, driver of animals, or any other class of worker to report to a place other than the field, such as an assembly point or tractor shed located on the farm, the time spent in transit from such place to the field and from the field to such place is compensable working time. Time spent in performing work directly related to the principal work performed by the worker, such as servicing equipment, is compensable working time. Time of the worker while being transported from a central recruiting point or labor camp to the farm is not compensable working time.

(c) *Equipment necessary to perform work assignment.* The producer shall furnish without cost to the worker any equipment required in the performance of any work assignment. The worker may be charged for the cost of such equipment in the event of its loss or destruction through negligence of the worker. Equipment includes, but is not limited to, hand and mechanical tools and special wearing apparel, such as boots and raincoats, required to discharge the work assignment.

§ 865.2 Applicability of wage requirements.

The wage requirements of this part apply to all persons who are employed or who work on the farm in operations directly connected with the production, cultivation, or harvesting of sugarcane on any acreage from which sugarcane is marketed or processed for the production of sugar, harvested for seed, or any acreage which qualifies as bona fide abandoned. Such persons include field overseers or supervisors while directing

other workers, and those workers employed by an independent contractor who perform services on the farm. The wage requirements are not applicable to persons who voluntarily perform work without pay on the farm for a religious or charitable institution or organization; inmates of a prison who work on a farm operated by the prison; truckdrivers employed by a contractor engaged only in hauling sugarcane; members of a cooperative arrangement among producers for the exchange of labor to be performed by themselves or members of their families; persons who have an agreement with the producer to perform all work on a specified acreage in return for a share of the crop or crop proceeds if such share, including the share of any Sugar Act payments, results in earnings at least as much as would otherwise be received in accordance with the requirements of this part for the work performed; custom operators or independent contractors and members of their immediate families; or workers performing services which are indirectly connected with the production, cultivation, or harvesting of sugarcane, including but not limited to mechanics, welders, and other maintenance workers and repairmen.

§ 865.3 Payment of wages.

(a) Workers shall be paid by check or in currency for all work performed, except to the extent that the payment is reduced by the following deductions: Cash advances made to the worker by the producer; the market value or the amount agreed upon for supplies furnished by the producer at the request of the worker; meals, lodging, and transportation expense which the producer agreed to furnish for a stated amount; and mandatory deductions such as taxes and Social Security contributions. In addition, a producer may deduct the amounts he has paid to a third party on behalf of the worker in connection with his employment as a farm worker which are acknowledged in writing signed by the worker or his agent or substantiated by other evidence acceptable to the county ASC committee to be an indebtedness of the worker, and which cover the expense of services and benefits furnished the worker by the third party, and which the worker or his agent has agreed may be deducted from his wages, such as public utilities, medical services, group hospitalization or other insurance for the benefit of the worker. As evidence of payments to a third party for which a deduction is made from the earnings of a worker, the producer shall maintain for a period of 3 years, for the inspection of the worker and the local county ASCS office, receipted bills or other written satisfactory evidence that support such deductions. Deductions may not be made for payments to a labor contractor or crew leader for his services; or for any items which the producer agreed to furnish the worker free of charge.

(b) The producer shall furnish the worker at the time of payment of wages or, if payment of wages is made through a labor contractor or crew leader, require the labor contractor or crew leader to furnish the worker at the time of payment of wages a statement showing the producer's and worker's names, the gross earnings, the items and amounts of deductions, and the net earnings of the worker, and the producer or the labor contractor or crew leader shall obtain the worker's signature acknowledging receipt of wages earned which shall in no event be less than those required by this part.

§ 865.4 Evidence of compliance.

Each producer subject to the provisions of this part shall keep and preserve, for a period of 3 years following the date on which his application for a Sugar Act payment is filed, such wage records as will demonstrate that each worker has been paid in full in accordance with the requirements of this part. Wage records should set forth dates work was performed, the class of work performed, units of work (piecework or hours), agreed upon rates per unit of work, total earnings and any permissible deductions, and the amount paid each worker. The producer shall furnish upon request to the appropriate Agricultural Stabilization and Conservation County Committee such records or other evidence as may satisfy such committee that the requirements of this part have been met.

§ 865.5 Employment of workers through a labor contractor or crew leader.

(a) If a producer employs workers through a labor contractor or crew leader, the producer may make payment of workers' wages through such labor contractor or crew leader: *Provided,* That the producer obtain from such contractor or crew leader and have on file (1) a copy of his authorization signed by each worker to collect wages due each such worker; (2) a copy of each worker's statement of earnings as required by § 865.3, or a wage record sheet such as any one of those shown in Exhibit 16 of Handbook 3–SU, available in county ASCS offices, showing the names of the producer and worker, dates work was performed, class of work performed, hours worked, agreed upon wage rate, total earnings, deductions, and the amount of wages due the worker; and (3) the signature of the worker acknowledging receipt of wages earned which shall in no event be less than those required by this part. The producer is responsible for paying to the labor contractor or crew leader the fee for his services, and the producer shall have on file a statement signed by the labor contractor or crew leader showing the amount of the fee being paid by the producer to the labor contractor or crew leader for his services, and showing that such fee is over and above the wages agreed upon by the contractor and producer which shall in no event be less than those required by this part.

(b) Responsibility for insuring that workers actually receive the minimum wage or the agreed upon wage, whichever is higher, less only deductions authorized by this part, rests with the producer. Whenever it appears that a worker has received less than the minimum or agreed upon wage, whichever is higher, less deductions authorized by this part, the producer shall not have met the requirements of this part for eligibility for payment under the act until it is determined that all workers on the farm have been paid in full: *Provided, however,* That a producer who having acted in good faith to fulfill his obligation to insure that the minimum or agreed upon wage is actually received by the workers, has obtained and has on file documents which meet the requirements set forth in paragraph (a) of this section and which show payment of wages in accordance with this part, shall have met the requirements of this part, except that in cases where the worker files a claim in the county ASCS office that he has not been paid wages in accordance with this part and it is found by the county committee that the worker's signature has been forged or he has been forced to sign under duress or by fraud, the producer shall not have met the requirements of this part for eligibility for payment under the act until the county committee determines that all workers on the farm have been paid in full.

§ 865.6 Subterfuge.

The producer shall not reduce the wage rates to workers below those determined in accordance with the requirements of this part through any subterfuge or device whatsoever.

§ 865.7 Claim for unpaid wages.

Any person who believes he has not been paid in accordance with this part may file a wage claim with the local Agricultural Stabilization and Conservation County Committee against the producer on whose farm the work was performed. Such claim must be filed on Form SU–191, entitled "Claim Against Producer for Unpaid Wages," within 2 years from the date the work with respect to which the claim is made was performed. Detailed instructions and Forms SU–191 are available at the local county ASCS office. Upon receipt of a wage claim the county office shall thereupon notify the producer against whom the claim is made concerning the representation made by the worker. The county ASC committee shall arrange for such investigation as it deems necessary and the producer and worker shall be notified in writing of its recommendation for settlement of the claim. If either party is not satisfied with the recommended settlement, an appeal may be made to the Texas State Agricultural Stabilization and Conservation Committee, USDA Building, College Station, Tex. 77840, which shall likewise consider the facts and notify the producer and worker in writing of its recommendation for settlement of the claim. If the recommendation of the State ASC Committee is not acceptable, either party may file an appeal with the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250. All

such appeals shall be filed within 15 days after the date the written notice of the recommended settlement is mailed by the respective committee, otherwise such recommended settlement will be applied in making payments under the act. If a claim is appealed to the Deputy Administrator, State and County Operations, his decision shall be binding on all parties insofar as payments under the act are concerned. Appeals procedures are set forth and explained fully in Part 780 of this title (7 CFR Part 780).

§ 865.8 Failure to pay all wages in full.

(a) Notwithstanding the provisions of this part requiring that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane be paid in full for all such work as one of the conditions to be met by a producer for payment under the act, if the producer has failed to meet this condition but has met all other conditions, a portion of such payment, representing the remainder after deducting from the payment the amount of accrued unpaid wages, may be disbursed to producer(s) upon a determination by the county committee (1) that the producer has made a full disclosure to the county committee or its representative of any known failure to pay all workers on the farm wages in full as a condition for payment under the Sugar Act; and (2) that either (i) the failure to pay all workers their wages in full was caused by the financial inability of the producer; or (ii) the failure to pay all workers in full was caused by an inadvertent error or was not the fault of the producer or his agent, and the producer has used reasonable diligence to locate and to pay in full the wages due all such workers. If the county committee makes the determination as heretofore provided in this paragraph, such committee shall cause to be deducted from the payment for the farm the full amount of the unpaid wages which shall be paid promptly to each worker involved if he can be located, otherwise the amount due shall be held for his account, and the remainder of the payment for the farm, if any, shall be made to the producer. If the county committee determines that the producer did not pay all workers in full because of an inadvertent error that was not discovered until after he received his Sugar Act payment, the producer shall be placed on the claims control record for the total amount of the unpaid wages.

(b) Except as provided in paragraph (a) of this section, if upon investigation the county committee determines that the producer failed to pay all workers on the farm the required wages, the entire Sugar Act payment with respect to such a farm shall be withheld from the producer until such time as evidence is presented to the county committee which will satisfy the county committee that all workers have been paid in full the wages earned by them; or if unpaid workers cannot be located, and the county committee determines that the producer used reasonable diligence to locate such workers, the amounts of unpaid wages shall be deducted from the Sugar Act payment computed for the farm and the balance released to the producer after the expiration of 1 year from the date payment would otherwise be made. If payment has been made to the producer prior to the county committee's determination that all workers on the farm have not been paid in full, the producer shall be placed on the claims control record for the total payment until the county committee determines that all workers on the farm have been paid in full, the producer refunds the entire amount of debt, or a setoff in the amount of the debt is made from a program payment otherwise due the producer, or the county committee after determining that the producer used reasonable diligence to locate such workers has recovered from such producer the amount of unpaid wages computed for the farm.

§ 865.9 Checking compliance.

The procedures to be followed by county ASCS offices in checking compliance with the wage requirements of this part are set forth under the heading "Wage Rate Determinations" in Handbook 3–SU, issued by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service. Handbook 3–SU may be inspected at local county ASCS offices, and copies may be obtained from the Texas State ASCS Office, USDA Building, College Station, Tex. 77840.

STATEMENT OF BASES AND CONSIDERATIONS

General. The foregoing determination provides fair and reasonable wage rates to be paid for work performed by persons employed on the farm in production, cultivation, or harvesting of sugarcane in Texas as one of the conditions with which producers must comply to be eligible for payments under the act.

Requirements of the act and standards employed. Section 301(c)(1) of the act requires that all persons employed on the farm in the production, cultivation, or harvesting of sugarcane with respect to which an application for payment is made, shall have been paid in full for all such work, and shall have been paid wages therefor at rates not less than those that may be determined by the Secretary to be fair and reasonable after investigation and due notice and opportunity for public hearing, and in making such determinations the Secretary shall take into consideration the standards therefor formerly established by him under the Agricultural Adjustment Act, as amended (i.e., cost of living, prices of sugar and byproducts, income from sugarcane, and cost of production), and the differences in conditions among various sugar-producing areas.

Wage determination. This determination is the first issued for the new sugarcane producing area in South Texas. The minimum hourly wage rates established in this determination are $2.10 for tractor drivers, truck drivers, and principal operators of mechanical harvesting and loading equipment; and $1.85 for all other workers. Most of the other provisions established in this determination conform in general to those contained in similar determinations issued in the sugarcane producing areas of Louisiana and Florida.

A public hearing was held in San Benito, Tex., on June 23, 1972, at which interested persons were afforded the opportunity to testify and present views and pertinent data regarding the establishment of fair and reasonable wage rates for sugarcane fieldworkers. Information and recommendations were sought specifically on the level of wage rates, the operations to be covered, the number and kinds of worker classifications, and other provisions for possible inclusion in the wage regulation.

Representatives of the Rio Grande Valley Sugar Growers, Inc., recommended a single wage classification to cover all workers employed in the production and cultivation of sugarcane at a minimum hourly wage of $1.30, the same minimum presently in effect for agricultural workers under the Fair Labor Standards Act; and two classifications for workers employed in the harvesting and hauling of sugarcane, one to cover all hand harvest workers with a minimum hourly wage of $1.40 and a second for operators of mechanical equipment at a minimum of $1.60. The producer representatives also recommended that, in the event the minimum rate for agricultural workers under the Fair Labor Standards Act is increased, the minimum under the Sugar Act be established at that same rate for production and cultivation workers, and 10 cents and 30 cents per hour, respectively, above that rate for hand harvest workers and equipment operators. They testified that the prevailing wage in the lower Rio Grande Valley for both skilled and unskilled farmwork is $1.30 per hour; and that since the producers are inexperienced, a yield of 35 tons per acre, rather than 42 tons, is estimated for the 1973 crop. Another witness, testifying on behalf of producers, stated that any rate established by the Secretary for sugarcane workers higher than the Fair Labor Standards Act minimum would have the effect of increasing wages for all farmwork in the area.

A representative of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, testifying on behalf of workers, stated that a minimum of $2.50 per hour is needed for fieldworkers to survive. He said that the sugar industry in the Rio Grande Valley would create a lot of needed employment, but the question still remains as to whether or not the workers will be paid a decent wage.

Another labor witness, representing the United Farm Workers Organizing Committee, AFL–CIO, presented notarized affidavits obtained by union members from 64 individual farmworkers indicating the wage for which they would be willing to work. He testified that on average the following rates were indicated: (a) $2.95 per hour for tractor drivers, (b) $2.90 per hour for truck drivers, (c) $3.40 per hour for operators of sophisticated mechanical equipment,

and (d) $2.50 per hour for general laborers and those harvesting cane by hand. The witness stated that these rates are not a recommendation or request by his union, but a desire on the part of the farmworkers. He said that to pay only the basic minimum wage under the Fair Labor Standards Act is absurd when the expected profitability of the Texas sugar industry is compared with that of the other mainland industries in Louisiana and Florida; that the estimates of cane yield and raw sugar recovery projected for Texas by the growers is 42 tons per acre and 8,800 pounds per acre, respectively; and that this recovery of raw sugar compares to 6,460 pounds in Florida and 4,098 pounds in Louisiana. He also stated that the Texas industry could bear somewhat greater wages than in Florida, but that he believes the levels should be established as a subject of bargaining between the workers and the growers association. The worker representative also submitted proposed regulations establishing procedures for the recognition of labor organizations, and collective action on the part of farmworkers and his organization; and provisions prohibiting Sugar Act payments to producers who knowingly employ illegal aliens and who discriminate against workers for filing wage claims. Other proposals made by the witness generally conform to those included in the Florida wage determination. He said that the proposed regulations governing the collective-bargaining process set out procedures for the recognition of any group of farmworkers who wish to organize and bargain collectively and provide an election procedure in simplified fashion that would further the aims of the Sugar Act in attempting to protect farmworkers.

A witness who had experience in cutting sugarcane a number of years ago in Mexico testified that he would not consider cutting cane by hand at $1.60 per hour; but that he would be willing to cut cane for $2.50 an hour provided it was unburnt prior to harvest, or $2.65 an hour on burnt cane.

A representative of producers submitted a supplemental brief subsequent to the hearing. In regard to miscellaneous provisions suggested for inclusion in the determination, he recommended that the wage rates for workers 14 and 15 years of age and for handicapped workers be not less than 85 percent and 75 percent, respectively, of the prescribed minimums; that the rate for apprentice equipment operators be not less than 25 cents per hour under the minimum; and that tools and equipment be furnished to the worker by the employer at no cost to the worker. In regard to the recommendations made by the United Farm Workers Union, he stated that the producers urge rejection of the proposals concerning collective bargaining and illegal aliens. He said these are matters that have previously been considered and rejected by Congress and determined improper by the Secretary for inclusion in the regulations, and that the proposals go beyond the scope and intent of the Sugar Act and authority of the Secretary.

Consideration has been given to all recommendations and testimony presented at the public hearing; to the expected yields, production, and profitability of the Texas sugar industry, as presented by the Rio Grande Valley Sugar Growers, Inc., at a public hearing held in Washington, D.C., in December 1972 on the commitment of acreage to new cane sugar producing areas; and to other generally related standards normally considered in wage determinations. Analysis of all data and relevant factors indicates that the minimum wage rates established in this determination are fair and reasonable and within expectation of producers' ability to pay.

The recommendations of producers for three worker classifications with minimum wage rates ranging from $1.30 to $1.60 per hour have not been adopted. It is believed that separate classifications for production and cultivation work and harvest work should not be established. Fieldworkers of the same skill should be afforded the same minimum wage protection in all operations. Therefore, the worker classifications established in this determination are similar to those in the Florida sugarcane area.

One witness at the hearing indicated that an average yield of 35 tons of cane per acre can be expected from the first crop in Texas. Producers have also indicated that a recovery of 210 pounds of raw sugar per ton of cane is a realistic estimate. Those estimates compare to the most recent 5-year averages in Florida of 32.5 tons of cane per acre and 214 pounds of raw sugar per ton of cane. Therefore, production conditions likely to prevail in the Texas sugarcane area compare favorably with average conditions in the Florida industry. Present prospects also indicate favorable sugar prices and a favorable overall profit position for Texas sugarcane producers. Consequently, the initial minimum wage rates established for the Texas sugarcane area are the same as those presently in effect in the Florida sugarcane area.

The recommendations by worker representatives that Sugar Act payments be denied producers who knowingly employ illegal aliens or who discriminate in any manner against workers for filing wage claims have not been adopted. Since the enactment of the original Sugar Act in 1937, the Department has consistently interpreted the wage provisions of the act as being confined to actual wage payments and, consequently, not to authorize reducing or denying Sugar Act payments to producers because of their acts in the subject area of employment of aliens or fair labor practices (except for employing child labor which is prohibited by an express statutory provision).

It is important to note that each of these proposed regulations falls within a subject area that is regulated by another act, and by another department or agency. The proposed regulation penalizing an employer who knowingly hires illegal aliens appears to conflict with the terms of the Immigration and Nationality Act, administered by the Immigration Service under the Attorney General. That act makes unlawful the "harboring" of certain aliens, but as enacted by Congress, the act declares that employment does not constitute harboring. Several bills are now pending before Congress that would specifically prohibit employment of illegal aliens, but none have been enacted as of this date.

Worker representatives also proposed that regulations governing collective-bargaining procedures be adopted, and that the Secretary affirm the right of workers in the Texas sugarcane area to join labor organizations and to take collective action. The recommendations have not been adopted. Such an affirmation by the Secretary would seem to conflict with the terms of the National Labor Relations Act and the Taft-Hartley Act, administered by the National Labor Relations Board. Both of those acts, which are concerned with the rights of employees to organize and bargain collectively, specifically exclude agricultural laborers from the definition of "employee."

In light of the comprehensive treatment by Congress of the general subject areas in which the proposals by worker representatives would fall, the Department deems it inadvisable to require by regulation that which Congress has refused to require by legislation.

The Department understands that a few producers in Texas may employ workers through local labor contractors. It has been found in the past that labor contractors or crew leaders often perform a valuable service for both the worker and the producer. Therefore, this determination includes provisions to permit the producer to pay workers' wages through a labor contractor or crew leader. To eliminate the possibility of violations of the minimum wage provisions of the Sugar Act, the producer is required to furnish or have the labor contractor or crew leader furnish the worker a statement showing gross earnings, itemized deductions, and the net amount due the worker. The producer must also obtain from the contractor or crew leader a copy of his authorization signed by the worker to collect wages due the worker, a copy of the worker's statement of earnings or a wage record sheet, a receipt for wages signed by the worker, and a statement signed by the contractor showing the fee paid to him by the producer for his services which must be over and above the minimum wages specified in the determination. The determination also provides that the producer has not met the requirements of the wage determination if the worker files a claim that he has not been paid wages in accordance with the determination and he can prove duress, fraud, or forgery. These requirements will facilitate the settlement of claims which may be filed by workers and help deter any possible exploitation of workers by labor contractors or crew leaders.

This determination is issued on a continuing basis and will remain in effect

until amended, superseded, or terminated. However, the Department will keep the wage situation under review and will conduct investigations and hold hearings annually.

On the basis of an examination of all relevant factors, the provisions of this determination are deemed to be fair and reasonable. Accordingly, I hereby find and conclude that the foregoing wage determination will effectuate the wage provisions of the Sugar Act of 1948, as amended.

NOTE: The recordkeeping and reporting requirements of these regulations have been approved by, and subsequent recordkeeping and reporting requirements will be subject to the approval of the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

Effective date. This determination shall become effective on October 2, 1972.

Signed at Washington, D.C., on September 15, 1972.

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

[FR Doc.72-16027 Filed 9-19-72;8:53 am]

SUBCHAPTER K—GENERAL CONDITIONAL PAYMENTS PROVISIONS

PART 896—GENERAL CONDITIONAL PAYMENTS PROVISIONS—TEXAS CANE SUGAR AREA

On June 20, 1972, a notice of proposed rule making regarding the issuance of a new regulation governing the conditional payments provisions of the Sugar Act of 1948, as amended, in the Texas Cane Sugar Area was published in the FEDERAL REGISTER (37 F.R. 12146).

Interested persons were given until August 21, 1972, to submit written comments, suggestions, or objections regarding the proposed regulations. After consideration of all such relevant matter as was presented by interested persons, the regulations so proposed are hereby adopted, subject to the following changes:

1. The section heading of § 896.5 is changed to read "Authority to make and computation of Sugar Act payments."

2. The text of § 896.5 is expanded to include the method of determining the amount of sugar for payment for abandoned acres and crop deficiency of harvested acreage. Heretofore these provisions of section 303 of the Sugar Act had not been set forth in program regulations.

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896.30 Farm normal yield.
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896.35 Sugar commercially recoverable from sugarcane in the Texas Cane Sugar Area.

AUTHORITY: The provisions of this Part 896 issued under secs. 301, 302, 303, 304, 305, 306, 403, 61 Stat., 929, as amended, 930 as amended, 931, 932; 7 U.S.C. 1131, 1132, 1133, 1134, 1135, 1136, 1153.

Subpart A—General

§ 896.1 Purpose.

This part prescribes the authorizations and procedures applicable to the Texas Cane Sugar Area under title III, Conditional Payments Provisions, of the Sugar Act of 1948, as amended, effective for 1973 and subsequent crop years.

§ 896.2 Definitions.

For the purpose of this part, the term:

(a) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(b) "Deputy Administrator" or "DASCO" means the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

(c) "State committee" means the persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State Committee under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(d) "State executive director" means the person responsible for the day-to-day operations of the Agricultural Stabilization and Conservation Service State Office (herein referred to as ASCS State office) or any employee of such office authorized to act on his behalf.

(e) "County committee" means the persons elected within a county as the county committee pursuant to regulations governing the selection and function of Agricultural Stabilization and Conservation County and Community Committees under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended.

(f) "County executive director" means the person responsible for the day-to-day operations of the Agricultural Stabilization and Conservation Service County Office (herein referred to as ASCS county office).

(g) "Act" or "Sugar Act" means the Sugar Act of 1948, as amended.

(h) "Producer" means a person who is the legal owner, at the time of harvest or abandonment, of a portion or all of a crop of sugarcane grown on a farm for the extraction of sugar or liquid sugar.

(i) "Processor-producer" means a producer who is determined to be also a processor. A producer shall be deemed to be also a processor:

(1) If such producer is directly engaged in the processing of sugarcane for sugar;

(2) If such producer, whether alone or in conjunction with others, controls a person directly engaged in the processing of sugarcane for sugar, either by stock ownership or otherwise; or

(3) If such producer is controlled, whether through stock ownership or otherwise, by a person directly engaged in the processing of sugarcane for sugar.

(j) "Farm" means all land within a State farmed by the same operator and shall include, in addition, any land in an adjoining State or States farmed by such operator, if any of the equipment or labor used in the operation of the land in one State is also used in the operation of the land in the other State or States.

(k) "Operator" means, the producer (or producers) who has general control of the sugarcane operations on the farm. Guides to the county committee for determining the "operator" of a farm are set forth in subparagraphs (1) to (7), inclusive, of this paragraph.

(1) The county committee shall determine the person (or persons acting together) who is a producer, as defined in paragraph (h) of this section, of the sugarcane crop and who has general control of the sugarcane operations and, hence, is the operator of all lands on which sugarcane operations are under his general control. The county committee shall determined the land that constitutes a farm in accordance with the definition of a farm in paragraph (j) of this section. To assist the county committee in determining who controls a sugarcane operation, there are set forth as follows certain factors that shall be

given careful consideration in determining the operator of a farm. In developing information as to who controls a sugarcane operation where a partnership or legal entity such as a corporation is involved, the county committee shall consider whether an individual rather than the partnership or legal entity has the general control of the sugarcane operations and is a producer, as defined in paragraph (h) of this section, of the sugarcane crop.

(2) As possible indicia of control of a sugarcane operation, the county committee shall ascertain the producer who performs the following functions: (i) Controls the land (by ownership or lease); (ii) arranges for financing and is responsible for repayment of any loans or advances; (iii) arranges for and pays labor; and (iv) manages the sugarcane operations and makes the decisions with respect thereto.

(3) Also, as an indication of control over a sugarcane operation, the county committee shall ascertain whether a written records of accounts covering costs and income from such operations is maintained separately from that of any other operation in which the persons involved have an interest.

(4) Generally, the person (or persons acting together) who directs the sugarcane operation and who has the authority to make the final decisions with respect to growing, harvesting, and marketing the crop shall be considered as controlling the operation and, hence, the operator of the farm. Often, such person performs the actual farming functions himself. Usually, such person (or persons) also has the majority financial interest in the crop, either by direct ownership or indirectly by stock ownership or otherwise.

(5) Wherever a person has a substantial interest in more than one sugarcane operation, the county committee shall determine whether such operations are, in fact, separate and do not constitute a device to avoid the scale-down provisions of the Sugar Act.

(6) The fact that a person has a substantial interest or the majority financial interest in the crop of sugarcane does not preclude the county committee from determining that he is not the operator where it can be shown to the satisfaction of the committee that in consideration of other pertinent factors another person is a producer of the crop and controls the operations. Also, since the definition of a producer has been construed over a long period of time as not including a creditor whose only interest in a crop results from a lien upon a crop of sugarcane, such a creditor by not being a producer of such crop would not qualify as the operator of the land on which such crop was produced. For purposes of determining whether a person qualifies as a producer, as defined, the county committee should take into consideration that bare legal title does not solely determine the legal owner.

(7) In the following situations, it would appear that control of the sugarcane operations would be as indicated:

(i) Where two or more persons have the same ownership interest in a crop of sugarcane growing or grown on one or more tracts of land, and they are the only persons engaged in farming operations on such land, they will, generally, be considered as the operator of all of such land. However, if one or more of such persons is determined by the county committee as exercising control, he or they shall be considered as the operator.

(ii) Where a husband and wife not legally separated by judgment of a court are both engaged in the production of sugarcane and one of them shares in the crop produced on the land of the other, if the county committee determines that the one who shares in the crop of the other also controls the sugarcane operations of the other, the spouse exercising the control would be considered as the operator. If neither spouse shares in the sugarcane crop of the other, or the county committee determines that the indicia of control justify a conclusion that separate operations are involved, each such spouse would be considered as a separate operator.

(iii) If a minor child and a parent live in the same household and each is engaged in the production of sugarcane, the parent who is a producer of the crop would be considered the operator unless the county committee is satisfied that the minor child controls his sugarcane operations. However, the cosigning of a note by a parent to enable the child to obtain financing shall not of itself be considered as representing control by the parent. Any land farmed by a minor as a Future Farmers of America or 4–H project shall be considered a part of the parent's farm unless the land on which the sugarcane is grown is leased by the minor from someone other than the parent and the parent has no control over the operation.

(l) "Ownership tract" means a farm or portion of a farm which is separately owned.

(m) "Proportionate share" or "share" means the proportionate share for a farm in terms of planted acreage as provided in sections 301 and 302 of the Act.

(n) "Planted acres" means the acreage of sugarcane planted within the farm proportionate share which is either harvested for the extraction of sugar or liquid sugar or is abandoned (bona fide), insofar as its use in sugar production or as seed is concerned, because of drought, flood, storm, freeze, disease, or insects.

(o) "Abandoned acres" means the planted sugarcane acreage on the farm (not in excess of the farm's share minus the acreage harvested for sugar and seed) which meets all the requirements specified in § 896.31 (a) and (b) with respect to approved abandoned acreage.

(p) "Harvested acres" means any acreage of sugarcane on which all customary harvesting operations have been performed (cutting, topping, stripping, or burning) preparatory to marketing for the extraction of sugar or liquid sugar, provided such harvesting operations were performed at a time when such sugarcane was in a condition acceptable for processing for such purpose, and at a time when sugarcane was being processed for such purpose.

(q) "Accredited acreage" or "accredited acres" means the acres on the farm (within the share for such farm if shares are in effect) for any crop as designated by year on which sugarcane was grown and marketed (or processed) for the extraction of sugar or liquid sugar, except for use as livestock feed or for the production of livestock feed, or which was harvested for seed or which was determined by the county committee to have been bona fide abandoned acreage to the extent of fulfilling at least the requirements for abandonment set forth in § 896.31 (a) and (b), as shown by office records of the county committee.

(r) "Cropland" means land suitable for the production of sugarcane on the farm.

(s) "Crop" means a crop of sugarcane and shall be designated by year to correspond to the year in which harvest begins in the Texas Can Sugar Area. The term "crop year" means the crop designated by year as provided in this paragraph.

(t) "Annual yield for the farm" means the average yield in hundredweight of sugar commercially recoverable per planted acre, as computed from the production records applicable to all of the land constituting the farm in the crop year for which such annual yield is established.

(u) "County yield" means the average hundredweight of sugar commercially recoverable per planted acre in the county in a crop year, except that if the total number of farms producing such sugarcane was less than five for any such year, the county yield for such year shall be the yield established by the State committee on the basis of the yield which could have been reasonably expected that year in such county considering weather conditions and the yields obtained from other crops.

(v) "County normal yield" means the simple average of the county yields for all of the next preceding 5 crop years for which county yields are established, except that if county yields are established for three or more of such years on the basis of the yields which could have been reasonably expected in such years, the county normal yield shall be the yield established by the State committee on the basis of the yield which could have been reasonably expected in the county during such years considering weather conditions and the yields obtained from other crops.

(w) "Commercially recoverable sugar" means the amount of sugar, in hundredweight raw value, determined annually as commercially recoverable from sugarcane grown on a farm in the Texas Cane Sugar Area and marketed (or processed) for the extraction of sugar or liquid sugar.

(x) "Texas Cane Sugar Area" means the counties of Cameron, Willacy, Hidalgo, and Starr in the State of Texas.

§ 896.3 Instructions and forms.

DASCO shall cause to be prepared such forms and internal management instructions as are necessary for carrying out the regulations in this part and regulations hereafter issued. These forms, instructions, and data pertaining to the individual farms are available in the ASCS county office of the county in which the farm headquarters is located, or in the absence of a farm headquarters, in the ASCS county office of the county in which the major portion of land suitable for the production of sugarcane on the farm is located. A list of forms prescribed for the conditional payment program in the Texas Cane Sugar Area is set forth in § 896.6.

§ 896.4 Filing application for payment.

(a) *Form to be used.* Applications for payments authorized under title III of the Act with respect to sugar commercially recoverable from sugarcane grown on a farm, as well as for acreage abandonment and crop deficiency payments, shall be made on Form SU–120.

(b) *Person eligible to apply and certify compliance for payment.* The producer on the farm, or his legal representative, must sign and file the form in the ASCS county office or with a representative of such office for the county in which the farm headquarters is located or, in the absence of a farm headquarters, for the county in which the major portion of land suitable for the production of sugarcane on the farm is located. Each producer signing the application certifies that the application covers all land farmed as a unit as defined in § 896.2(j).

(c) *Closing date for filing.* Form SU–120 must be filed with respect to a crop of sugarcane no later than December 31 of the second calendar year following the year designating such crop. The producers shall be notified by the county office of the place and time the forms are available for signing.

(d) *Exception to closing date requirement.* An application may be filed after the closing date if the State committee determines that the applicant was prevented from filing by such date because of illness or other reason beyond his control.

(e) *Person eligible to receive payment.* Payment shall be made to a producer of the sugarcane in accordance with the provisions of section 304(d) of the Act. In the event of death, disappearance, or incompetency of the producer, payment shall be made to the beneficiary designated in the application for payment by the producer, or if no such beneficiary is named, to the producer's legal representative or his heirs as determined by the county committee.

(f) *Assignments.* Sugar Act payments may not be assigned.

(g) *Receivers.* A Sugar Act payment may not be made to a receiver.

§ 896.5 Authority to make and computation of Sugar Act payments.

(a) The county committee is authorized to make payments on the conditions provided in this Part 896 with respect to sugar commercially recoverable from the sugarcane grown on a farm for the extraction of sugar or liquid sugar.

(b) In addition to the amount of sugar with respect to which payments are authorized under paragraph (a) of this section the county committee is also authorized to make payments, on the conditions provided in this Part 896, with respect to bona fide abandonment of planted acreage and crop deficiencies of harvested acreage as determined in accordance with the provisions of § 896.31. Payments are authorized in the following quantities of sugar:

(1) With respect to such bona fide abandonment of each planted acre of sugarcane, one-third of the normal yield of commercially recoverable sugar per acre for the farm as determined by the county committee; and

(2) With respect to such crop deficiencies of harvested acreage of sugarcane, the excess of 80 percentum of the normal yield of commercially recoverable sugar for the farm, as determined by the county committee, over the actual yield.

(c) Payment is computed as to each farm, and the amount of payment is scaled down in accordance with the following table when the quantity of sugar determined as provided in paragraph (a) and (b) of this section exceeds 7,000 hundredweight:

If the hundredweight of commercially recoverable sugar determined for a farm is—	Multiply it by—	Then add—
1 to 7,000	$0.80	$0
7,001 to 14,000	.75	350
14,001 to 20,000	.70	1,050
20,001 to 30,000	.60	3,050
30,001 to 60,000	.55	4,550
60,001 to 120,000	.525	6,050
120,001 to 240,000	.50	9,050
240,001 to 600,000	.475	15,050
More than 600,000	.30	120,050

Example. If the hundredweight of commercially recoverable sugar determined for a farm is 50,000 hundredweight: 50,000 × $0.55 equals $27,500 plus $4,555 totals $32,050, the amount of payment.

§ 896.6 List of prescribed forms.

Forms prescribed for the conditional payment program in the Texas Cane Sugar Area.

FORM NUMBER AND TITLE

SU–79—Application to Produce and Market Sugar Under Bond.
SU–120—Application for Payment.
SU–120–1—Supplement to Application for Payment.
SU–122—Sugarcane Record Card.
SU–122–A—Sugarcane Record Worksheet.
SU–125—Notice of Farm Proportionate Share.
SU–126—Worksheet for Computing Farm Base and Proportionate Share.
SU–126–A—Worksheet for Dividing Proportionate Share, 19____.
SU–126–B—Worksheet for Consolidating Proportionate Share, 19____.
SU–127—Farm Normal Yield Worksheet.
SU–130—Report of Performance.
SU–130–A—Summary of Measured Sugarcane Acreage and Disposition of Acreage in Excess of Proportionate Share.
SU–132—Report of Sugarcane Deliveries.
SU–134—Daily Wage Rate Record Sheet.
SU–140—Child Labor and Wage Compliance Report.
SU–141—Request for New Producer Proportionate Share.
SU–142—Request for Additional Proportionate Share.
SU–191—Claim Against Producer for Unpaid Wages.
SU–195—Sugar Act Payment Deductions.
ASCS–578—Report of Acreage.
SC–303—Notice of Acreage Commitment.

Subpart B—Determination of Compliance With Conditions of Payment

§ 896.10 Obtaining information regarding eligibility for payment.

(a) Where it is necessary to obtain information to assist the county committee in determining compliance with the conditions prescribed by the Act and regulations for any payment authorized under title III of the Act, the facts constituting the basis for any such payment or the amount thereof, or

(b) Where it is necessary to assist the State committee or the Deputy Administrator in reviewing upon appeal, or upon their own initiative, any such determination by the county committee, any such information with respect to acreage or compliance shall be obtained to the extent possible as provided in the applicable provisions of Part 718 of Chapter VII of this title, as amended.

(c) In the absence of a provision in such Part 718 of this title for obtaining any such information, any employee of the ASCS county office or employees of the ASCS State office designated respectively by the county executive director or by the State executive director to be qualified to perform such a duty may obtain such information.

§ 896.11 Conditions of payment not met where producer prevents obtaining information.

If the producer, or his representative, on any form with respect to which application made for any payment authorized under title III of the Act prevents the obtaining of the information necessary to determine compliance with the conditions for any such payment, the facts constituting the basis of any such payment or the amount thereof, the conditions prescribed by the Act and regulations for any such payment shall be deemed not to have been met until such producer or his representative permits such information to be obtained.

§ 896.12 Compliance with child labor provisions of the Act.

(a) *Applicability.* As a condition for payment under the Act, and except for a member of the immediate family of a person who was the legal owner of not less than 40 percent of the crop at the time work was performed, no child under the age of 14 shall have been employed or permitted to work on the farm, whether for gain to such child or any person, in the production, cultivation, or harvesting of a crop of sugarcane with respect to which application for payment is made, nor be so employed or permitted to work for a longer period than 8 hours in any 1 day if 14 or 15 years old.

(b) *Deduction for noncompliance.* Payment authorized under the Act may be made notwithstanding a failure to comply with the conditions set forth in paragraph (a) of this section, but the payments made with respect to any crop shall be subject to a deduction of $10 for each child for each day, or a portion of a day, during which such child was employed or permitted to work contrary to the provisions of this section.

(c) *Proof of age.* The operator of a farm upon which a child is found by a representative of the ASCS county or State office or county or State committee to have worked or to be working in the production, cultivation, or harvesting of a crop of sugarcane shall be required upon request of the representative to furnish proof of age of the child if such child is not a member of the immediate family of a person owning at least 40 percent of the crop of sugarcane at the time such work was performed. Proof of age may be established by (1) an age certificate issued pursuant to any child labor program carried out under State or Federal supervision or other authorized personnel such as a school superintendent or principal, (2) a birth certificate or transcript thereof, (3) a baptismal certificate showing the date of birth, (4) a passport, (5) an insurance policy, or (6) a Bible record.

(d) *Proving child member of producer's immediate family.* If it is alleged that the child is a member of the immediate family of a person who owns such 40 percent of a crop, such person or the operator of the farm must establish such relationship to the satisfaction of the representative of the ASCS county or State office or county or State committee. "Member of the immediate family" is deemed to include children who constitute the household of a person when such person is responsible for and provides the support of such children either as parent or in place of the parent.

(e) *Checking compliance with child labor provisions.* In accordance with instructions issued by DASCO, the county committee shall determine by random selection the farms on which child labor compliance checks shall be made. The farm operator shall be notified immediately of any violation of these provisions.

§ 896.13 Sharecropper or share tenant protection.

For any crop designated by year the number of share tenants or sharecroppers engaged in cane production on the farm shall not be reduced below the number so engaged for the previous crop unless such reduction is approved by the county committee. In considering such approval, the county committee shall be guided by whether the reduction resulted from voluntary action of the tenants or sharecroppers, or was otherwise beyond the producer's control. The producer shall not have entered into any leasing or cropping agreement to direct payments to him to which share tenants or sharecroppers would be entitled if their leasing or cropping agreements for the previous crop were in effect except with the approval of the county committee prior to entering into the leasing or cropping agreement for the current crop. Failure to comply with these provisions will result in the forfeiture of the Sugar Act payment.

§ 896.14 Compliance with the acreage certification and land use provisions.

When proportionate shares are in effect for a crop, if the operator of a farm located in a county designated in Part 718 of this title as a county in which farm operator's certification of the acreage and land use may be accepted in lieu of farm inspection and measurements fails to file a report in compliance with § 718.8(b)(6) of this title, or files a timely report showing that the acreage of cane is within the share for the farm and the county or State committee later determines that such acreage is in excess of the share and was knowingly reported incorrectly by the operator, no payment shall be made with respect to such farm.

§ 896.15 Compliance with other conditions of payment.

All requirements of the Act and the regulations issued pursuant thereto with respect to wage rates, farm proportionate shares (if in effect) and, in case of a processor-producer, prices paid for sugarcane shall be met to be eligible for payment under the Act.

§ 896.16 Credit for accredited sugarcane acreage record.

For the purpose of compiling sugarcane production records for use in establishing shares, the subdivisions of any farm which is subdivided shall be credited with the accredited sugarcane acreage record of such farm for the three crops immediately preceding the crop year when such farm is subdivided as provided in paragraphs (a) and (b) of this section.

(a) The county committee shall apportion such record among the subdivisions on the basis of the cropland suitable for the production of sugarcane in such subdivisions. However, if the county committee determines that the use of the cropland relationship is materially inconsistent with the accredited acreage of sugarcane of such three crops grown on any subdivision, or is not representative of the sugarcane acreage of the crop growing or grown on any subdivision in the year designating such crop when such farm is subdivided, such subdivisions shall be credited with a pro rata share of the accredited acreage record of the farm for such three crops, determined either on the basis of the total accredited acreage of sugarcane of such three crops on each subdivision or on the basis of the acreage of sugarcane of the crop growing or grown and harvested on each subdivision in the year designating such crop when such farm is subdivided.

(b) If all persons concerned as owners or farm operators in the subdivision sign and file a written request with the county committee to credit each subdivision with all, a portion or none of the accredited sugarcane acreage record of the farm being subdivided as agreed to therein, each subdivision shall be credited with the accredited acreage record of the farm for such three crops as set forth in the written request, except that the portion of the accredited acreage record credited to any subdivision by the county committee on the basis of a written agreement between the interested persons shall not exceed the cropland suitable for the production of cane on such subdivision. However, if the land comprising a subdivision to which accredited sugarcane acreage record has been credited on the basis of a written agreement of all concerned persons should, within 3 years from the date of such agreement, be transferred in whole or in part from the farm in which it is included, the accredited acreage record credited to such land may not be credited on the basis of a written agreement of the persons concerned in such transfer but shall be credited on the basis of cropland suitable for production as provided in paragraph (a) of this section and if applicable as provided in paragraph (c) of this section.

(c) A reconstituted farm consisting of any combination of farms, combination of subdivisions of farms, or combination of farms and subdivision of farms shall be credited with the total of the accredited acreage records determined for the constituent parts of the farm for the three crops immediately preceding the crop year when such combination occurs.

§ 896.17 Determination of eligibility and basis for payment, review and appeals.

The finality provisions of section 306 of the Act apply to determinations made in conformity with the regulations in this section. Compliance with the conditions prescribed by the Act and regulations for any payment authorized under title III of the Act, the facts constituting the basis for any such payment, and the amount thereof, shall be determined by the county committee, any such determination to be subject to redetermination initiated by the county committee and to review initiated by the State committee and to approval or redetermination by the State committee. Any determination by the State committee shall be subject to redetermination initiated by the State committee and to review initiated by the Deputy Administrator and to approval or redetermination by the Deputy Administrator. Determinations and redeterminations by the county committee, the State committee or the Deputy Administrator shall be made and decided in accordance with the applicable provisions of the Act and regulations issued by the Secretary thereunder and on the facts in the individual case. The producers on the farm with respect to which such a determination or redetermination is made shall be promptly notified in writing of the substance and meaning of the determination or redetermination, the amounts of any payments and any reduction in payments

which are determined; and that the producer may obtain reconsideration or review of the determination or redetermination and an informal hearing in connection therewith, by filing a written request within 15 days from the date of mailing of such written notification. The written notification also shall state where the request for reconsideration or review should be filed and where further information in regard to appeal procedure and the hearing may be obtained. The provisions apprising producers of their rights to request reconsideration or appeal from determinations affecting their eligibility for or the amount of payments under the Act, and the procedure to follow in such instances including time limitations for filing requests for reconsideration and appeals are contained in Chapter VII, Part 780 of this title. The procedures applicable to claims for unpaid wages are provided for under regulations pertaining thereto, as issued by the Secretary.

§ 896.18 Notification of shares when shares are in effect.

Each operator of a farm for which a share is established and each applicant filing a request for a new-producer share shall be notified in writing on behalf of the county committee of the share established for his farm (even if "none" in case of a new-producer request) and of his right to appeal under § 896.17 and each such person shall be notified in writing of any adjustment or change made in the share.

§ 896.19 Harvesting within the farm's share when shares are in effect.

In addition to other conditions of payment, a producer must comply with the following provision to be eligible for payment under the Act when shares are in effect.

(a) *Harvesting for sugar.* When shares are in effect for any crop designated by year, the total acreage of cane of such crop on the farm harvested for seed, and harvested and marketed (or processed) for sugar production (except livestock sugar) shall not exceed the final share determined for the farm.

(b) *Harvested for seed.* The acreage of cane harvested for seed purposes from a farm and planted as seed on another farm will be considered as acreage of the latter farm harvested for seed for purposes of compliance with the share established for such latter farm, except where the seed cane was harvested within the share established for the farm on which grown or from an experimental farm operated by a State or Federal agency. Where such seed cane was grown on a farm for which a share was not established the operator of the farm on which the seed cane is planted shall notify the county committee prior to the acquisition of the seed cane so that the committee may determine, at the expense of the operator, the acreage to be harvested for such purpose, or in the absence of such notification the county committee shall determine at the expense of the operator the acreage harvested for such purpose, or shall determine the acreage harvested for seed by estimate or calculation from information available to it.

(c) *Harvested for sugar and seed in excess of farm share.* The producer shall be deemed to have met the requirements for payment with respect to marketings (or processings) within the share where cane was marketed (or processed) for sugar or for sugar and seed from an acreage on the farm (including acreage of seed cane attributed to such farm under this paragraph) in excess of the share: *Provided,* That (1) such excess acreage is not more than the larger of four-tenths acre or 2 percent of the share but not in excess of 5 acres, (2) the county committee finds and the State committee concurs that such marketings (or processings) were unintentional, and (3) within 1 year after the processing of such excess cane the operator arranges for the raw value equivalent of sugar produced from cane in the Texas Cane Sugar Area, and not marketed to fill a quota for such area as provided in Part 816 of this chapter, to be made subject to a bond given pursuant to Part 816 of this chapter, which provides that a condition of such bond shall be that the sugar shall be used for livestock feed. The Sugar Act payment in any such case shall be limited to the amount of sugar commercially recoverable from cane marketed (or processed) from the acreage within such share.

§ 896.20 Notification of excess sugarcane acreage when shares are in effect.

If the county committee determines for any crop that the acreage of sugarcane on any farm is in excess of the acreage established as the share for such farm, written notice of such excess acreage and of the eligibility requirements for payment shall be mailed to the person who is listed on the ASCS county office records as the operator of the farm.

§ 896.21 Erroneous notice of share or of excess sugarcane acreage when shares are in effect.

If through error, an operator is officially notified of a share for his farm greater than the share properly established, or is furnished an incorrect notice of excess sugarcane acreage, or if the determined acreage of sugarcane is in excess of the share for the farm and notice thereof is not mailed to the operator, and it is found by the county committee that such operator, acting solely on the information contained in the erroneous notice or without a notice of excess sugarcane acreage being mailed to him, marketed sugarcane from an acreage in excess of the share properly established, the operator will be deemed to be in compliance with the share unless he harvested sugarcane for seed or marketed sugarcane for sugar from an acreage in excess of the share stated in the erroneous notice, or unless it is determined by the county committee that the error in the share or notice was so gross, or that the excess acreage was so gross as to place the operator on notice regarding the error in the share or of the existence of the excess acreage. However, the Sugar Act payment with respect to the farm shall be limited to the amount of sugar determined by the county committee to be commercially recoverable from the sugarcane marketed (or processed) from the acreage within the properly established share.

§ 896.22 Disposition of excess acreage when shares are in effect.

The provisions of this section apply if the county committee determines there is acreage of cane on a farm in excess of the share.

(a) Excess acreage which the operator elects to plow-out, abandon, or harvest for purposes other than for sugar (except livestock sugar) or seed may be disposed of at any time. Notification must be given to the county committee by the operator when and how disposition will be made to permit verification by a committee representative of the action taken. Excess acreage of cane disposed of concurrently with acreage harvested within the share must be clearly identified by a county committee representative. Such excess acreage must be so located that it may be disposed of without interfering with the harvest of the proportionate share acreage. The identity of such excess acreage must be maintained after harvest to assure that proper disposition was made: *Provided,* That if cane is harvested from excess acreage for sirup concurrently with the harvest of cane within the share for seed or sugar other than for livestock sugar, and such acreage is not identified as provided above, the producer shall not market a quantity of cane for sugar production or seed greater than the total of the tonnages of cane marketed for sugar, seed, and sirup multiplied by the percentage that the acreage harvested for sugar and seed on the farm is of the total acreage of all cane so marketed.

(b) An estimate of the average tons of cane per acre growing on excess acreage which has been identified and designated for harvest for sirup or livestock sugar must be made before such harvest by a county committee representative and the farm operator. The estimate must be signed by the operator and filed at the county office.

(c) Any operator who markets cane for livestock sugar or sirup from excess acreage must furnish weight tickets to the county committee evidencing that such cane was sold by him or processed by or for him for such purposes. Where excess acreage is identified by a county committee representative and an estimate made, as provided in paragraph (b) of this section, and the average tonnage of cane per acre grown on such excess acreage, as computed by dividing the total tonnage of cane marketed for livestock sugar or sirup by the excess acreage, is less than 80 percent of the estimate made pursuant to paragraph (b) of this section, no payment shall be made until the operator furnishes acceptable proof to the county committee that the cane from all excess acreage on the farm

was marketed or disposed of other than for seed or sugar production except for livestock sugar.

(d) For any crop, the operator must maintain a record of the excess acreage in each field or parts of fields and the method and purpose of disposal of cane grown on such acreage until receipt of the Sugar Act payment for such crop.

§ 896.23 Eminent domain.

The share established for a crop designated by year for a farm which was removed from cane production in its entirety or in part by acquisition within the 3 years immediately preceding the year designating such crop by an agency or entity entitled to exercise the right of eminent domain, shall, upon application by the owner of the land so removed to the appropriate ASCS State office, be added to the share established for such crop for any land owned by the owner in the same State to the extent requested in the application, but the acreage added shall not exceed the difference between the shares established for the farm from which production was removed and the share established for the part of the farm not lost by the acquisition. Where application is not made as provided in this section for the entire share or part thereof established for the farm, the share or part thereof not applied for shall be reserved by the State committee for 3 years after the date of acquisition or until application is made by the owner of the land removed, whichever is earlier: *Provided*, That such reserved share or part thereof shall be subject to any adjustments required to be made in establishing shares for old-producer farms under the regulations applicable during the period the share is reserved. The acreage of such reserved share not applied for may not be reallocated to other old-producer farms.

§ 896.24 Harvest of illegal drug-producing plants.

In accordance with Part 796 of Chapter VII of this title, after August 10, 1971, a Sugar Act payment shall not be made to a farm if any producer with respect to such farm harvests or knowingly permits to be harvested for illegal use, marihuana or other such prohibited drug-producing plants on any land included in the farm. Such prohibited plants are specified in § 796.2 of Chapter VII of this title.

Subpart C—Determination of Normal Yields and Eligibility for Abandonment and Crop Deficiency Payments

§ 896.30 Farm normal yield.

The normal yield per acre of each sugarcane farm in the Texas Cane Sugar Area shall be established for the 1973 and subsequent crops as follows:

(a) For a farm on which there were planted acres in more than two of the next preceding 5 crop years, the normal yield shall be the simple average of all the annual yields for the farm for such crop years.

(b) For a farm on which there were planted acres in only one or two of the next preceding 5 crop years, the normal yield shall be the product derived by multiplying the county normal yield by the percentage obtained by dividing the simple average of the annual yields for the farm for such year or years by the simple average of the county yields for such year or years, except that the normal yield for such farm shall be not less than 80 percent nor more than 120 percent of the county normal yield.

(c) For a farm on which there were planted acres in none of the next preceding 5 crop years, the normal yield shall be 90 percent of the county normal yield.

§ 896.31 Eligibility for abandonment and crop deficiency payments.

For each crop, each farm having abandonment of planted sugarcane acreage, or having a crop deficiency of harvested sugarcane acreage below 80 percent of the normal yield for such acreage, or having both such abandonment and deficiency, shall be approved by the county committee for payments relating thereto if the following conditions with respect to the farm are met:

(a) The abandonment or deficiency was caused directly by drought, flood, storm, freeze, disease, or insects.

(b) The planted acres that were abandoned, or the harvested acres with respect to which there was such a crop deficiency, were suitable for the production of sugarcane and were cared for up to the time of harvest or abandonment, as the case may be, in a manner which could have been expected under average conditions to produce a normal crop of sugarcane.

(c) There was compliance with all the other conditions for payment prescribed by the Act.

§ 896.32 Approval and certification.

Approval by a member of the county committee on behalf of such committee of an application for an abandonment payment or a crop deficiency payment, or both, shall constitute a determination that the farm with respect to which such application is made is eligible for an abandonment or a deficiency payment, or both, as the case may be.

Subpart D—Determination of Sugar Commercially Recoverable

§ 896.35 Sugar commercially recoverable from sugarcane in the Texas Cane Sugar Area.

The amount of sugar commercially recoverable from the sugarcane grown on a farm in the Texas Cane Sugar Area and marketed (or processed) for the extraction of sugar shall be the amount obtained by multiplying the number of net tons of such sugarcane by the average number of hundredweights of sugar, raw value, recovered per net ton of sugarcane at the mill where such sugarcane is ground. Such average number of hundredweights of sugar recovered per net ton of sugarcane shall be established by dividing the total number of hundredweights of sugar (raw value basis determined in accordance with the provisions of title I of the Sugar Act of 1948, as amended), produced at the mill where the sugarcane is ground by the total number of net tons of sugarcane ground during the applicable grinding season.

Statement of bases and considerations. Pursuant to sections 202(a)(4) and 302(c) of the Sugar Act of 1948, as amended, and as set forth in Part 859 (37 F.R. 9614) a new cane sugar-producing area was established in Texas effective for the 1973 and subsequent crops.

To qualify for Sugar Act payments, sugarcane producers must comply with various general provisions and requirements of the Act, as implemented in determinations issued by the Secretary. In addition, they must file applications for payments, use approved forms, adhere to certain instructions and furnish information regarding eligibility for payment and the basis for payment and in connection with appeals for review thereof.

These regulations represent an issuance of these general provisions applicable to the Texas Cane Sugar Area. Also, some provisions applicable only when proportionate shares are in effect have been included since they relate to recordkeeping requirements. Heretofore, in other cane sugar producing areas, these proportionate share provisions have been issued without substantive change with each proportionate share regulation.

Provisions of the Act relating to proportionate shares not included herein will be incorporated in the regulations pertaining to proportionate shares when it is determined by the Secretary that such shares are required.

Accordingly, I hereby find and conclude that the foregoing issuance of Part 896 will effectuate the applicable provisions of the Act.

Effective date: Date of publication (9–20–72).

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

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

[FR Doc.72–15956 Filed 9–19–72;8:48 am]

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

PART 927 — BEURRE D'ANJOU, BEURRE BOSC, WINTER NELIS, DOYENNE DU COMICE, BEURRE EASTER, AND BEURRE CLAIRGEAU PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

Expenses and Rate of Assessment

On August 29, 1972, notice of rule making was published in the FEDERAL REGISTER (37 F.R. 17478) regarding proposed

expenses and the related rate of assessment for the fiscal period July 1, 1972, through June 30, 1973, pursuant to the amended marketing agreement and Order 927 (7 CFR Part 927), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and 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 matters presented, including the proposals set forth in such notice which were submitted by the Control Committee (established pursuant to said amended marketing agreement and order), it is hereby found and determined that:

§ 927.212 Expenses and rate of assessment.

(a) *Expenses.* Expenses that are reasonable and necessary to be incurred by the Control Committee during the period July 1, 1972, through June 30, 1973, will amount to $56,350.

(b) *Rate of assessment.* The rate of assessment for said period, payable by each handler in accordance with § 927.41, is fixed at $0.01 per standard western pear box of pears, or an equivalent quantity of pears in other containers or in bulk.

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) shipments of fresh pears are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable pears handled during the aforesaid period; and (3) such period began on July 1, 1972, and the rate of assessment will automatically apply to all such pears beginning with such date.

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

Dated: September 15, 1972.

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

[FR Doc.72-16026 Filed 9-19-72;8:53 am]

[Avocado Reg. 20, Amdt. 1]

PART 944—FRUITS; IMPORT REGULATIONS

Avocado Import Limitations

Pursuant to the provisions of section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) the provisions of paragraph (a)(6)(ii) and (iii) of § 944.12 Avocado Regulation 20; 37 F.R. 9403) are hereby amended to read as follows:

§ 944.12 Avocado Regulation 20.

(a) * * *

(6) * * *

(ii) From September 25, 1972, through October 15, 1972, unless the individual fruit in each lot of such avocados weighs at least 16 ounces; and

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

* * * * *

It is hereby found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective time of this amended regulation beyond that hereinafter specified (5 U.S.C. 553) in that (a) the requirements of this import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such regulation mandatory; (b) the maturity requirements of this import regulation are comparable to those to be in effect beginning September 18, 1972, on domestic shipments of avocados under Avocado Regulation 14, Amendment 1 (§ 915.314); (c) compliance with this import regulation will not require any special preparation which cannot be completed by the effective time hereof; (d) notice hereof in excess of 3 days, the minimum that is prescribed by section 8e, is given with respect to this import regulation; and (e) such notice is hereby determined, under the circumstances, to be reasonable.

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

Dated September 15, 1972, to become effective September 25, 1972.

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

[FR Doc.72-16059 Filed 9-19-72;8:56 am]

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

[Docket No. AO 243-A24; Milk Order 108]

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

Order Amending Order

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

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Arkansas Marketing Area.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

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

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

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

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

ORDER RELATIVE TO HANDLING

It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Central Arkansas Marketing Area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. In § 1108.53, paragraph (a) is revised as follows:

§ 1108.53 Location adjustments to handlers.

(a) For milk received from producers at a pool plant located more than 60 miles, by shortest highway distance as measured by the market administrator, from the nearest of the County Courthouse in Arkadelphia, Ark., the County Courthouse in Forrest City, Ark., or the State Capitol in Little Rock, Ark., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section and for other source milk to which a location adjustment is applicable, the price computed pursuant to § 1108.51(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof between such plant and such nearest point; and

* * * * *

§ 1108.74 [Amended]

2. In paragraph (a) of § 1108.74, add "the County Courthouse in Forrest City, Arkansas" immediately following "Arkadelphia, Arkansas,".

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

Effective date: November 1, 1972.

Signed at Washington, D.C., on September 14, 1972.

RICHARD E. LYNG,
Assistant Secretary.

[FR Doc.72–15957 Filed 9–19–72;8:49 am]

Chapter XIV—Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1972-Crop Peanut Farm-Stored Loan and Purchase Supplement]

PART 1421—GRAIN AND SIMILARLY HANDLED COMMODITIES

Peanut Loan and Purchase Program

The regulations issued by the Commodity Credit Corporation, and published in 37 F.R. 13084, which set forth specific requirements with respect to the farm stored loan and purchase program for 1972-crop peanuts, are hereby amended to increase the loan rates for farmers' stock peanuts. It is unnecessary to follow the notice of rule making procedure with respect to this amendment, because the increase in the loan rates reflects the final national average support level for 1972-crop peanuts previously announced.

Section 1421.294(a) is amended to read as follows:

§ 1421.294 Loan and purchase rates.

(a) *Loan rate.* Subject to the discounts specified in paragraph (b) of this section, the loan rates for farmers' stock peanuts placed under farm-stored loan shall be the following rates by types per ton:

Type:	*Dollars per ton*
Virginia	292
Runner	288
Southeast Spanish	280
Southwest Spanish	274
Valencia (suitable for cleaning and roasting in Southwest)[1]	292

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

* * * * *

Effective date: Upon publication in the FEDERAL REGISTER (9–20–72).

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

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

[FR Doc.72–15960 Filed 9–19–72;8:49 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. 72–554]

PART 76—HOG CHOLERA AND OTHER COMMUNICABLE SWINE DISEASES

Areas Quarantined

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

In § 76.2, in paragraph (e)(7) relating to the State of Kentucky, a new subdivision (viii) relating to Montgomery, Clark, and Bourbon Counties is added to read:

(e) * * *

(7) *Kentucky.* * * *

(viii) The adjoining portions of Montgomery, Clark, and Bourbon Counties bounded by a line beginning at the junction of the Montgomery-Bath County line and State Highway 11 in Montgomery County; thence, following State Highway 11 in a southeasterly direction to U.S. Highway 60; thence, following U.S. Highway 60 in a southwesterly direction to Wades Mill Road in Clark County; thence, following Wades Mill Road in a generally northwesterly direction to Sewell Shop Road; thence, following Sewell Shop Road in a southwesterly, then northwesterly direction to Stoner Road; thence, following Stoner Road in a northwesterly direction to the Clark-Bourbon County line; thence, following the Clark-Bourbon County line in a southwesterly direction to Petty Run Road; thence, following Petty Run Road in a northwesterly direction to State Highway 956 in Bourbon County; thence, following State Highway 956 in a northeasterly direction to State Highway 13; thence, following State Highway 13 in a northeasterly direction to Stone Road; thence, following Stone Road in a northeasterly direction to State Highway 537; thence, following State Highway 537 in a southeasterly direction to Plum Lick Road; thence, following Plum Lick Road in a northeasterly direction to the Montgomery-Bath County line; thence, following the Montgomery-Bath County line in a generally southeasterly direction to its junction with State Highway 11 in Montgomery County.

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

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

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

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

Done at Washington, D.C., this 15th day of September 1972.

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

[FR Doc.72–16028 Filed 9–19–72;8:54 am]

Title 12—BANKS AND BANKING

Chapter VII—National Credit Union Administration

PART 721—INCIDENTAL POWERS

On pages 8952–8954 of the FEDERAL REGISTER of May 3, 1972, notice of proposed rule making regarding incidental powers was published. After consideration of all such relevant matter as was presented by interested persons, the regulation as so proposed is hereby adopted, subject to the following changes:

1. In the introductory paragraph of § 721.1, line 8, delete the word "temporary".

2. In § 721.1(a)(2), line 2, change "officers" to "officials".

3. In § 721.1(c), delete the last sentence thereof.

4. In § 721.1(d), lines 8–9, delete "insure" and insert "reasonably determine".

5. In § 721.1(e), line 2, following the word "trust", change "of" to "or".

6. In § 721.1(h), line 3, following "policyholder", insert "or a subgroup under a master policy."

7. In § 721.1(i), line 4, following "union", insert "eligible for insurance".

8. In § 721.1(j), line 2, following "insurer", insert "or trust or association described in paragraph (e) of this section" and in line 4, following "insurer", add this same language.

9. In § 721.1(j), delete the second sentence.

10. In § 721.1(j), change the last sentence to read as set forth below.

11. In § 721.1(k), line 6, following "insurer", insert "or trust or association described in paragraph (e) of this section".

12. In § 721.1(l), lines 7–8, delete "and when the member makes application for insurance plan".

13. In § 721.1(m), line 2, following "insurer", insert "or trust or association described in paragraph (e) of this section".

14. In § 721.1(n), line 3, following "applicable", insert "insurance".

15. In the title of § 721.2, after "than" delete "group".

16. In § 721.2(b), line 3, following "members", insert "or participants".

17. In § 721.2(b), lines 4–5, change "officers" to "officials".

18. In § 721.2(c), lines 1–2, change "officers" to "officials".

Effective date. This regulation is effective October 20, 1972.

HERMAN NICKERSON, Jr.,
Administrator.

SEPTEMBER 11, 1972.

Sec.
721.1 Insurance activities.
721.2 Group purchasing activities other than insurance.

AUTHORITY: The provisions of this Part 721 issued under section 120, 73 Stat. 635, 12 U.S.C. 1766.

§ 721.1 Insurance activities.

A Federal credit union may undertake to facilitate its members' voluntary purchase of types of insurance incidental to promotion of thrift or the borrowing of money for provident and productive purposes such as life savings, loan protection, group, fire, theft, automobile, life, and disability insurance. Pursuant to such activities, a Federal credit union will adhere to the following guidelines:

(a) As used herein, unless the context otherwise requires—

(1) "Contract," "policy," and "plan" shall additionally have reference to any amendments, clauses, riders, endorsements, revisions, renewals or replacements thereof;

(2) "Credit union" shall mean any Federal credit union, its officials, directors, agents, employees, and representatives;

(3) "Insurer" shall mean any insurance company, its officers, directors, agents, employees, and representatives; and

(4) "Person" includes individuals, corporations, associations, firms, partnerships and joint stock companies.

(b) No credit union shall enter into any contract of insurance, or agreements or understandings relating thereto, except as provided in this part.

(c) The credit union may inform its members as to the availability of insurance through informational materials placed in the credit union's office, through the credit union's publications, or by direct mailings to members by the credit union. In this regard, the credit union may not, directly or indirectly, make any list of its membership available or provide addresses of its members to any insurer or use such insurer's stationery or envelopes.

(d) The credit union may be the policyholder of a group insurance plan or a subgroup under a master policy plan and may disseminate information to its members concerning the insurance provided thereunder. Where such plans are adopted by a credit union, the plan should be thoroughly investigated to reasonably determine that it is a reliable one, will protect the interests of the members and complies with these guidelines. The credit union's files should contain documentary evidence of the investigations made concerning the various plans.

(e) The credit union may subscribe to or be a member of a trust or other association whose sole function is to administer insurance plans or programs under policies of insurance for its subscribing or member credit unions or their members: *Provided,* Such trust or other association:

(1) Shall not be an agent of any insurer;

(2) Shall agree in writing to be bound by these guidelines; and

(3) Shall agree in writing to submit its records and affairs to inspection by the Administrator as he may require.

(f) The credit union may remit premiums to an insurer or the holder of a master policy on behalf of a credit union member: *Provided,* The credit union obtains written authorization from such member for remittance by share withdrawals or through proceeds of loans made to such member.

(g) The credit union may make insurance application forms available to its members and may provide instructions on predetermined published insurance rates and such other information as may be required by law.

(h) The credit union may issue certificates of insurance where the credit union is the policyholder or a subgroup under a master policy in a group insurance plan.

(i) The credit union may purchase certain insurance such as life savings insurance and loan protection insurance for all members of the credit union eligible for insurance who have loans or shares: *Provided,* The cost of the loan protection insurance (if passed on to the borrower as a condition precedent to making the loan) and other incidental costs, including the interest on the loan, cannot exceed the statutory rate of 1 percent per month on the unpaid balance. Where insurance is required as a condition precedent to making the loan, the borrower must be informed that he may select an insurer of his own choice.

(j) The credit union may not, directly or indirectly, act as agent for an insurer or trust or association described in paragraph (e) of this section in processing of claims or in any other agency capacity for such insurer or trust or association described in paragraph (e) of this section. Neither an insurer nor a trust or association described in paragraph (e) of this section may have an agent or employee permanently or regularly on the premises of the credit union for the purpose of conducting insurance business with the members.

(k) The credit union may not agree to accept or contract with the insurer for responsibility of the credit union for nontransmission of premiums nor may the credit union transmit business correspondence to its members for the insurer or trust or association described in paragraph (e) of this section such as notices of cancellation, bills, claim forms, etc.

(l) The credit union which passes informational material to its members as set forth in paragraph (c) of this section must indicate to its members in writing that the member must voluntarily determine whether he desires to participate in such insurance plan and when the member makes application for insurance about which the credit union has furnished informational material, he must indicate in writing on the application that he has voluntarily selected the insurer and understands that he may select any other insurer of his own choice. This provision, of course, does not apply where the credit union has purchased insurance such as life savings or loan protection insurance for all members. Nothing herein shall be construed as preventing a credit union from exercising a reasonable privilege of approval or disapproval of the insurance procured by the borrower on the property securing the indebtedness.

(m) The credit union may accept from the insurer or trust or association described in paragraph (e) of this section reimbursement for the actual cost of ministerial tasks performed pertaining to insurance. Any compensation, reimbursement, or other consideration in excess of such cost, whether in the form of merchandise, services, cash or otherwise, received or promised, directly or indirectly, to a credit union is prohibited.

(n) The credit union must, in carrying out any of the permitted practices, comply with the applicable insurance laws of the State in which the credit union does business. The guidelines herein are in addition to, and not in lieu of, any applicable laws and regulations of the State in which such insurance activities are transacted.

(o) No credit union shall, directly or indirectly, engage in any act, practice or transaction, with respect to the subject matter of these guidelines, nor enter into any contract of insurance, or agreement or understanding relating thereto, unless all parties to such act, practice, transaction or contract expressly agree in writing to be bound by the provisions hereof.

(p) No credit union shall, directly or indirectly, engage in any act, practice or transaction, otherwise permitted herein, where such act, practice or transaction shall constitute an evasion, or attempted evasion, of any requirement or prohibition of these guidelines, nor shall any credit union aid, abet or permit, directly or indirectly, any such evasion, or attempted evasion, by any insurer or other person dealing with any such credit union or its members.

§ 721.2 Group purchasing activities other than insurance.

(a) A Federal credit union may inform its members as to the availability of various group purchasing plans which are related to the promotion of thrift or the borrowing of money for provident and productive purposes by means of informational materials placed in the credit union's office, through its publications, or by direct mailings to members by the credit union. The credit union may not, directly or indirectly, make any list of its membership available or provide addresses of its members to any party associated with such a plan or use the stationery or envelopes provided by those who operate such plans.

(b) A Federal credit union may not be a member of such group purchasing plans nor may it solicit members or participants for such plans. A Federal credit union and its officials, employees, agents, and representatives may not, directly or indirectly, act in any agency capacity in regard to such plans. For purposes of this section, the term "agency capacity" includes but is not limited to the preparation and transmittal of individual membership applications, issuance of membership certificates, explanation of benefits, and other related activities.

(c) A Federal credit union or its officials, employees, agents, and representatives may not, directly or indirectly, receive compensation, reimbursement, or other consideration in excess of the actual cost of making such informational materials available to its members or for any other functions performed in connection with such plans, whether in the form of merchandise, services, cash or otherwise.

(d) A Federal credit union must, in carrying out any of the permitted practices, comply with the applicable laws of the State in which the credit union does business.

[FR Doc.72-15988 Filed 9-19-72;8:48 am]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 12236, Amdt. 11-12]

PART 11—GENERAL RULE MAKING PROCEDURES

Grant or Denial of Exemptions From Airport; Certification and Operation

The purpose of these amendments to Part 11 of the Federal Aviation Regulations is to (1) state the general course and method by which action is taken on petitions for exemption from provisions of Part 139—Certification and Operations: Land Airports Serving CAB—Certificated Scheduled Air Carriers Operating Large Aircraft (Other Than Helicopters), including petitions filed under § 139.19 for exemptions from safety equipment requirements, on which Regional Directors already are authorized to act; and (2) provide for public dockets in the offices of Regional Counsel relating to rule making actions taken by Regional Directors on all petitions for exemption filed under Part 139.

Section 139.19 specifically provides for petitions for exemption from the safety equipment requirements of §§ 139.49 *Airport firefighting and rescue equipment and service*, 139.53 *Trafic and wind direction indicators*, and 139.65 *Public protection*, on the grounds that compliance would be contrary to the public interest. This provision was responsive to the 1971 amendment to section 612(b) of the Federal Aviation Act of 1958 (Public Law 92-174, approved November 27, 1971) that specifically provides that the terms, conditions, and limitations on each airport operating certificate that are "reasonably necessary to assure safety in air transportation" shall include those relating to adequate safety equipment "unless the Administrator determines that it would be contrary to the public interest." While petitions under that section are to be submitted and processed under Part 11, they are to be filed with FAA airport field offices. It has been provided that thereupon they are to be either granted or denied by the appropriate Regional Director, in view of the fact that the certification function itself is to be performed in the field. As stated in the preamble to Part 139, relief by exemption may be applied for under Part 11 at any time in situations other than those covered by § 139.19. In the absence of these amendments, petitions other than § 139.19 petitions would be processed by the Director, Airports Service, at the FAA Headquarters in Washington, D.C.

Upon further consideration, it has been determined that it is desirable to have all exemption petitions under Part 139 processed at one location and thus avoid an illogical diversity of authority as to the exemptions filed under that part. Accordingly, it is considered appropriate to have the Regional Directors grant or deny all exemptions under Part 139. It is anticipated that, comparatively, the workload on exemptions filed under Part 139 other than under § 139.19 will be fairly light. As a consequence of these amendments, therefore, all petitions for exemption filed under Part 139 will be referred to Regional Directors for action. These amendments also provide specifically for the establishment of public dockets on these actions in the offices of Regional Counsel.

Since these amendments are procedural in nature and do not impose a burden upon any person, notice and public procedure thereon is not required, and they may be made effective in less than 30 days after publication.

In consideration of the foregoing, Part 11 of the Federal Aviation Regulations is amended, effective September 20, 1972, as follows:

1. By inserting the following sentence after the second sentence in § 11.11 to read as follows:

§ 11.11 Docket.

* * * A public docket relating to rule making actions taken by each Regional Director on petitions for exemption filed under Part 139 of this chapter is maintained in the office of the Regional Counsel for that region.

2. By amending paragraph (b)(2) of § 11.25 to read as follows:

§ 11.25 Petitions for rule making or exemptions.

* * * * *

(b) * * *

(2) Be submitted in duplicate—

(i) To the appropriate FAA airport field office in whose area the petitioner proposes to establish or has established its airport, in the case of any petition for exemption filed under Part 139 of this chapter; and

(ii) To the Federal Aviation Administration, Washington, D.C. 20591, in all other cases;

* * * * *

3. By amending the last sentence in paragraph (a) of § 11.41 to read as follows:

§ 11.41 Scope.

(a) * * * For the purposes of this subpart, the words "Office or Service" include the Aeronautical Center and the

National Aviation Facilities Experimental Center, and include Regional Directors with respect to petitions for exemption filed under Part 139 of this chapter.

* * * * *

4. By inserting a new paragraph (c) at the end of § 11.53 to read as follows:

§ 11.53 Grant or denial of exemption.

* * * * *

(c) For the purposes of this section, the words "General Counsel" include Regional Counsel as to petitions for exemption filed under Part 139 of this chapter.

(Secs. 303(d), 313(a), 1001, Federal Aviation Act of 1958; 49 U.S.C. 1344(d), 1354(a), 1481; sec. 6(c), Department of Transportation Act; 49 U.S.C. 1655(c); sec. 1.47(a) of the regulations, Office of the Secretary of Transportation; 49 CFR 1.47(a))

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

J. H. SHAFFER,
Administrator.

[FR Doc.72-15945 Filed 9-19-72;8:48 am]

[Airspace Docket No. 72-EA-79]

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

Alteration of Transition Area

On page 15383 of the FEDERAL REGISTER for August 1, 1972, the Federal Aviation Administration published a proposed regulation which would alter the Buffalo, N.Y., transition area (37 F.R. 2164).

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulation have been received.

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t. December 7, 1972.

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

Issued in Jamaica, N.Y., on September 11, 1972.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

1. Amend § 71.181 of Part 71, Federal Aviation Regulations so as to delete the description of the Buffalo, N.Y., 1,200-foot floor transition area and substitute the following in lieu thereof:

"and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at latitude 43°21'00" N., longitude 78°00'00" W., to latitude 43°06'00" N., longitude 78°21'00" W., to latitude 42°32'00" N., longitude 78°21'00" W., to latitude 42°32'00" N. longitude 78°52'00" W., to latitude 42°37'00" N., longitude 79°15'00" W., to latitude 42°41'00" N., longitude 79°19'30" W., thence via the United States/Canadian border to longitude 78°00'00" W., thence south along longitude 78°00'00" W. to the point of beginning, excluding the portion outside the United States."

[FR Doc.72-15946 Filed 9-19-72;8:48 am]

[Airspace Docket No. 72-EA-74]

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

Alteration of Transition Area

On page 15384 of the FEDERAL REGISTER for August 1, 1972, the Federal Aviation Administration published a proposed regulation which would alter the Olean, N.Y., transition area (37 F.R. 2255).

Interested parties were given 30 days after publication in which to submit written data or views. No objections to the proposed regulation have been received.

In view of the foregoing, the proposed regulation is hereby adopted, effective 0901 G.m.t. December 7, 1972.

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

Issued in Jamaica, N.Y., on September 11, 1972.

LOUIS J. CARDINALI,
Acting Director, Eastern Region.

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

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the center 42°14'20" N., 78°22'30" W. of Olean Municipal Airport and within 3.5 miles each side of the Olean, N.Y., RBN (42°-17'20" N., 78°20'08" W.) 028° bearing extending from the 8-mile radius area to 11.5 miles northeast of the RBN. This transition area shall be effective 0700 to 2200 hours, local time, daily.

[FR Doc.72-15947 Filed 9-19-72;8:48 am]

[Airspace Docket No. 72-WA-47]

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

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Alteration of Federal Airway Segment, Control Area, Reporting Point and Jet Routes

The purpose of these amendments to Parts 71 and 75 of the Federal Aviation Regulations (FAR's) is to replace the Point Barrow, Alaska, RBN (PBA) with Browerville, Alaska, RBN (NMT) where it appears in §§ 71.105, 71.163, 71.213, and 75.100.

On June 13, 1972, an airspace proposal (72-AL-51NR) was circulated for public comment, stating that the Federal Aviation Administration (FAA) was considering the substitution of the Browerville RBN for the Point Barrow RBN. No adverse comments were received.

The Browerville RBN is approximately 2 miles southwest of the Point Barrow RBN and will operate at 1,000 watts power. Operational reliability will be greatly increased on all routes changed to be predicated on this RBN.

Since these amendments are minor in nature and no substantive change in the regulation or its effect upon the operation of aircraft is effected, further notice and public procedure thereon are unnecessary. However, since it is necessary that sufficient time be allowed to permit appropriate changes to be made on aeronautical charts, these amendments will become effective November 9, 1972.

In consideration of the foregoing, Part 71 and Part 75 of the Federal Aviation Regulations are amended, effective 0901 G.m.t., November 9, 1972, as hereinafter set forth.

1. Section 71.105 (37 F.R. 2007) is amended as follows:

In A-2 "Point Barrow, Alaska, RBN (PBA)." is deleted and "Browerville, Alaska, RBN." is substituted therefor.

2. Section 71.163 (37 F.R. 2048) is amended as follows:

In the Point Barrow/Barter Island, Alaska, additional control area "Point Barrow," is deleted and "Browerville," is substituted therefor in the heading and in the text.

3. In § 71.213 (37 F.R. 2325) "Point Barrow, Alaska, RBN (PBA)" is deleted and "Browerville, Alaska, RBN" is substituted therefor.

4. Section 75.100 (37 F.R. 2382, 36 F.R. 23358) is amended as follows:

a. In Jet Route No. 123 (From Marble, Alaska, to Point Barrow, Alaska) "Point Barrow, Alaska" is deleted and "Browerville, Alaska" is substituted therefor in the heading and in the text.

b. In Jet Route No. 507 (Point Barrow, Alaska, to Annette Island, Alaska) "Point Barrow, Alaska" is deleted and "Browerville, Alaska" substituted therefor in the heading and in the text.

c. In Jet Route No. 515 "to Point Barrow, Alaska, RBN (PBA)." is deleted and "to Browerville, Alaska, RBN." is substituted therefor in the heading and in the text.

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

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

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

[FR Doc.72-15948 Filed 9-19-72;8:48 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 72-253]

PART 1—GENERAL PROVISIONS

PART 111—CUSTOMHOUSE BROKERS

Customs Field Organization

Due to a reorganization in the Bureau of Customs, the title "Director, Field Audit" has been changed to "Regional Director, Security and Audit." The regulations are amended to reflect this change, and to revise the table of audit offices and their assigned regions which

appears in § 1.4a to reflect office location rather than address.

Accordingly, the Customs regulations are amended as set forth below:

Section 1.4a is amended to read as follows:

§ 1.4a Assignment of Customs regions to regional directors, security and audit.

The regions in § 1.1, together with their respective districts, are assigned to the offices of the regional directors, security and audit, as follows:

Audit office	Office location	Customs regions
New York	New York, N.Y.	I, II, and III.
Branch	Boston, Mass.	I.
Branch	Baltimore, Md.	III.
Miami	Miami, Fla.	IV.
Houston	Houston, Tex.	V and VI.
Branch	New Orleans, La.	V.
San Francisco	San Francisco, Calif.	VII and VIII.
Branch	San Pedro, Calif.	VII.
Chicago	Chicago, Ill.	IX.

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624)

Sections 111.22(b), 111.24, and 111.27, are amended by deleting the phrase "director, field audit" and inserting "regional director, security and audit" wherever it appears.

(R.S. 251, as amended, sec. 624, 46 Stat. 759; 5 U.S.C. 301, 19 U.S.C. 66, 1624)

Because this amendment relates to agency management, it is excepted from the requirements of 5 U.S.C. 553.

Effective date. This amendment shall become effective upon publication in the FEDERAL REGISTER (9–20–72).

[SEAL] EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved: September 11, 1972.

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.72–15968 Filed 9–19–72;8:50 am]

Title 22—FOREIGN RELATIONS

Chapter I—Department of State

[Departmental Reg. 108.676]

PART 11—APPOINTMENT OF FOREIGN SERVICE OFFICERS

Written and Oral Examinations

Regulations concerning competitive examinations of candidates who apply for appointment as a Foreign Service officer (FSO) in the Department of State or Foreign Service information officer (FSIO) in the U.S. Information Agency, classes 7 and 8, are amended and revised to reflect the current procedures established by the Board of Examiners for the Foreign Service in the examination and certification of junior Foreign Service officers.

Accordingly, Part 11, §§ 11.1 through 11.8 of Title 22 of the Code of Federal Regulations is changed to read as set forth below.

§ 11.1 Eligibility for appointment as Foreign Service Officer.

(a) *General considerations.* Pursuant to section 511 of the Foreign Service Act of 1946, as amended, all Foreign Service officers shall be appointed by the President, by and with the advice and consent of the Senate. All appointments shall be made to a class and not to a particular post. No person shall be eligible for appointment as a Foreign Service officer unless that person has demonstrated loyalty to the Government of the United States and attachment to the principles of the Constitution, and has been a citizen of the United States for at least 10 years and, if married, is married to a citizen of the United States. The religion, race, sex, and political affiliations of a candidate will not be considered in designations, examinations or certifications.

(b) *Veterans' preference.* Notwithstanding the provisions of section 3320 of title 5 of the United States Code, the fact that any applicant is a veteran or disabled veteran, as defined in section 2108 (1) or (2) of such title, shall be taken into consideration as an affirmative factor in the selection of applicants for initial appointment as Foreign Service officers or Foreign Service information officers. (22 U.S.C. 1234.)

(c) *Appointment to class 7 or 8.* Appointment as a Foreign Service officer of class 8, or of class 7, in circumstances specified herein, is governed by regulations in §§ 11.2 through 11.8.

§ 11.2 Written examination for appointment to class 7 or 8.

The Board of Examiners for the Foreign Service has established the following rules regarding the written examination:

(a) *When and where given.* The written examination will be given annually or semiannually, if required, in designated cities in the United States and at Foreign Service posts on dates established by the Board of Examiners for the Foreign Service. Applicants must indicate in their applications whether they are applying for the Department of State or for the U.S. Information Agency. Candidates who pass the written examination successfully may request a transfer of their applications to the other agency.

(b) *Designation to take written examination.* No person will be permitted to take a written examination for appointment as a Foreign Service officer or Foreign Service information officer who has not been specifically designated by the Board of Examiners to take that particular examination. Prior to each written examination, the Board will establish a closing date for the receipt of applications for designation to take the examination. No person will be designated for the examination who has not, as of that closing date, filed an application with the Board. To be designated for the written examination, a candidate, as of the date of the examination, shall have been a citizen of the United States for at least 7½ years and shall be at least 21 years of age, except that an applicant who has been awarded a bachelor's degree by a college or university, or has successfully completed the junior year at a college or university, may qualify if at least 20 years of age.

(c) *Content.* The written examination is designed to permit the Board to test the candidate's intelligence, breadth and quality of knowledge, and understanding. It will consist of three parts: (1) A general ability test, (2) an English expression test, and (3) a general background test.

(d) *Grading.* The several parts of the written examination are weighted in accordance with the rules established by the Board of Examiners.

§ 11.3 Oral examination for appointment to class 7 or 8.

The Board of Examiners for the Foreign Service has established the following rules regarding the oral examination:

(a) *When and where given.* The oral examination will be given throughout the year at Washington and periodically in selected cities in the United States and, if circumstances permit, at selected Foreign Service posts.

(b) *Eligibility.* If a candidate's weighted average on the three parts of the written examination is 70 or higher, the candidate will be eligible to take the oral examination. Candidates eligible for the oral examination will be given an opportunity and will be required to take the oral examination within 9 months after the date of the written examination. If a candidate fails to appear for the oral examination on an agreed date within the 9-month period, the candidacy will automatically terminate, except that time spent outside the United States and its territories, for reasons acceptable to the Board of Examiners, will not be counted against the 9-month period. The candidacy of anyone for whom the 9-month period is extended because of being abroad will be automatically terminated if the candidate fails to appear for the oral examination within 3 months after first returning to the United States: *Provided*, That the candidacy of anyone who has not returned and been examined in the meantime will be canceled 2 years after the end of the month in which the written examination was held.

(c) *Examining process.* (1) The oral examination will be given by a panel of deputy examiners approved by the Board of Examiners from a roster of Foreign Service officers, officers from the Department of State, and other Government agencies, and qualified private citizens who by prior service as members of selection boards or through other appropriate activities have demonstrated special qualifications for this work. Service as deputy examiners shall be limited to a maximum of 5 years, unless a further period is specifically authorized by the Board.

(2) The examination will be conducted in the light of all available information concerning the candidate and will be designed to determine the candidate's: (i) Competence to perform the

work of a Foreign Service officer at home and abroad; (ii) potential for growth in the Service; and (iii) suitability to serve as a representative of the United States abroad. Panels examining candidates for the Department of State will be chaired by a Foreign Service officer of the Department. Panels examining candidates for the U.S. Information Agency will be chaired by a Foreign Service officer of that Agency. Determinations of duly constituted panels of deputy examiners are final, unless modified by specific action of the Board of Examiners for the Foreign Service.

(3) Grading: Candidates appearing for the oral examination will be graded "recommended" or "not recommended." If recommended, the panel will assign a grade which will be advisory to the Final Review Panel in determining the candidate's standing on the rank-order register of eligibles. The candidacy of anyone who is graded "not recommended" is automatically terminated and may not be considered again until the candidate has passed a new written examination.

(4) An investigation shall be conducted of candidates who have been graded "recommended" by the oral examining panel to determine loyalty to the Government of the United States and attachment to the principles of the Constitution.

§ 11.4 Medical examination for appointment to class 7 to 8.

The Board of Examiners for the Foreign Service has established the following rules regarding the medical examination of candidates.

(a) A candidate graded "recommended" on the oral examination will be eligible for the physical examination.

(b) The medical examination is designed to determine the candidate's physical fitness to perform the duties of a Foreign Service officer on a worldwide basis and to determine the presence of any physical, nervous, or mental disease or defect of such a nature as to make it unlikely that the candidate would become a satisfactory officer. The Executive Director of the Board of Examiners for the Foreign Service, with the concurrence of the Deputy Assistant Secretary for Medical Services, may make such exceptions to these physical requirements as are in the interest of the Service. All such exceptions shall be reported to the Board of Examiners for the Foreign Service at its next meeting.

(c) The medical examination will be conducted by medical officers of the Armed Forces, the Public Health Service, the Department, accredited colleges and universities, or, with the approval of the Board of Examiners, by private physicians.

(d) The Deputy Assistant Secretary for Medical Services will determine, on the basis of the report of the physician(s) who conducted the medical examination, whether the candidate has met the standards set forth in paragraph (b) of this section.

§ 11.5 Certification for appointment to class 7 and 8.

(a) Candidates will not be certified as eligible for appointment as Foreign Service officers of class 8 unless they are at least 21 years of age and have been a citizen of the United States for at least 10 years, and, if married, married to a citizen of the United States. A candidate may be certified as eligible for direct appointment to class 7 if, in addition to meeting these specifications, the candidate is at least 24 years old and has a record of 2 years of graduate training, employment, military service, or Peace Corps service, which clearly demonstrates ability and special skills for which there is a need in the Foreign Service. Recommended candidates who meet these requirements will be certified for appointment, in accordance with the needs of the Service, in the order of their standing on their respective registers.

(b) Separate registers for Department of State candidates will be maintained for the administrative, consular, commercial/economic, and political functional specialties. Successful candidates for the U.S. Information Agency will have their names placed on a separate rank-order register and appointments will be made according to the needs of the Agency. Postponement of entrance on duty for required active military service, or required alternative service, civilian Government service abroad (to a maximum of 2 years of such civilian service), or Peace Corps volunteer service, will be authorized. A candidate may be certified for appointment to class 7 or 8 without first having passed an examination in a foreign language, but the appointment will be subject to the condition that the newly appointed officer may not receive more than one promotion unless, within a specified period of time, adequate proficiency in a foreign language is achieved.

§ 11.6 Final review panel.

After the results of the medical examination and background investigation are received, the candidate's entire file will be reviewed by a Final Review Panel, consisting of two or more deputy examiners. Candidates who have been graded "recommended" by oral examining panels, who have passed their medical examination, and who, on the basis of investigation have been found to be loyal to the Government of the United States and personally suitable to represent it aboard, will have their names placed on a rank-order register for the functional specialty for which they have been qualified. Their standing on the register will be determined by the Final Review Panel after taking into account the grade assigned by the oral examining panel and any information developed subsequent to the oral examination concerning the applicant. The candidacy of anyone who is determined by the Final Review Panel to be unqualified for appointment shall be terminated and the candidate so informed.

§ 11.7 Termination of eligibility.

(a) Candidates who have qualified but have not been appointed because of lack of vacancies will be dropped from the rank-order register 30 months after the date of the written examination: *Provided, however,* That reasonable time spent in civilian Government service abroad (to a maximum of 2 years such service), including service as a Peace Corps volunteer, in required active military service, or in required alternative service, subsequent to establishing eligibility for appointment will not be counted in the 30-month period.

(b) The Chairman of the Board of Examiners may extend the eligibility period when such extension is, in his judgment, justified in the interests of the service. The Chairman shall report the approved extensions to the Board of Examiners.

§ 11.8 Travel expenses of candidates.

The travel and other personal expenses of candidates incurred in connection with the written and oral examinations will not be borne by the Government, except that the Department may issue round-trip invitational travel orders to bring candidates to Washington at Government expense when it is determined that it is necessary in ascertaining a candidate's qualifications and adaptability for appointment.

(Secs. 212, 302, 303, 516, 517, 60 Stat. 1001, as amended, 1002, 1008, as amended; 22 U.S.C. 827, 842, 843, 911, 1221 et seq.)

Effective date. These revisions and amendments shall become effective upon publication in the FEDERAL REGISTER (9–20–72).

For the Secretary of State.

JOSEPH F. DONELAN, Jr.,
Acting Deputy Under Secretary for Management.

SEPTEMBER 12, 1972.

[FR Doc.72–15989 Filed 9–19–72;8:51 am]

Title 21—FOOD AND DRUGS

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

SUBCHAPTER C—DRUGS

PART 135—NEW ANIMAL DRUGS

Subpart A—Definitions and Procedural Regulations

FORMS REQUIRED TO REPORT NEW ANIMAL DRUG REACTIONS AND EXPERIENCES

Correction

In F.R. Doc. 72–13004 appearing at page 16602 of the issue for Thursday, August 17, 1972, the last line of § 135.14c (c)(2) should read "literature may be submitted."

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7203]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Investment Credit; Correction

On August 25, 1972, T.D. 7203 was published in the FEDERAL REGISTER (37 F.R. 17123). Section 47(a)(6) should have been added to § 1.47 of the Income Tax Regulations (26 CFR Part 1) by T.D. 7203. Accordingly, add section 47(a)(6), which follows below, to § 1.47.

§ 1.47 Statutory provisions; certain dispositions, etc., of section 38 property.

SEC. 47. *Certain dispositions, etc., of section 38 property*—(a) *General rule.* * * *

(6) *Aircraft used outside the United States after April 18, 1969*—(A) *General rule.* Any aircraft which was new section 38 property for the taxable year in which it was placed in service and which is used outside the United States under a qualifying lease or leases shall be treated as not ceasing to be section 38 property by reason of such use until such aircraft has been so used for a period or periods exceeding 3½ years in total. For purposes of the preceding sentence, the registration of such aircraft under the laws of a foreign country shall be treated as use outside the United States.

(B) *Computation of qualified investment.* If an aircraft described in subparagraph (A) is disposed of or otherwise ceases to be section 38 property, the increase under paragraph (1) and the adjustment under paragraph (3) shall not be greater than the increase or adjustment which would result if the qualified investment of such aircraft were based upon a useful life equal to the lesser of (i) the actual useful life of such aircraft with respect to the taxpayer, or (ii) twice the number of full calendar months during which such aircraft was registered by the Administrator of the Federal Aviation Agency and was used in the United States, operated to and from the United States, or operated under contract with the United States. For purposes of the preceding sentence, an aircraft shall be treated as used in the United States for any calendar month beginning after such aircraft was placed in service, if such month is included in a taxable year ending before January 1, 1971, for which such aircraft was section 38 property (determined without regard to this paragraph).

(C) *Qualifying lease defined.* For purposes of subparagraph (A), the term "qualifying lease" means a lease from an air carrier (as defined in section 101 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301)) which complies with the provisions of the Federal Aviation Act of 1958, as amended, and the rules and regulations promulgated by the Civil Areonautics Board thereunder, but only if such lease was executed after April 18, 1969.

JAMES F. DRING,
Director, Legislation and Regulation Division.

[FR Doc.72-16034 Filed 9-19-72;8:54 am]

Title 31—MONEY AND BANKING

Chapter II—Fiscal Service, Department of the Treasury

SUBCHAPTER B—BUREAU OF THE PUBLIC DEBT

PART 315—REGULATIONS GOVERNING U.S. SAVINGS BONDS

Notice of Modification of Requirement That Courtesy Titles Be Used in Inscribing U.S. Savings Bonds

Section 315.5 of Department of the Treasury Circular No. 530, Ninth Revision, dated December 23, 1964, as amended (31 CFR Part 315), provides that in inscribing U.S. savings bonds the name of a woman must be preceded by "Miss" or "Mrs." unless some other applicable title or designation is used. Notice is hereby given that, effective immediately, this requirement has been modified to permit, in lieu of furnishing a courtesy title, the social security account number of any female registrant on a bond, whether the individual is named as owner, coowner, or beneficiary.

Dated: September 14, 1972.

[SEAL] JOHN K. CARLOCK,
Fiscal Assistant Secretary of the Treasury.

[FR Doc.72-15967 Filed 9-19-72;8:56 am]

Title 32—NATIONAL DEFENSE

Chapter XIV—Renegotiation Board

SUBCHAPTER B—RENEGOTIATION BOARD REGULATIONS UNDER THE 1951 ACT

PART 1460—PRINCIPLES AND FACTORS IN DETERMINING EXCESSIVE PROFITS

PART 1499—RENEGOTIATION RULINGS AND BULLETINS

Miscellaneous Amendments

The Renegotiation Board hereby adopts, without change, the proposed amendments published on July 18, 1972 (37 F.R. 14243-44). Such regulations, as adopted, read as set forth below.

Dated: September 15, 1972.

RICHARD T. BURRESS,
Chairman.

Section 1460.5 *Minimum refund* is amended by deleting paragraph (a) in its entirety and inserting in lieu thereof the following:

§ 1460.5 Minimum refund.

(a) *In general.* Except as otherwise provided in this section, and in the absence of unusual circumstances, no determination of excessive profits will be made (1) with respect to any fiscal year ending on or before December 31, 1970, in an amount less than $40,000 or, in the case of subcontracts described in section 103(g)(3) of the act, in an amount less than $10,000; or (2) with respect to any fiscal year ending after December 31, 1970, in an amount less than $80,000 or, in the case of subcontracts described in section 103(g)(3) of the act, in an amount less than $20,000; in each instance before adjustment for taxes measured by income, other than Federal taxes (see § 1459.9 of this chapter).

* * * * *

Section 1499.1-8 *Renegotiation Ruling No. 8: Competitively bid construction contracts; small business restricted advertising ("set-asides")* is deleted in its entirety and the following is inserted in lieu thereof:

§ 1499.1-8 Renegotiation Ruling No. 8: Competitively bid construction contracts; small business restricted advertising ("set-asides") (interprets act section 106(a)(9)); § 1453.7(b)(1)(iii) of this chapter.

(a) The exemption provided in section 106(a)(9) of the act is confined to prime contracts, awarded as a result of competitive bidding, for the construction of any building, structure, improvement or facility (other than so-called Capehart housing). Under § 1453.7(b)(1)(iii) of this chapter, a contract is considered to have been awarded as a result of competitive bidding if it was awarded in conformity with the formal advertising procedures prescribed in section 3 of the Armed Services Procurement Act of 1947 (now 10 U.S.C. section 2305). This limitation was prescribed by the Congress at the time of the enactment of the exemption (see S. Rept. 582, 84th Cong., 1st sess. 3 (1955)).

(b) Small business restricted advertising is a special method of procurement whereby contracts are advertised and awarded in the same manner as contracts made under 10 U.S.C. section 2305, except that bids and awards are restricted to small business concerns. To validate awards so made, contracts for total or partial small business set-asides, entered into after small business restricted advertising, are classified as negotiated procurements. See § 1-706.2 of the Armed Services Procurement Regulation (32 CFR 1-706.2), § 1.706-8 of the NASA Procurement Regulation (41 CFR 18-1.706-8), and §§ 1-1.701-9 and 1-1.706-8 of the Federal Procurement Regulations (41 CFR 1-1.701-9, 1-1.706-8). However, for purposes of the exemption in section 106(a)(9) of the act, since in such procurements all established principles and requisites of formal advertising are observed with respect to all eligible bidders, the Board considers that such contracts have been awarded in conformity with the requirements for procurement by formal advertising prescribed in 10 U.S.C. section 2305. This conclusion is consistent with the view expressed by the Comptroller General that "there may be formal advertising even though the bidding is restricted to a limited class or group,"

including specifically small business concerns (41 Comp. Gen. 230).

(c) It follows that construction contracts entered into as a result of small business restricted advertising, under the set-aside program, are within the exemption provided in section 106(a)(9) of the act.

(Sec. 109, 65 Stat. 22; 50 U.S.C.A., App. Sec. 1219)

[FR Doc.72-15966 Filed 9-19-72;8:50 am]

Title 38—PENSIONS, BONUSES, AND VETERANS' RELIEF

Chapter I—Veterans Administration

PART 9—SERVICEMEN'S GROUP LIFE INSURANCE

Cadets and Midshipmen at Service Academies of the Armed Forces Granted Coverage

On page 14890 of the FEDERAL REGISTER of July 26, 1972, there was published a notice of proposed regulatory development to amend § 9.1, Title 38, Code of Federal Regulations, to extend coverage of Servicemen's Group Life Insurance to cadets and midshipmen at the Service Academies of the Armed Forces. Interested persons were given 30 days in which to submit comments, suggestions, or objections regarding the proposed regulation.

Pursuant to such notice, written comments were received from an interested party. However, no objections were made to the proposed regulation, and it is hereby adopted without change as set forth below.

Effective date. This VA regulation is effective June 20, 1972.

Approved: September 14, 1972.

By direction of the Administrator.

[SEAL] FRED B. RHODES,
Deputy Administrator.

Section 9.1 of Part 9 of Title 38 is amended by amending subparagraph (1) of paragraph (a), and by adding a new subparagraph (4) to paragraph (b) to read as follows:

§ 9.1 Definitions.

(a) The term "member" means (1) a person on active duty, active duty for training, or inactive duty training in the Uniformed Services in a commissioned, warrant, or enlisted rank or grade, or as a cadet or midshipman at the U.S. Military Academy, U.S. Naval Academy, U.S. Air Force Academy, or the U.S. Coast Guard Academy.

* * * * *

(b) The term "active duty" means * * *

(4) Full-time duty as a cadet or midshipman at the U.S. Military Academy, U.S. Naval Academy, U.S. Air Force Academy, or the U.S. Coast Guard Academy.

* * * * *

[FR Doc.72-15963 Filed 9-19-72;8:49 am]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 15—Environmental Protection Agency

PART 15-16—PROCUREMENT FORMS

Subpart 15-16.9—Illustration of Forms

GENERAL PROVISIONS

On April 28, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (36 F.R. 8540-8550) stating that the Environmental Protection Agency, was considering an amendment to 41 CFR, Chapter 15, by adding new § 15-16.901-2-A, General Provisions, under Subpart 15-16.9, Illustration of Forms, Part 15-16, Procurement Forms. Interested persons were invited to submit written data, views, or comments within 30 days after publication. Written comments were received, and after due consideration of the views presented, the regulation was revised and adopted as set forth below.

The purpose of this amendment is to illustrate EPA Form 1900-17, General Provisions for Use in Cost Reimbursement Contracts with Profit Making Organizations, as revised, and recodify the section as § 15-16.553-1.

Effective date. This amendment shall become effective upon availability of EPA Form 1900-17, from EPA supply sources.

Dated: September 14, 1972.

WILLIAM D. RUCKELSHAUS,
Administrator.

§ 15-16.553-1 General provisions.

GENERAL PROVISIONS FOR USE IN COST-REIMBURSEMENT CONTRACTS WITH PROFIT-MAKING ORGANIZATIONS

1. *Definitions.* As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(b) Except as otherwise provided in this contract, the term "Subcontracts" includes purchase orders under this contract.

(c) The term "EPA" means the Environmental Protection Agency.

2. *Disputes.* (a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish to the Contractor a written copy of his decision. Such decision shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor appeals therefrom by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Administrator, Environmental Protection Agency. The decision of the Administrator or his duly authorized representative upon such appeal shall be final and conclusive unless the decision is determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided,* That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

3. *Changes.* The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general score of this contract, in any one or more of the following: (i) Drawings, designs, specifications or statement of work, (ii) method of shipment or packing, (iii) place of inspection, delivery, or acceptance, and (iv) the amount of Government-furnished property. If any such change causes an increase or decrease in the cost of, or the time required for performance of this contract or otherwise affects any other provisions of this contract, whether changed or not changed by any such order, an equitable adjustment shall be made (i) in the contract price or time of performance, or both, and (ii) in such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

4. *Termination for default or for convenience of the Government.* (a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(1) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of 10 days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(2) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a notice of termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the Contractor was not

in default pursuant to (1), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the notice of termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a notice of termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the notice of termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the notice of termination;

(4) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(6) Transfer title to the Government (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination; (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government; and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Subpart 1–8.1 of the Federal Procurement Regulations (41 F.R. 1–8.1), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list certified as to quantity and quality of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a notice of termination the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than 1 year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 1-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify and action, he may receive and act upon any such termination claim at any time after such 1-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the settlement includes cost and fee—

(i) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the notice of termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however,* That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract;

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however,* That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(iv) There shall be included therein a portion of the fee payable under the contract determined as follows—

(A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, but exclusive of subcontract effort included in subcontractors' termination claims, less fee payments previously made hereunder; or

(B) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract. If the amount determined under this subparagraph (1) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

(2) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (1)(iv) above.

(f) Costs claimed, agreed to, or determined pursuant to paragraphs (c), (d), and (e) of this clause shall be in accordance with the contract cost principles and procedures in Part 1–15 of the Federal Procurement Regulations (41 CFR Part 1–15) in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c)

above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) If there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

5. *Printing.* Unless otherwise specified in this contract, the Contractor shall not engage in, nor subcontract for, any printing (as that term is defined in title I of the Government Printing and Binding Regulations in effect on the effective date of this contract) in connection with the performance of work under this contract: *Provided, however,* That performance of a requirement under this contract involving the duplication of less than 5,000 units of only one page, or less than 25,000 units in the aggregate of multiple pages, such pages not exceeding a maximum image size of 10¾ by 14¼ inches, will not be deemed to be printing.

6. *Stop work order.* (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either:

(i) Cancel the Stop Work Order, or

(ii) Terminate the work covered by such order as provided in the clause of this contract, entitled "Termination for Default or for Convenience of the Government."

(b) If a Stop Work Order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected, and the contract shall be modified in writing accordingly, if

(i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract, and

(ii) The Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage: *Provided,* That, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) If a Stop Work Order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the Stop Work Order shall be allowed in arriving at the termination settlement.

7. *Inspection.* The Government, through any authorized representatives, has the right, at all reasonable times, to inspect, or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by the Government on the premises of the Contractor or a subcontractor, the Contractor shall provide and shall require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

8. *Excusable delays.* Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (c) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled "Termination for Default or for Convenience of the Government." (As used in this clause, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier. The Contractor shall notify the Government immediately if it is determined that a subcontractor is failing to perform or make reasonable progress under the terms and conditions of the subcontract.)

9. *Subcontracts.* (a) Except as may be otherwise stated in the schedule of this contract, the Contractor shall give a minimum of ten (10) days advance notification to the Contracting Officer of any proposed subcontract hereunder which (1) is a construction contract, (2) is a cost-reimbursement, time and materials or a labor-hour contract, or (3) is a fixed-price contract and exceeds the dollar amount of $25,000 or five percent (5%) of the total estimated cost of this contract, (4) has experimental, developmental, or research work as one of its purposes. This information shall include but not be limited to the following:

(i) A description of the supplies or services to be called for by the contract, including a copy of the proposed subcontract;

(ii) Identification of the proposed subcontractor and an explanation of why and how the proposed subcontractor was selected, including the degree of competition obtained;

(iii) The proposed subcontract price, together with the Contractor's cost or price analysis thereof;

(iv) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data when such data and certificate are required by other provisions of this contract, to be obtained from the subcontractor; and

(v) Identification of the type of contract to be used.

(b) The Contractor shall obtain the written consent of the Contracting Officer prior to placing any subcontract for which advance notification is required under (a) above, and prior to placing any subcontract which provides for the fabrication, purchase, rental, installation, or other acquisition, of any facilitities, equipment, or special tooling having a dollar value in excess of $1,000. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (b).

(c) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(d) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the allowability of any cost under this contract, unless such approval specifically provides that it constitutes a determination of the allowability of such cost.

(e) The Contractor shall, in accordance with the clause entitled "Litigation and Claims," give the Contracting Officer immediate notice in writing of any action or

suit filed, and prompt notice of any claim made against the Contractor by any subcontractor or vendor which, in the opinion of the Contractor, may result in litigation related in any way to this contract with respect to which the Contractor may be entitled to reimbursement from the Government.

(f) Except as otherwise stated in the schedule of this contract and notwithstanding (b) above, the Contractor may enter into subcontracts within (2) and (3) of (a) above, or, if the subcontract is for facilities, equipment, or for special tooling, without the prior written consent of the Contracting Officer if the Contracting Officer has in writing approved the Contractor's purchasing system and the subcontract is within the limitations of such approval.

10. *Competition in subcontracting.* (The following clause is applicable if the amount of this contract exceeds $2,500.)

The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

11. *Government property.* (a) *Government-furnished property.* The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the property described as Government-furnished property in the schedule or specifications, together with such related data and information as the Contractor may request and as may reasonably be required for the intended use of such property (hereinafter referred to as "Government-furnished property"). The delivery or performance dates for the supplies or services to be furnished by the Contractor under this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the schedule or, if not so stated, in sufficient time to enable the Contractor to meet such delivery or performance dates. In the event that Government-furnished property is not delivered to the Contractor by such time or times, the Contracting Officer shall, upon timely written request made by the Contractor, make a determination of the delay, if any, occasioned the Contractor and shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provisions affected by any such delay, in accordance with the procedures provided for in the clause of this contract entitled "Changes." In the event that Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt thereof notify the Contracting Officer of such fact and, as directed by the Contracting Officer, either (i) return such property at the Government's expense or otherwise dispose of the property or (ii) effect repairs or modifications. Upon completion of (i) or (ii) above, the Contracting Officer upon written request of the Contractor shall equitably adjust the estimated cost, fixed fee, or delivery or performance dates, or all of them, and any other contractual provision effected by the return or disposition, or the repair or modification in accordance with the procedures provided for in the clause of this contract entitled "Changes." The foregoing provisions for adjustment are exclusive and the Government shall not be liable to suit for breach of contract by reason of any delay in delivery of Government-furnished property or delivery of such property in a condition not suitable for its intended use.

(b) *Changes in Government-furnished property.* (1) By notice in writing, the Contracting Officer may (i) decrease the property furnished or to be furnished by the Government under this contract, and/or (ii) substitute other Government-owned property for property to be furnished by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct with respect to the removal and shipping of property covered by such notice.

(2) In the event of any decrease in or substitution of property pursuant to paragraph (1) above, or any withdrawal of authority to use property provided under any other contract or lease, which property the Government had agreed in the schedule to make available for the performance of this contract, the Contracting Officer, upon the written request of the Contractor (or, if the substitution of property causes a decrease in the cost of performance, on his own initiative), shall equitably adjust such contractual provisions as may be affected by the decrease, substitution or withdrawal, in accordance with the procedures provided for in the "Changes" clause of this contract.

(c) *Title.* Title to all property furnished by the Government shall remain in the Government. Title to all property purchased by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Government upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under the contract, shall pass to and vest in the Government upon (i) issuance for use of such property in the performance on this contract, or (ii) commencement of processing or use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by the Government in whole or in part, whichever first occurs. All Government-furnished property, together with all property acquired by the Contractor, title to which vests in the Government under this paragraph, is subject to the provisions of this clause and is hereinafter collectively referred to as "Government property." Title to the Government property shall not be affected by the incorporation or attachment thereof to any property not owned by the Government, nor shall such Government property, or any part thereof, be or become a fixture or lose its identity as personalty by reason of affixation to any realty.

(d) *Property administration.* The Contractor agrees to maintain and administer a property control system in accordance with EPA publication "Guide for Control of Government Property by Contractors," in effect as of the date of this contract, supplied by the Government. While the Contractor is responsible for the Government property (Government furnished and Contractor acquired), the Government will maintain the official accountability records.

(e) *Use of Government property.* The Government property shall unless otherwise provided herein or approved by the Contracting Officer, be used only for the performance of this contract.

(f) *Maintenance of Government property.* The Contractor shall maintain and administer, in accordance with sound business practice, a program for the maintenance, repair, protection, and preservation of Government property so as to assure its full availability and usefulness for the performance of this contract. The Contractor shall take all reasonable steps to comply with all appropriate directions or instructions which the Contracting Officer may prescribe as reasonably necessary for the protection and disposition of Government property.

(g) *Risk of loss.* (1) The Contractor shall not be liable for any loss of or damage to the Government property, or for expenses incidental to such loss or damage, except that the Contractor shall be responsible for any such loss or damage (including expenses incidental thereto):

(i) Which results from willful misconduct or lack of good faith on the part of any one of the Contractor's directors or officers, or on the part of any of his managers, superintendents, or other equivalent representatives, who has supervision or direction of—

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operations at any one plant or separate location, in which this contract is being performed; or

(C) A separate and complete major industrial operation in connection with the performance of this contract;

(ii) Which results from a failure on the part of the Contractor, due to the willful misconduct or lack of good faith on the part of any of his directors, officers, or other representatives mentioned in subparagraph (i) above—

(A) To maintain and administer, in accordance with sound industrial practice, the program for utilization, maintenance, repair, protection and preservation of Government property as required by paragraph (f) hereof, or to take all reasonable steps to comply with any appropriate written direction of the Contracting Officer under paragraph (f) hereof; or

(B) To establish, maintain, and administer, in accordance with (d) above, a system for control of Government property;

(iii) For which the Contractor is otherwise responsible under the express terms of the clause or clauses designated in the schedule;

(iv) Which results from a risk expressly required to be insured under this contract, but only to the extent of the insurance so required to be procured and maintained, or to the extent of insurance actually procured and maintained, whichever is greater; or

(v) Which results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement.

(2) If more than one of the above exceptions shall be applicable in any case, the Contractor's liability under any one exception shall not be limited by any other exception. The Contractor shall obtain the approval of the Contracting Officer prior to transferring any Government property to a subcontractor. If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of or damage to the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of or damage to the property while in the latter's possession or control, except to the extent that the subcontract, with the prior approval of the Contracting Officer, provides for the relief of the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for the utilization of the property in accordance with the provisions of the prime contract.

(3) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance, or any provision for a reserve, covering the risk of loss of or damage to the Government property, except to the extent that the Government may have required the Contractor to carry such insurance under any other provisions of this contract.

(4) Upon the happening of loss or destruction of or damage to the Government property, the Contractor shall notify the

Contracting Officer thereof, take all reasonable steps to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the Government property in the best possible order and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, and damaged Government property;

(ii) The time and origin of the loss, destruction or damage;

(iii) All known interests in comingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

The Contratcor shall make repairs ad renovations of the damaged Government property or take such other action, as the Contracting Officer directs.

(5) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to the Government property, he shall use the proceeds to repair, renovate, or replace the Government property involved, or shall credit such proceeds against the cost of the work covered by the contract, or shall otherwise reimburse the Government, as directed by the Contracing Officer. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where the subcontractor has not been relieved from liability for any loss or destruction of or damage to Government property, the Contractor shall enforce the liability of the subcontractor for such loss or destruction of or damage to the Government property for the benefit of the Government.

(h) *Access.* The Contractor agrees to make available to the Contracting Officer, at all reasonable times, at the office of the Contractor, all its property records under this contract, and the Government shall at all reasonable times have access to the premises where any of the Government property is located.

(i) *Final accounting and disposition of Government property.* Upon the completion of this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit to the Contracting Officer in a form acceptable to him, inventory schedules covering all items of the Government property not consumed in the performance of this contract, or not theretofore delivered to the Government, and shall deliver or make such other disposal of such Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by the contract or shall be paid in such manner as the Contracting Officer may direct. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings, or cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account therefor as a part of general overhead or other reimbursable cost in accordance with the Contractor's established accounting procedures.

(j) *Restoration of Contractor's premises and abandonment.* Unless otherwise provided herein, the Government:

(i) May abandon any Government property in place, and thereupon all obligations of the Government regarding such abandoned property shall cease; and

(ii) Has no obligation to the Contractor with regard to restoration or rehabilitation of the Contractor's premises, neither in case of abandonment (paragraph (j)(i) above), disposition on completion of need or of the contract (paragraph (i) above), nor otherwise, except for restoration or rehabilitation costs caused by removal of Government property pursuant to paragraph (b) above.

(k) *Communications.* All communications issued pursuant to this clause shall be in writing.

12. *Key personnel.* The personnel specified in the schedule of this contract are considered to be essential to the work being performed hereunder. If these individuals are unavailable for assignment for work under the contract, the Contractor shall immediately notify the Contracting Officer and shall submit justifications (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the program. Prior to substitution of key personnel, the Contractor shall obtain the written consent of the Contracting Officer as to the acceptability of the succeeding personnel: *Provided,* That the Contracting Officer may ratify in writing such substitution and such ratification shall constitute the consent of the Contracting Officer required by this clause.

13. *Overtime.* (a) Allowable cost shall not include any amount on account of overtime premiums except when (1) specified in (c) below or (2) paid for work—

(i) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(ii) By indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(iii) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(iv) Which will result in lower overall cost to the Government.

(b) The cost of overtime premiums otherwise allowable under (a) above shall be allowed only to the extent the amount thereof is reasonable and properly allocable to the work under this contract.

(c) The Contractor is authorized to perform overtime, in addition to that performed under (a), to the extent that the overtime does not exceed the amount set forth in the schedule.

(d) Any request for overtime, in addition to any amount specified in (c) above, which can be estimated with reasonable certainty to be required for the remainder of the contract shall contain the following:

(1) Identification of the work unit, such as the department or section in which the requested overtime will be used, together with present workload, meaning, and other data of the affected unit, sufficient to permit an evaluation by the Contracting Officer of the necessity for the overtime;

(2) The effect that denial of the request will have on the delivery or performance schedule of the contract;

(3) Reasons why the required work cannot be performed on the basis of utilizing multishift operations or by the employment of additional personnel; and

(4) The extent to which approval of overtime would affect the performance of payments in connection with any other Government contracts, together with any identification of such affected contracts.

14. *Foreign travel.* Unless otherwise provided in this contract, foreign travel shall not be performed without the prior written approval of the Contracting Officer. As used in this clause, "foreign travel" means travel outside the United States, its territories and possessions, and Canada.

15. *Services of consultants.* Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled "Subcontracting," the prior written approval of the Contracting Officer shall be required:

(a) Whenever any employee of the Contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract.

Whenever Contracting Officer approval is required, the Contractor will obtain and furnish to the Contracting Officer information concerning the need for such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charges by such consultant to others for performing consultant services of a similar nature.

16. *Insurance.* (a) The Contractor shall procure and maintain such insurance as is required by law or regulation, including that required by Subpart 1–10.5 of the Federal procurement regulations as of the date of execution of this contract, and such insurance as the Contracting Officer prescribes by written direction.

(b) At a minimum, the Contractor shall procure and maintain the following types and amounts of insurance:

(1) Workmen's compensation and occupational disease insurance in amounts sufficient to satisfy State law.

(2) Employer's liability insurance, where available.

(3) Public liability insurance, on the comprehensive form of policy, in the amount of $200,000 per claimant and $500,000 per incident.

(c) With respect to any insurance policy all or part of the premiums of which the Contractor proposes to treat as a direct cost under this contract, and with respect to any proposed qualified program of self-insurance, the written approval of the Contracting Officer shall be obtained prior to any claim for payment therefor.

(d) The terms of any other insurance policy held by Contractor shall be submitted to the Contracting Officer for review and/or approval upon request of the Contracting Officer.

17. *Litigation and claims.* The Contractor shall give the Contracting Officer immediate notice in writing of (a) any action, including any proceeding before an administrative agency, filed against the Contractor arising out of the performance of this contract, including, but not limited to, the performance of any subcontract hereunder; and (b) any claim against the Contractor the cost and expense of which may be allowable under the clause entitled, "Allowable Cost, Fixed Fee and Payment." Except as otherwise directed by the Contracting Officer, the Contractor shall furnish immediately to the Contracting Officer copies of all pertinent papers received by the Contractor with respect to such action or claim. To the extent not in conflict with any applicable policy or insurance, the Contractor may, with the Contracting Officer's approval, settle any

such action or claim. If required by the Contracting Officer, the Contractor shall (a) effect an assignment and subrogation in favor of the Government of all the Contractor's rights and claims (except those against the Government) arising out of any such action or claim against the Contractor; and (b) authorize representatives of the Government to settle or defend any such action or claim and to represent the Contractor in, or to take charge of, any action. If the settlement or defense of an action or claim is undertaken by the Government, the Contractor shall furnish all reasonable assistance in effecting a settlement or asserting a defense. When an action against the Contractor is not covered by a policy of insurance, the Contractor shall, with the approval of the Contracting Officer, proceed with the defense of the action in good faith. The Government shall not be liable for the expense of defending any action to the extent that the Contractor would have been compensated by insurance which was required by law, regulation, by this contract, or by written direction of the Contracting Officer, but which the Contractor failed to secure through its own fault or negligence.

18. *Notice to the Government of delays.* (a) Whenever the Contractor has knowledge that any actual or potential situation or labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice thereof, including all relevant information with respect thereto, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract hereunder as to which a situation or labor dispute may delay the timely performance of this contract; except that each such subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential situation or labor dispute, the subcontractor shall immediately notify its next higher tier subcontractor, or the prime contractor, as the case may be, of all relevant information with respect to such dispute.

19. *Allowable cost, fixed fee, and payment.* (a) For the performance of this contract, the Government shall pay to the Contractor—

(i) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with—

(A) Subpart 1–15.2 of the Federal Procurement Regulations as in effect on the date of this contract, and

(B) The terms of this contract; and

(ii) Such fixed fee, if any, as may be provided for in the schedule.

(b) Once each month (or more frequent intervals, if approved by the Contracting Officer), the Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require, an invoice or public voucher supported by a statement of cost incurred by the Contractor in the performance of this contract and claimed to constitute allowable cost.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) below, make payment thereon as approved by the Contracting Officer. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the schedule: *Provided, however,* That after payment of eighty-five percent (85%) of the fixed fee set forth in the schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or fifteen thousand dollars ($15,000), whichever is less, shall have been set aside.

(d) At any time or times prior to final payment under this contract, the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) A "completion invoice" or "completion voucher" shall be submitted:

(i) Upon the physical completion of all performance provisions and

(ii) When all costs applicable to the contract have been incurred.

The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one (1) year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion. Upon the completion of the final audit and the receipt of a "final invoice" or "final voucher," the Government shall promptly pay to the Contractor any balance of allowable costs, and any part of the fixed fee, which has been withheld pursuant to (c) above or otherwise not paid to the Contractor.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions—

(A) Specified claims in stated amounts, or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(B) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided,* That such claims are not known to the Contractor on the date of execution of the release: *And provided further,* That the Contractor gives notice of such claims in writing to the Contracting Officer not more than six (6) years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment whichever is earlier; and

(C) Claims for reimbursement of costs (other than expenses of the Contractor by reason of his indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable costs under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

20. *Limitation of cost.* (a) It is estimated that the total cost to the Government for the performance of this contract, exclusive of any fee, will not exceed the estimated cost set forth in the schedule, and the Contractor agrees to use his best efforts to perform the work specified in the schedule and all obligations under this contract within such estimated cost. If, at any time, the Contractor has reason to believe that the cost which he expects to incur in the performance of this contract in the next succeeding sixty (60) days, when added to all costs previously incurred, will exceed seventy-five percent (75%) of the estimated cost set forth in the schedule, or if, at any time, the Contractor has reason to believe that the total cost to the Government for the performance of his contract, exclusive of any fee, will be greater or substantially less than the then estimated cost, hereof, the Contractor shall notify the Contracting Officer in writing to that effect, giving the revised estimate of such total cost for the performance of this contract.

(b) Except as required by other provisions of this contract specifically citing and stated to be an exception of this clause, the Government shall not be obligated to reimburse the Contractor for costs incurred in excess of the estimated cost set forth in the schedule, and the Contractor shall not be obligated to continue performance under the contract (including actions under the Termination Clause) or otherwise to incur costs in excess of the estimated cost set forth in the schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the estimated cost of performance of this contract. No notice, communication, or representation in any other form or from any person other than the Contracting Officer shall affect the estimated cost of this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the Contractor for any costs in excess of the estimated cost set forth in the schedule, whether those excess costs were incurred during the course of the contract or as a result of termination. When and to the extent that the estimated cost set forth in the schedule has been increased, any costs incurred by the Contractor in excess of the estimated cost prior to such increase shall be allowable to the same extent as if such costs had been incurred after the increase; unless the Contracting Officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(c) If (1) the Contractor stops performance before completion of all work hereunder because it has incurred costs in the amount of or in excess of the estimated cost set forth in the contract, and (2) the Contracting Officer elects not to increase such estimated costs, the Contractor's fixed-fee will be equitably reduced to reflect the actual amount of work performed as compared with the full amount of the work required in the contract. In the event of failure to agree as to the amount of such reduction,

the Contracting Officer shall determine the amount, subject to the right of the Contractor to appeal therefrom pursuant to the clause in the contract entitled "Disputes." This paragraph shall not, in any way, limit the rights of the Government under the clause in the contract entitled "Termination for Default or for the Convenience of the Government."

(d) Change orders issued pursuant to the "Changes" clause of this contract shall not be considered an authorization to the Contractor to exceed the estimated cost set forth in the schedule of the absence of a statement in the Change order, or other contract modification, increasing the estimated cost.

21. *Limitation on withholding of payments.* If more than one clause or schedule provision of this contract authorized the temporary withholding of amounts otherwise payable to the Contractor for work performed under this contract, the total of the amounts so withheld at any one time shall not exceed the greatest amount which may be withheld under any one such clause of schedule provision at that time: *Provided*, That this limitation shall not apply to:

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract; and

(c) The recovery of overpayments.

22. *Interest.* Notwithstanding any other provision of this contract, unless paid within 30 days all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest at the rate of 6 percent per annum from the date due until paid. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract; (ii) the date of the first written demand for payment, consistent with this contract, including demand consequent upon default termination; (iii) the date of transmittal by the Government to the Contractor of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or (iv) if this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by contract supplement.

23. *Payment of interest of Contractor's claims.* (a) If an appeal is filed by the Contractor from a final decision of the Contracting Officer under the "Disputes" clause of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the Contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the Contractor furnishes to the Contracting Officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction or (2) mailing to the Contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a Board of Contract Appeals.

(b) Notwithstanding (a) above, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the Contracting Officer determines the Contractor has unduly delayed in pursuing his remedies before a Board of Contract Appeals or a court of competent jurisdiction.

24. *Audit and records.* (a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitute "records" for the purposes of this clause.

(b) The Contractor's plants, or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his authorized representatives. In addition, for purposes of verifying the cost or pricing data submitted, in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of $100,000, was accurate, complete, and current, the Contracting Officer or his authorized representatives, shall, until the expiration of 3 years from the date of final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(c) The Contractor shall preserve and make available his records (1) until the expiration of 3 years from the date of final payment under this contract, or of the time periods for the particular records specified in 41 CFR Part 1-20, whichever expires earlier, and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract, or by (i) or (ii) below.

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of 3 years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract, (B) litigation or the settlement of claims arising out of the performance of this contract, or (C) costs and expenses of this contract as to which exception has been taken by the Contracting Officer or any of his duly authorized representatives, shall be retained until such appeals, litigation, claims, or exceptions have been disposed of.

(d) (1) The Contractor shall insert the substance of this clause, including the whole of this paragraph (d), in each subcontract hereunder that is not firm fixed-price or fixed-price with escalation. When so inserted, changes shall be made to designate the higher tier subcontractor at the level involved in place of the Contractor; to add "of the Government prime contract" after "Contracting Officer"; and to substitute "the Government prime contract" in place of "this contract" in (B) of paragraph (c) above.

(2) The Conractor shall insert the substance of the following clause in each firm fixed-price or fixed-price with escalation subcontract hereunder which when entered into exceeds $100,000, except those subcontracts covered by subparagraph (3) below:

AUDIT

(a) For purposes of verifying the certified cost or pricing data submitted in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of $100,000, was accurate, complete, and current, the Contracting Officer of the Government prime contract, or his authorized representatives, shall, until the expiration of 3 years from the date of final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal procurement regulations (41 CFR Part 1-20), whichever expires earlier, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(b) The subcontractor agrees to insert this clause including this paragraph (b), in all subcontracts hereunder which when entered into exceed $100,000, unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(3) The Contractor shall insert the following clause in each firm fixed-price or fixed-price with escalation subcontract hereunder which when entered into exceeds $100,000 where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

AUDIT—PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification of this contract, which involves a price adjustment in excess of $100,000, unless the price adjustment is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation: *Provided*, That such change or other modification to this contract must result from a change or other modification (1) to the Government prime contract, or (2) authorized under the provisions of the Government prime contract.

(b) For purposes of verifying that any certified cost or pricing data submitted in conjunction with a contract change or other modification was accurate, complete, and current, the Contracting Officer of the Government prime contract, or his authorized representative, shall, until the expiration of 3 years from the date of final payment under this contract, or of the time periods for the particular records specified in Part 1-20 of the Federal Procurement Regulations (41 CFR Part 1-20), whichever expires earlier, have the right to examine those books, records, documents, papers, and other supporting data which involve transactions related to this contract or which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein.

(c) The subcontractor agrees to insert the substance of this clause including this paragraph (c) in all subcontracts hereunder which when entered into exceed $100,000.

25. *Examination of records by Comptroller General.* (a) This clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation, including small business restricted advertising, but is not applicable if this contract was entered into by means of formal advertising.

(b) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under this contract or such lesser time specified in the Federal procurement regulations Part 1-20, have access to and the right to examine any directly pertinent

books, documents, papers, and records of the Contractor involving transactions related to this contract.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of 3 years after final payment under the subcontract or such lesser time specified in the Federal procurement regulations Part 1–20, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (1) purchase orders not exceeding $2,500, and (2) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

(d) The periods of access and examination described in (b) and (c) above, the records which relate to (1) appeals under the "Disputes" clause of this contract, (2) litigation or the settlement of claims arising out of the performance of this contract, or (3) costs and expenses of this contract as to which exception has been taken by the Comptroller General or any of his duly authorized representatives, shall continue until such appeals, litigation claims, or exceptions have been disposed of.

26. *Price reduction for defective cost or pricing data.* (The provisions of this clause shall be applicable only if the amount of this contract exceeds $100,000.)

(a) If the Contracting Officer determines that any price, including profit or fee, negotiated in connection with this contract or any cost reimbursable under this contract was increased by any significant sums because the Contractor, or any subcontractor pursuant to the clause of this contract entitled "Subcontractor Cost or Pricing Data" or "Subcontractor Cost or Pricing Data—Price Adjustments," or any subcontract clause therein required, furnished incomplete or inaccurate cost or pricing data or data not current as certified in his contractor's Certificate of Current Cost or Pricing Data, then such price or cost shall be reduced accordingly and the contract shall be modified in writing to reflect such reduction.

(b) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

NOTE—Since the contract is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, it is expected that the Contractor may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the contractor. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

27. *Subcontractor cost and pricing data.* (The provisions of this clause shall be applicable only if the amount of this contract exceeds $100,000.)

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor-hour, incentive, or price redeterminable subcontract, change or other modification, the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000 or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor in the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause including this paragraph (c) in each of his cost-reimbursement type, time and material, labor-hour, price redeterminable, or incentive subcontracts hereunder, and in any other subcontract hereunder which exceeds $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST AND PRICING DATA-PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, time and material, labor-hour, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

28. *Pricing of adjustments.* When costs are a factor in any determination of a contract price adjustment pursuant to the "Changes" clause or any other provision of this contract, such costs shall be in accordance with Part 1–15 of the Federal Procurement Regulations as in effect as of the date of this contract.

29. *Negotiated overhead rates.* (a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost, Fixed Fee, and payment" the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than 90 days after the expiration of his fiscal year, or such other period as may be specified in the contract, shall submit to the Contracting Officer, with a copy to the cognizant audit activity, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal. In the event the Contractor has more than one contract with EPA, only one submittal shall be required with respect to each applicable rate.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with paragraph (b) of the clause of this contract entitled "Allowable Cost and Fixed Fee and Payment."

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify (1) the agreed final rates; (2) the bases to which the rates apply; (3) the periods for which the rate apply; and (4) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the contract, or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over- or underpayment, and to apply either retroactively or prospectively, (1) provisional rates may, at the request of either party, be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revision or negotiated provisional rates provided in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rates under this clause shall be considered a dispute concerning a question of fact for decision by the Contracting Officer within the meaning of the "Disputes" clause of this contract.

(g) Nothing in this clause shall preclude the Contracting Officer from negotiating final overhead rates applicable to this contract, for any period, for the purpose of contract close out, provided that (1) the negotiated amount of overhead costs applicable hereto does not exceed $200,000 for any 1 fiscal year; (2) there is agreement between the Government and the Contractor that there will be no adjustment against other Government contracts for over or under recovery under this contract disclosed through a subsequent, regular final overhead rate negotiation or determination; and (3) this contract is appropriately modified to reflect the finality of this negotiation and the fact that other contracts shall not be affected by any over or under recovery resulting therefrom.

30. *Assignment of claims.* (a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned

to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

31. *Utilization of small business concerns.* (The following clause is applicable if this contract exceeds $5,000.)

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for the supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

32. *Utilization of labor surplus area concerns.* (The following clause is applicable if this contract exceeds $5,000.)

(a) It is the policy of the Government to award contracts to labor surplus area concerns that (1) have been certified by the Secretary of Labor (hereafter referred to as certified-eligible concerns with first or second preferences) regarding the employment of a proportionate number of disadvantaged individuals and have agreed to perform substantially (i) in or near sections of concentrated unemployment or underemployment or in persistent or substantial labor surplus areas or (ii) in other areas of the United States, respectively, or (2) are noncertified concerns which have agreed to perform substantially in persistent or substantial labor surplus areas, where this can be done consistent with the efficient performance of the contract at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy.

(b) In complying with paragraph (a) of this clause and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (1) Certified-eligible concerns with a first preference which are also small business concerns; (2) other certified-eligible concerns with a first preference; (3) certified-eligible concerns with a second preference which are also small business concerns; (4) other certified-eligible concerns with a second preference; (5) persistent or substantial labor surplus area concerns which are also small business concerns; (6) other persistent or substantial labor surplus area concerns; and (7) small business concerns which are not labor surplus area concerns.

33. *Utilization of minority business enterprises.* The following clause is applicable if the amount of this contract is in excess of $5,000 except (1) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico (2) contracts for services which are personal in nature.

(a) It is the policy of the Government that minority business enterprises shall have the maximum practicable opportunity to participate in the performance of Government contracts.

(b) The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. As used in this contract, the term "minority business enterprise" means a business, at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock of which is owned by minority group members. For the purposes of this definition, minority group members are Negroes, Spanish-speaking American persons, American - Orientals, American - Indians, American-Eskimos, and American Aleuts. Contractors may rely on written representations by subcontractors regarding their status as minority business enterprises in lieu of an independent investigation.

34. *Equal opportunity.* (The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR Ch. 60).)

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

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

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

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the labor union or workers' representative of the Contractor's commitments under this Equal Opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraph (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter such litigation to protect the interests of the United States.

35. *Listing of employment openings.* (This clause is applicable pursuant to 41 CFR Part 50–250 if this contract is for $10,000 or more and will generate 400 or more man-days of employment.)

(a) The Contractor agrees that all employment openings of the Contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the Contractor other than the one where in the contract is being performed but excluding those of independently operated corporate affiliates, shall, to the maximum extent feasible, be offered for listing at an appropriate local office of the State employment service system wherein the opening occurs and to provide such periodic reports to such local office regarding employment openings and hires as may be required.

(b) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve only the normal obligations which attach to the placing of a bona fide job order but does not require the hiring of any job applicant referred by the employment service system.

(c) The periodic reports required by paragraph (a) of this clause, shall be filed at least quarterly with the appropriate local office or, where the Contractor has more than one establishment in a State, with the central office of that State employment service. Such reports shall indicate for each establishment the number of individuals who were hired during the reporting period and the number of hires who were veterans who served in the Armed Forces on or after August 5, 1964, and who received other than a dishonorable discharge. The Contractor shall maintain copies of the reports submitted until the expiration of one (1) year after final payment under the contract, during which time they shall be made available, upon request, for examination by any authorized representatives of the Contracting Officer or of the Secretary of Labor.

(d) Whenever the Contractor becomes contractually bound to the listing provisions of this clause, he shall advise the employment service system in each State wherein he has establishments of the name and location of each such establishment in the State. As long as the Contractor is contractually bound to these provisions and has so advised the State employment service system, there is no need to advise the State system of subsequent

contracts. The Contractor may advise the State systems when it is no longer bound by this contract clause.

(e) This clause does not apply (1) to the listing of employment openings which occur outside of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, and (2) to contracts with State and local governments.

(f) This clause does not apply to openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(g) As used in this clause:

(1) "All employment openings" includes, but is not limited to, openings which occur in the following job categories: Production and nonproduction; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings which are compensated on a salary basis of less than $18,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

(2) "Appropriate office of the State employment service system" means the local office of the Federal-State national system of public employment offices with assigned responsibility for serving the area of the establishment where the employment opening is to be filled, including the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(3) "Openings which the Contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement," means employment openings for which no consideration will be given to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) or outside of a special hiring arrangement which is part of the customary and traditional employment relationship which exists between the Contractor and the representatives of his employees and includes any openings which the Contractor proposes to fill from regularly established "recall" or "rehire" lists or from union hiring halls.

(4) "Man-day of employment" means any day during which an employee performs more than 1 hour of work.

(h) The Contractor agrees to place this clause (excluding this paragraph (h)) in any subcontract directly under this contract.

36. *Walsh-Healey Public Contracts Act.* If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

37. *Contract Work Hours and Safety Standards Act—Overtime Compensation (40 U.S.C. 327–333).* This contract is subject to the Contract Work Hours and Safety Standards Act and to the applicable rules, regulations, and interpretations of the Secretary of Labor.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contratcor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for 3 years from the completion of the contract.

38. *Convict labor.* In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

39. *Buy American Act.* (a) In acquiring end products, the Buy American Act (41 U.S.C. 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(1) "Components" mean those articles, materials, and supplies which are directly incorporated in the end products;

(2) "End products" mean those articles, materials, and supplies which are to be acquired under this contract for public use; and

(3) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a) (3) (B), components of foreign origin of the same type or kind as the products referred to in (b) (2) or (3) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(1) Which are for use outside the United States;

(2) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(3) As to which the Administrator determines the domestic preference to be inconsistent with the public interest; or

(4) As to which the Administrator determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

40. *Officials not to benefit.* No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

41. *Covenant against contingent fees.* The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

42. *Gratuities.* (a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Administrator or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor (to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract: *Provided,* That the existence of the facts upon which the Administrator or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (1) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Administrator or his duly authorized representative) which shall be not less than three nor more than 10 times the costs incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

43. *Authorization and consent.* The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower-tier subcontract).

44. *Rights in data*—(a) *Definitions.* (1) Technical data, as used in this clause, means recorded information, regardless of form or characteristic, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or used to define a design or process or to procure, produce, support, maintain, or operate materiel. The data may be graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design type documents; in machine forms such as punched cards, magnetic tape, computer memory printouts; or may be retained in computer memory. Examples of technical data include research and engineering data, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. Technical data does not include financial, administrative, cost and pricing, and management data, or other information incidental to contract administration.

(2) Limited rights means rights to use, duplicate, or disclose technical data, in whole or in part, by or for the Government, with the express limitation that such technical data shall not, without the written permission of the party furnishing such technical data, be (a) released or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture or procurement, or (c) used by a party other than the Government, except for:

(i) Emergency repair or overhaul work only, by or for the Government, where the item or process concerned is not otherwise reasonably available to enable timely performance of the work, provided that the release or disclosure thereof outside the Government shall be made subject to a prohibition against further use, release or disclosure; or

(ii) Release to a foreign government, as the interest of the United States may require, for emergency repair or overhaul work by or for such government under the conditions of (i) above.

(3) Unlimited rights means rights to use, duplicate, or disclose technical data, in whole or in part, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Government rights.* (1) The Government shall have unlimited rights in:

(i) Technical data resulting directly from performance of experimental, developmental or research work which was specified as an element of performance in this or any other Government contract or subcontract;

(ii) Technical data necessary to enable manufacture of end-items, components and modifications, or to enable the performance of processes, when the end-items, components, modifications or processes have been, or are being, developed under this or any other Government contract or subcontract in which experimental, developmental or research work is, or was specified as an element of contract performance:

(iii) Technical data prepared or required to be delivered under this or any other Government contract or subcontract and constituting corrections or changes to Government-furnished data;

(iv) Technical data pertaining to end-items, components or processes, prepared or required to be delivered under this or any other Government contract or subcontract, for the purpose of identifying sources, size, configuration, mating, and attachment characteristics, functional characteristics and performance requirements ("form, fit, and function" data, e.g., specification control drawings, catalog sheets, envelope drawings, etc.);

(v) Manuals or instructional materials prepared or required to be delivered under this contract or any subcontract hereunder for installation, operation, maintenance or training purposes;

(vi) Technical data which is in the public domain, or has been or is normally furnished without restriction by the contractor or subcontractor; and

(vii) Technical data listed or described in an agreement incorporated into the Schedule of this contract, which the parties have predetermined, on the basis of subparagraphs (i) through (vi) above, and agreed will be furnished with unlimited rights.

(2) The Government shall have limited rights in technical data, listed or described in an agreement incorporated into the schedule of this contract, which the parties have agreed will be furnished with limited rights: *Provided,* That such piece of data to which limited rights are to be asserted is marked with the following legend in which is inserted the number of the prime contract under which the technical data is to be delivered and the name of the contractor or subcontractor by whom the technical data was generated:

This technical data, furnished under U.S. Government Contract No. _____, shall not, without the written permission of _____, be either (a) used, released, or disclosed in whole or in part outside the Government, (b) used in whole or in part by the Government for manufacture or procurement or (c) used by a party other than the Government, except for: (i) Emergency repair or overhaul work only, by or for the Government where the item or process concerned is not otherwise reasonably available to enable timely performance of the work: *Provided,* That the release or disclosure hereof outside the Government shall be made subject to a prohibition against further use, release, or disclosure; or (ii) release to a foreign government, as the interest of the United States may require, for emergency repair or overhaul work by or for such government under the conditions of (i) above. This legend shall be marked on any reproduction hereof in whole or in part.

No legend shall be marked on, nor shall any limitation on rights of use be asserted as to, any data which the Contractor has previously delivered to the Government without restriction. The limited rights provided for by this paragraph (b)(2) shall not impair the right of the Government to use similar or identical data if such data is or becomes a part of the public domain or public knowledge by publication or otherwise, or is acquired by the Government from other sources, without restrictions. In preparation of the final report (if required under the contract), any and all technical data in which the Government has limited rights as set forth in (b)(2) above, shall be submitted under separate cover with the final report and marked with the legend set forth above. However, the final report shall include a complete disclosure of all materials, processes, and equipment employed in such full, clear, concise, and exact detail, including data such as mathematical, graphic, and written descriptive materials and other means of disclosure appropriate in the circumstances to enable any person skilled in the art to comprehend the results of the work performed under the contract.

(c) *Material covered by copyright.* (1) In addition to the rights granted under the provisions of (b) above, the Contractor agrees to and does hereby grant to the Government, and to its officers, agents, and employees acting within the scope of their official duties, a royalty-free nonexclusive and irrevocable license throughout the world to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others so to do, all technical data now or hereafter covered by copyright.

(2) No copyrighted matter shall be included in technical data furnished hereunder without the written approval of the Contracting Officer unless there has been obtained the written permission of the copyright owner for the Government to use such copyrighted matter in the manner described in paragraph (c)(1) above.

(3) The Contractor shall report to the Government (or higher tier Contractor) promptly and in reasonable written detail each notice or claim of copyright infringement received by the Contractor with respect to any technical data delivered hereunder.

(d) Except for those items set forth in (b)(2) above, the Contractor shall not affix any restrictive markings upon any technical data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(e) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) *Right to publish.* The Contractor agrees that he will not publish, have published, or otherwise disseminate any information of whatever nature resulting from the work being performed under this contract except as may be approved by the Project Officer; *Provided, however,* That the Contractor may without the approval of the Project Officer for internal use only, disseminate such information within his own organization.

(g) *Acquisition of data from subcontractors.* (1) Whenever any technical data is to be obtained from a subcontractor under this contract, the Contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's or the Contractor's rights in that subcontractor data which is required for the Government.

(2) Technical data required to be delivered by a subcontractor shall normally be delivered to the next higher tier Contractor. However, when there is a requirement in the prime contract, or in any deferred order, for data which may be supplied with limited rights pursuant to (b)(2) above, a subcontractor may fulfill such requirement by submitting such data directly to the Government rather than through the prime Contractor.

(3) The Contractor and higher tier subcontractors will not use their power to award subcontracts as economic leverage to acquire rights in data from their subcontractors for themselves.

45. *Data requirements.* (a) To the extent that the following data is not elsewhere required to be furnished to the Government under this contract, and is of the type customarily retained in the normal course of business, the Contractor, upon written request of the Contracting Officer at any time during contract performance or within 1 year after final payment, shall furnish the following:

(1) A set of engineering drawings which will be sufficient to enable the manufacturer of items or equipment furnished under this contract (other than components or items of standard commercial design, or items fabricated heretofore) by a firm skilled in the art of manufacturing items or equipment of the general type and character of the items or equipment furnished under this contract or a set of flowsheets and engineering drawings which will be sufficient to enable performance of any process developed with this

contract by a firm skilled in the art of practicing processes of the general type and character of such process. Such set or sets of drawings and flowsheets shall be reproducible copies incorporating all changes made in the equipment or process in the form in which it was delivered to the Government.

(2) Any of the following data which is necessary to explain or help Government technical personnel understand any equipment, items, or process developed under the contract and furnished to the Government:

(i) A copy (which shall be a reproducible master if one is so requested) of drawings and other technical data used in or prepared in connection with the development, practice, and testing of any process or processes required under the contract, or with the development, fabrication, and testing of prototype models of equipment or items (other than items of standard commercial design or items fabricated heretofore), if required under the contract.

(ii) A report of all studies made in planning the work, and in developing background research for the work, including citation references to all such background research, and a copy of all compilations, digests, or analyses of such background research compiled in connection with the performance of this contract.

(iii) A copy (which shall be a reproductible master if one is so requested) of design studies, research notes, parameter and tolerance studies, drawings, including Contractor's identification of symbol and markings, specifications (test results, and any other technical information used in any research, development, design, engineering, and testing required in the performance of this contract, including test equipment and related items, together with any information as to safety precautions which may be necessary in connection with the manufacture, storage, or use of the equipment, material, or process, if any, in the event that equipment, material, or process is the subject of research under this contract.

The Contractor shall not be required to furnish any background data which may be described in (ii) and (iii) above unless such data is essential and closely related to the contract work.

(b) All reports, data, and recorded information which are required to be furnished by the Contractor under this provision, as well as all other reports of a technical nature required to be furnished under this contract, are "Technical Data" within the meaning of the clause of the General Provisions of this contract entitled "Rights in Data."

(c) Nothing contained in this "Data Requirements" clause shall require the Contractor to deliver data previously developed by parties other than the Contractor, independently of this contract and acquired by the Contractor prior to this contract under conditions restricting the Contractor's right to disclose the name. Unless otherwise directed by the Contracting Officer, if any of the data requested is in the public domain or copyrighted, it will be sufficient for the Contractor to identify the data and furnish a citation as to where it may be found.

(d) Any reproducible copies requested under this "Data Requirements" clause shall be of a type and prepared in accordance with good commercial practice.

(e) In the event the Contracting Officer requests the delivery of data by the Contractor, as contemplated by (a) above, prior to final payment, such request shall be treated as a change under the clause of this contract entitled "Changes" and an equitable adjustment in the price, if this is a fixed-price contract, or estimated cost and any fixed fee, if this is a cost-type contract, shall be made to cover the cost of preparing drawings called for in (a)(1) above, and of collecting, preparing, editing, duplicating, assembling, and shipping the data requested under (a) above, but only to the extent that the Contractor warrants that such costs were not included in the price (or estimated cost and fixed fee) of the contract. The Contractor shall comply with requests of the Contracting Officer made under (a) above, within 1 year following final payment, provided that suitable provision is made for reimbursement of the additional costs of complying with such request, together with a reasonable fee or profit thereon, such additional costs being limited to the costs set forth above, and warranted to have been excluded from the price (or estimated cost and fixed fee) of the contract. Any adjustment or payment under this paragraph (e) shall not include any amount for the value of the data, as distinguished from the costs set forth above.

46. *Notice and assistance regarding patent and copyright infringement.* (The provisions of this clause shall be applicable only if the amount of this contract exceeds $10,000.)

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government, on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

(40 U.S.C. 486(c) sec. 205(c), 63 Stat. 377, as amended)

[FR Doc.72-16035 Filed 9-19-72;8:54 am]

Title 43—PUBLIC LANDS: INTERIOR

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

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5257]

ALASKA

Amendment of Public Land Orders No. 5178, No. 5179, and No. 5180, as Amended

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

1. Public Land Order No. 5178 of March 9, 1972, as amended, withdrawing lands for selection under section 12 of the Act by the Copper River Regional Corporation, is hereby amended to add the following described land to said order:

COPPER RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 8 N., Rs. 4 through 7 W.
T. 9 N., Rs. 3 through 8 W.
T. 10 N., Rs. 3 through 8 W.
T. 11 N., Rs. 3 through 8 W.
T. 11 N., R. 10 W. (fractional).
T. 12 N., R. 9 W.
T. 12 N., R. 10 W. (fractional).
T. 13 N., R. 9 W.
T. 13 N., R. 10 W. (fractional).
T. 14 N., Rs. 8 through 10 W. (fractional).
T. 11 N., R. 12 E., that portion west of the Tetlin Indian Reservation.
T. 12 N., R. 12 E., that portion west of the Tetlin Indian Reservation.
T. 13 N., R. 12 E., that portion west of the Tetlin Indian Reservation.
T. 14 N., R. 12 E., that portion west of the Tetlin Indian Reservation.

FAIRBANKS MERIDIAN

PROTRACTED DESCRIPTIONS

T. 22 S., Rs. 4 and 5 E.

SEWARD MERIDIAN

PROTRACTED DESCRIPTIONS

T. 29 N., R. 12 E.
T. 30 N., R. 12 E.
T. 31 N., R. 12 E.
T. 32 N., R. 12 E.
T. 33 N., R. 12 E. (fractional).

The areas described aggregate approximately 826,560 acres.

2. Subject to valid existing rights, all of the lands described in paragraph 1 of this order are added to Public Land Order No. 5178, as amended, and immediately become subject to all of the terms and conditions of that order, including the withdrawal of the lands from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181–287 (1970). The lands described in paragraph 1 of this order are deleted from those listed in Public Land Orders No. 5179 and No. 5180 of March 9, 1972, as amended.

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

COPPER RIVER MERIDIAN

PROTRACTED DESCRIPTIONS

T. 1 N., Rs. 6 through 8 E.
T. 2 N., Rs. 6 through 8 E.
T. 3 N., Rs. 4 through 8 E.
T. 4 N., Rs. 4 through 9 E.
T. 5 N., Rs. 4 through 9 E.
T. 6 N., Rs. 4 through 9 E.
T. 7 N., Rs. 7 through 10 E.
T. 8 N., R. 10 E.

The areas described aggregate approximately 783,360 acres.

4. Subject to valid existing rights, all of the lands described in paragraph 3 of this order are added to Public Land Order No. 5179, as amended, and immediately become subject to all of the terms and conditions of that order, including

the withdrawal of the lands from selection by the State of Alaska under the Alaska Statehood Act, 72 Stat. 339, and from location and entry under the mining laws, 30 U.S.C. Ch. 2, and from leasing under the Mineral Leasing Act of February 25, 1920, as amended, 30 U.S.C. sections 181–287 (1970), and from selection by the Regional Corporations under section 12 of the Act. These lands are deleted from those listed in Public Land Order No. 5178 of March 9, 1972, as amended. Any of the lands described in paragraph 3 of this order, which are under the administrative jurisdiction of the Secretary of the Interior shall not be subject to any prior withdrawals or classifications of these lands which are inconsistent with the terms and conditions of Public Land Order No. 5179, and any such prior withdrawals or classifications are, to the extent of the inconsistency, hereby modified.

5. The purpose of this order is to supplement Public Land Order No. 5178, as amended, by reserving additional lands for selection by the Copper River Regional Corporation, as provided for by section 12 of the Act, and to supplement Public Land Order No. 5179, as amended, by reserving additional lands for possible additions to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems, as provided for by section 17(d)(2)(A) of the Act.

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

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

Dated: September 17, 1972.

MITCHELL MELICH,
Acting Secretary of the Interior.

[FR Doc.72-16052 Filed 9-19-72;8:56 am]

Title 45—PUBLIC WELFARE

Chapter II—Social and Rehabilitation Service (Assistance Programs), Department of Health, Education, and Welfare

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Need and Amount of Assistance

Part 283 of Chapter II of Title 45 of the Code of Federal Regulations is amended to provide that any payment received under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, will be disregarded as income and resources in determining need and the amount of the assistance payment. (Section 216 of Public Law 91-646, approved January 2, 1971.)

Notice of proposed rule making has been dispensed with because the amendment implements a statutory change which has no substantive effect on the regulation. (The statutes on which the existing § 233.20(a)(4)(ii) (*c*) and (*d*) is based were repealed by section 220(a)(5) and (10) of Public Law 91-646, but section 216 of that law applies a similar disregard requirement under the successor legislation.)

Section 233.20(a)(4) is amended by expanding the heading to include "resources", by deleting the content of subdivision (ii) (*c*) and (*d*), adding a new (*c*), and redesignating subdivision (*e*) as (*d*). As amended, § 233.20(a)(4)(ii) reads as follows:

§ 233.20 Need and amount of assistance.

(a) * * *

(4) *Disregard of income and resources common to OAA, AFDC, AB, APTD, or AABD.* * * *

(ii) *Provided,* That, in determining need and the amount of the assistance payment, the following will be disregarded as income and resources:

(*a*) The value of the coupon allotment under the Food Stamp Act of 1964 in excess of the amount paid for the coupons;

(*b*) The value of the U.S. Department of Agricultural donated foods (surplus commodities);

(*c*) Any payment received under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and

(*d*) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education.

* * * * *

(Sec. 1102, 49 Stat. 647, 42 U.S.C. 1302)

Effective date. States must submit plan amendments implementing this regulation no later than 60 days after publication in the FEDERAL REGISTER.

Dated: August 24, 1972.

PHILIP J. RUTLEDGE,
Acting Administrator, Social and Rehabilitation Service.

Approved: September 14, 1972.

ELLIOT L. RICHARDSON,
Secretary.

[FR Doc.72-16020 Filed 9-19-72;8:53 am]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 19484]

PART 0—COMMISSION ORGANIZATION

Safety and Special Radio Services; Correction

In the matter of Amendment of Parts 0, 1, 81, 87, 89, 91, and 93 of the Commission's rules relating to the time in which applications, and amendments thereto, or petitions to deny applications, may be filed in the Safety and Special Radio Services.

In the appendix to the report and order in the above-entitled matter released July 11, 1972, FCC 72-591 (37 F.R. 13982, July 15, 1972) the new paragraph added to § 0.331(b) of the rules is erroneously shown as subparagraph (22); it should be subparagraph (23). For convenience, subparagraphs (22) and (23) are recapped below:

§ 0.331 Authority delegated.

* * * * *

(b) * * *

(22) To act on requests for waivers of the equipment requirements of § 81.104(c)(2) of this chapter when a limited coast station has been exempted from the watch requirements of § 81.191(d) of this chapter.

(23) To act on requests for waiver of § 1.918(b) of this chapter so as to accept untimely filed amendments to certain types of applications prior to their designation for hearing, where the proposed amendment, or amendments, would resolve the controversy or will eliminate one or more issues.

* * * * *

Released: September 14, 1972.

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

[FR Doc.72-16000 Filed 9-19-72;8:55 am]

[Mimeo 80695]

PART 0—COMMISSION ORGANIZATION

PART 1—PRACTICE AND PROCEDURE

Hearing Examiner; Change of Title to Administrative Law Judge

Order. In the matter of editorial amendment of Parts 0 and 1 of the FCC rules and regulations to change the title of Hearing Examiner to Administrative Law Judge.

1. The Federal Communications Commission in its order adopted August 29, 1972, FCC 72-760, 37 F.R. 18034, amended § 0.5 and added § 0.150 to change the title of "Hearing Examiner" to "Administrative Law Judge".

2. *It is ordered*, That wherever the terms "Hearing Examiner," "Chief Hearing Examiner," "Assistant or Acting Chief Hearing Examiner," and "Office of Hearing Examiners" appear in Parts 0 and 1 of the Commission's rules they shall be read as "Administrative Law Judge," "Chief Administrative Law Judge," "Assistant or Acting Chief Administrative Law Judge," and "Office of Administrative Law Judges," and that rules in Parts 0 and 1 in which those terms appear are hereby amended to reflect these changes. In so doing, § 0.150 is no longer appropriate and is deleted.

3. Authority for this amendment is covered by sections 4(i), 5(d), and 303(r) of the Communications Act of 1934, as amended, and by § 0.231(d) of the Commission's rules and regulations. Since this is an editorial amendment to conform the rules to the Commission's action of August 29, 1972, the prior notice and public procedure provisions of the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. This amendment shall be effective September 21, 1972.

Adopted: September 15, 1972.

Released: September 18, 1972.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] STANLEY E. MCKINLEY,
Deputy Executive Director.

[FR Doc.72-16001 Filed 9-19-72;8:55 am]

[FCC 72-795; Docket No. 19268]

PART 15—RADIO FREQUENCY DEVICES

Comparable Television Tuning

Memorandum Opinion and Order. In the matter of comparable television tuning regulation; Docket No. 19268.

1. A report and order in this proceeding was adopted on November 24, 1971 (FCC 71-1177, 32 F.C.C. 2d 612, 36 F.R. 23563, December 10, 1971). A petition for reconsideration was filed by the Philco-Ford Corp. on December 29, 1971. Statements supporting the petition for reconsideration were filed by Motorola, Inc., GTE Sylvania, and the Consumer Electronics Group, Electronic Industries Association (EIA).

2. The Philco petition expresses concern about two of the requirements set out in § 15.68(d)(2):

(a) The requirement that monochrome receivers equipped with a 70-position UHF detent mechanism be equipped with AFC. (Philco does not object to this requirement as applied to color receivers.)

(b) The requirement that the channel selection mechanism be capable of positioning the tuner within the pull-in range of AFC.

These requirements would go into effect on July 1, 1974. They are discussed separately below:

3. The monochrome-AFC requirement. Philco asks that this requirement be deleted, arguing that the requirement would disserve the interests of the television receiver purchaser and that it would seriously disrupt the engineering and marketing plans of television receiver manufacturers. The company considers that present monochrome tuning methods (without AFC) are engineeringly sound and have won public acceptance and, in effect, that the public does not need monochrome AFC and would not find that its value warranted the additional receiver cost. It argues that low cost is what makes monochrome receivers attractive to the public, particularly in the case of lower income families, second and third set purchases, and the smaller screen size receivers. It maintains that an increase in the cost of monochrome receivers would adversely affect total receiver sales. It argues, further, that the reduction in the cost differential between monochrome and color receivers would, in particular, reduce the sale of monochrome receivers and would have an especially severe impact on the sale of the smaller, less expensive monochrome receiver models. Philco stresses that the monochrome-AFC requirement was unexpected and that planning with regard to model mix, production quantities, and engineering design has gone forward on the assumption that AFC would be required only for color receivers. In short, Philco's position is that a costly reconsideration of design and model mix decisions should not be imposed on the industry at a late date in terms of industry planning schedules, particularly where, in the judgment of the industry, the resulting product will be less satisfactory to the consuming public. EIA takes essentially the same position, without, however, accepting the proposition that AFC should be required for color receivers.

4. Sylvania supports the position taken by Philco and urges in addition that AFC not be required in color receivers. It argues that comparable tuning can be accomplished without AFC, provided a nonmemory VHF tuner is utilized in combination with a UHF tuner geared for slow fine tuning (at least 20° rotation per megahertz). It urges that slow fine tuning be authorized as an alternative to AFC in color receivers.

5. Motorola also urges that AFC not be required for monochrome receivers. Its principal point is that equipping a receiver with AFC is not simply a matter of adding AFC circuitry. It states that circuitry would be needed to trap the color subcarrier and that additional sound trapping and audio gain and a separate sound detector would be required. This would not only increase the cost of the monochrome receiver but would also, in Motorola's judgment, require complete redesign of the IF system. Motorola believes that the costs and problems associated with redesign would cause the industry to abandon use of the 70-position channel selection mechanism in monochrome receivers. In addition, Motorola shares Sylvania's view that comparable tuning can be achieved by combining a 70-position mechanism (without AFC) with a nonmemory VHF tuner. It notes further that if the accuracy of the 70-position tuning system is improved to provide for detented channel selection within the pull-in range of AFC, that it will be comparable in accuracy to the VHF memory system for which AFC is not required.

6. The requirement that the channel selection mechanism be capable of positioning the tuner within the pull-in range of AFC. Philco asks simply that we reconsider the technical feasibility of the requirement that the 70-position channel selection mechanism be capable of positioning the tuner within the pull-in range of AFC circuitry with which the receiver is equipped. Sylvania suggests that the requirement apply only when a color receiver is voluntarily equipped with AFC by the manufacturer. Motorola recommends that we require full comparability in the accuracy of the VHF and UHF channel selection mechanism used on a given receiver by 1974 but that we not specify the accuracy for either of these tuning mechanisms or particular methods (e.g., AFC) for achieving that objective. EIA takes a stronger position, to the effect that the requirement is not feasible in terms of the 1974 date. It notes that receivers to be produced in 1974 are now being designed; that receivers must be designed around equipment which is known and whose availability is assured; and that the receiver manufacturer's only option (if the requirement is retained) would be to drop plans for use of a 70-position system in 1974 models. It recommends that the 1974 effective date for the stricter standard be deferred indefinitely, pending proof that a system meeting that requirement is technically feasible and can be made available and pending the additional period required for design of that system into receivers. It recommends generally, in addition, that any requirement be stated in terms of performance objectives (e.g., fully comparable accuracy) rather than means (e.g., AFC) for accomplishing such objectives.

7. Discussion. The Commission is concerned with the achievement of equal tuning accuracy for UHF and VHF channels on all receivers. We would consider that this standard had been met if the

need for fine tuning UHF and VHF channels were eliminated. The standard would also be met, assuming fine tuning to be necessary, if the UHF and VHF channel selection controls (whether or not electronically aided) positioned the tuner with equal accuracy, as measured by maximum deviation from correct frequency in kilohertz, and if UHF and VHF fine tuning speed were the same. Equal tuning accuracy is a matter of concern regardless of the type of receiver (i.e., monochrome or color) and regardless of the tuning mechanism which is employed. We are not concerned with the means by which equal tuning accuracy is achieved. In the case of a 70-position nonmemory UHF tuning system, however, the only presently known method for achieving equal tuning accuracy is to equip the receiver with automatic frequency control (AFC) circuitry combined with a channel selection mechanism capable of positioning the tuner within the pull-in range of AFC. This being the case, we are retaining these requirements. To lessen the problem of transition to receivers so equipped, however, we are deferring the effective date of the requirement from July 1, 1974, to July 1, 1975.

8. Though capability now differs among tuner manufacturers, all are making progress toward improved accuracy for the 70-position nonmemory system, and information recently received indicates that fully comparable tuning accuracy for receivers utilizing such a system is a reasonable expectation for the near future. See letter of June 27, 1972, from the General Instrument Corp., which has been entered in the docket file. Although AFC is recognized by industry as a highly desirable feature in color TV receivers and most color receivers in production are now AFC-equipped, those commenting in this proceeding do not recognize AFC as desirable in monochrome receivers. We would naturally look with favor upon any alternative method of achieving equal tuning accuracy which may be developed and is more acceptable to industry than the use of AFC. However, in the absence of such developments, we view the present requirement of AFC in monochrome receivers utilizing a 70-position nonmemory UHF tuning system as appropriate and desirable.

9. As an aid to the Commission in monitoring the progress toward fully comparable accuracy, we are requiring that each application for certification of a television receiver that uses a 70-position UHF detent tuner to achieve comparability of tuning be accompanied by a report of measurements of the tuning accuracy achieved. Measurements should be made pursuant to the procedure set out in our Bulletin OCE 30, entitled "Procedure for Measurement of the UHF Tuning Accuracy of a Television Receiver Incorporating a 70-position Non-Memory UHF Detent Tuning System." In this connection, an objection has been raised to our requirement that the measurements be made with the fine tuning control free to move during the test. This requirement is deliberate and is intended to reproduce the actual conditions under which the user will operate his receiver. We must therefore, overrule this objection and insist that tuning accuracy measurements be made with the fine tuning control not locked in place. The requirement of measurement data is new. We consider, however, that it is important to settle on the rules of the game in this area at an early date and that notice and opportunity for comment on this matter would serve little or no purpose. We conclude, therefore, pursuant to 5 U.S.C. 553(b)(3)(B), that notice and public procedure, and the attendant delay, would be contrary to the public interest.

10. Authority for the amendment set out in the attached appendix is contained in sections 4(i), 303 (r) and (s), and 330 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303 (r) and (s), and 330.

11. *Accordingly, it is ordered,* Effective October 27, 1972, that § 15.68 and § 15.69 of the rules and regulations are amended as set out below.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; sec. 2, 76 Stat. 151; 47 U.S.C. 151, 154, 303)

Adopted: September 7, 1972.

Released: September 13, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

Part 15 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 15.68(d) is revised to read as follows:

§ 15.68 All-channel television broadcast reception: Receivers manufactured on or after July 1, 1971.

* * * * *

(d) *Use of a 70-position nonmemory UHF detent tuning system.* (1) Numerical readout shall be provided for each of the 70 UHF channels or, if all of the VHF and UHF channel numbers displayed are at all times visible on the face of the receiver, numerical readout shall be provided for at least every other UHF channel, with marks to indicate those channels not displayed numerically.

(2) Until July 1, 1975, a 70-position, nonmemory UHF detent tuning system may be used to meet the requirements of this section provided the channel selection mechanism shall be capable of positioning the tuner to receive each UHF channel at its designated detent position, with maximum deviation from correct frequency on any detent setting not exceeding ±3 MHz, when approached from either direction of rotation.

(3) On or after July 1, 1975, a 70-position nonmemory UHF detent tuning system may be used to meet the requirements of this section provided:

(i) The receiver shall be equipped with automatic frequency control (AFC) circuitry.

(ii) The channel selection mechanism shall be capable of positioning the tuner to receive each UHF channel at its designated detent position with maximum deviation from correct frequency on any detent setting less than the pull-in range of automatic frequency control (AFC) circuitry with which the receiver is equipped, when approached from either direction of rotation.

2. Section 15.69(e)(11) is added, to read as follows:

§ 15.69 Certification of receivers.

* * * * *

(e) * * *

(11) In the case of a television broadcast receiver designed to meet the requirements of § 15.68 by the use of a 70-position UHF detent tuner, a report of measurements showing the tuning accuracy achieved. Measurements shall be made in accordance with the procedure set out in Bulletin OCE 30.

* * * * *

[FR Doc.72-15999 Filed 9-19-72;8:55 am]

[Docket No. 16495]

PART 25—SATELLITE COMMUNICATIONS

Establish of Domestic Communications-Satellite Facilities by Nongovernmental Entities; Extension of Time for Filing Comments

Order. In the matter of establishment of domestic communications-satellite facilities by nongovernmental entities.

1. On September 12, 1972 RCA Global Communications, Inc. and RCA Alaska Communications, Inc. (the RCA applicants) filed a request for an extension until September 25, 1972, of the time for filing replies to the responses to the petitions for reconsideration of the "Second Report and Order" in this proceeding. In support of this request the RCA applicants state that three parties have responded to their petition for reconsideration, that coordination with interested entities in Alaska poses difficulties, and that the 1-week extension here requested—which would constitute the first extension of time for replies not occasioned by previously granted requests for extension of the time for responses—will not unduly delay a resolution of this proceeding. The RCA applicants further note that material filed by the Communications Satellite Corp. (Comsat) and MCI Lockheed Satellite Corp. (MCI Lockheed) on September 8, 1972, relating to their Memorandum of Understanding, raises new developments which may have a significant bearing on the present proceeding and necessitate additional time for evaluation.

2. In light of the foregoing it appears that good cause has been shown for granting the requested extension. Interested parties desiring to comment on the September 8 filings by Comsat and MCI Lockheed and their Memorandum of

[1] Commissioners Johnson and H. Rex Lee absent.

Understanding should submit such comments on the date scheduled herein for replies, i.e., on or before September 25, 1972.

3. *Accordingly, it is ordered,* Pursuant to § 0.303 of the Commission's rules and regulations, That the time for filing replies to the responses to the petitions for reconsideration is extended to September 25, 1972.

Adopted: September 12, 1972.

Released: September 13, 1972.

[SEAL] BERNARD STRASSBURG,
Chief, Common Carrier Bureau.

[FR Doc.72-16003 Filed 9-19-72;8:55 am]

[FCC 72-786; Docket No. 19163]

PART 97—AMATEUR RADIO SERVICE

Licensing and Operating Requirements for Attainment of Amateur Extra Class License

Report and order. In the matter of amendment of Part 97 of the Commission's rules regarding licensing and operating requirements for the attainment of the amateur extra class license; Docket No. 19163, RM-1590, RM-1591, RM-1646, RM-1658, RM-1787, RM-1811, RM-1843.

1. On February 26, 1971, the Commission released a notice of proposed rule making in the above-entitled matter. The notice was duly published in the FEDERAL REGISTER on March 3, 1971 (36 F.R. 4069), and all comments submitted in response thereto have been considered.

2. The rule changes proposed in the notice are twofold and were suggested by the American Radio Relay League in petitions RM-1590 and RM-1591; and Mr. William K. Smith in petition RM-1646. First, we proposed amendment of § 97.9 (a) of the Commission's rules to reduce to 1 year the waiting period required of holders of amateur licenses, other than novice and technician, before they may upgrade to extra class. Secondly, we proposed amendment of § 97.25 to provide credit toward the Morse Code element of the extra class license examination for former holders of the extra first class license who have continuously held its successor licenses and who currently hold the advanced class amateur license.

3. Almost all of the comments received supported the proposals with most replies placing particular emphasis on the code examination credit provision. In this regard, comments generally agreed that the Morse Code requirement presents the greatest difficulty to elderly applicants and that consideration is warranted in (the case of former extra first class) licensees who were required to pass a 20-word-per-minute (w.p.m.) Morse Code examination.

4. Opposition to the proposals was voiced in several comments which argued that reduction of the waiting period would increase the number of inexperienced extra class licensees and that allowing code credit to former extra first class licensees would be inconsistant with the code speed prerequisite required for license renewal. The Commission appreciates the concern expressed over the possible number of inexperienced extra class licensees that could result from lowering the waiting period. However, the Commission is of the opinion that the length of this period alone is not always an accurate measure of an operator's experience and ability. In fact, it has been shown that improvement of one's operating ability and amateur technique is dependent more on regularity of operation than length of licensing time. As to the objection regarding the code requirement for license renewal, the question is not considered germane to the fundamental consideration: Is it necessary that former holders of the extra first class license who have remained active and who once passed a 20 wpm code examination, be required to repeat the same examination a second time? The Commission considers mandatory repetition of the code examination unfair to those extra first class licensees who have remained continuously licensed and the proposal was designed to eliminate this inequity. In addition, satisfying the code requirement for renewal is each licensee's personal responsibility, and the Commission is not in a position to conclude that licensees seeking code credit are so doing because they cannot satisfy the code renewal requirement under normal, everyday operating conditions.

5. A number of comments received suggested alternative and counter-proposals which are listed as follows:

a. Provide full credit for the written element of the extra class examination to former extra first class licensees who have remained continuously licensed.

b. Issue the extra class license to persons 50 years old or older who were licensed over 25 years ago and who qualify for, or hold, the general or advanced class license.

c. Issue the extra class license to persons 65 years old or older who were licensed over 40 years ago and who qualify for, or hold, the general or advanced class license.

d. Issue the extra class license to persons who have held an amateur general or advanced class license continuously for 40 years or more.

e. Provide cumulative code credit toward passage of examination elements, i.e., if an applicant passes element 1(C) and not 4(B), upon reexamination the applicant would be required to pass only element 4(B) and receive credit for previous passage of 1(C).

f. Eliminate the provision which counts operation under a foreign license toward satisfying the waiting period requirement for the extra class.

g. Provide code credit toward the extra class license for licensed holders of the commercial first, second, and third class radiotelegraph licenses.

h. Provide code credit toward the extra class license for persons who held a commercial license of the first or second class, in lieu of the amateur extra first class for the same period, between 1923 and 1933, and who obtained the class A license in 1933 and have continuously held the same and its successor, the advanced class, to the present date.

In addition to the comments listed, several proposals submitted by formal petitions since the inception of this proceeding set forth the following related suggestions:

(i) Issue the extra class license to persons who held an amateur license prior to December 1941, and who qualify for, or hold, a general or advanced class license (RM-1658).

(ii) Issue the extra class license to persons who held an amateur license prior to January 1940, and who qualify for, or hold, a general or advanced class license (RM-1787).

(iii) Issue the extra class license to persons who held an amateur license 50 years or more ago and who presently hold the general or advanced class license (RM-1811).

(iv) Issue the extra class license to persons who have held the general or advanced class license for a period of 25 years or more (RM-1843).

6. The proposal to provide full written examination credit to former extra first class licensees who have remained continuously licensed, is a reiteration of one of the original proposals filed. In reply to the Commission's position that a comparison of the present extra class and old extra first class examinations showed that the level of difficulty was much less for the latter, the American Radio Relay League replied that due to the absence of training aids and instructional material during the 1923-33 years, the level of difficulty could be considered comparable to the present extra class examination. In addition, the League argued that without exception, holders of the former extra first class license have continued to progress in technical knowledge and proficiency throughout the intervening years. The Commission does not deny the claims regarding progress made by licensees of such long standing. However, the Commission still contends that the present extra class license is indicative of attainment of a level of achievement distinctly above that of any previously available license. The current availability of study aids is considered to be immaterial since the scope of present examination material is much more broad than that covered 40 years ago. In addition, if the licensees in question have continued to progress in technical knowledge and proficiency as stated by the ARRL, former extra first class licensees should have no difficulty passing the written portion of the extra class examination. Accordingly, the Commission maintains that no credit should be provided for the written element of the extra class examination and the proposal is denied.

7. Those suggestions which request amendment of the Commission's rules to issue the extra class license to holders of the general or advanced class license on the basis of length of license tenure and/or licensee's age, including those reflected in petitions RM-1658, RM-1787, RM-1811, and RM-1843, are also denied. As the highest grade amateur license, the extra class signifies that its holder has

clearly demonstrated his technical qualifications based on both minimum licensing time and passage of a rigorous examination. Although the Commission realizes that length of licensed operation can be a valuable asset toward establishing one's eligibility for the extra class license, this in itself is not considered sufficient basis for determining the amateur's total qualifications. In addition, to allow attainment of the extra class license on the basis of age or term of license tenure alone, would, we believe, discourage amateurs from studying toward license achievement in keeping with the Commission's incentive licensing program.

8. The proposal regarding cumulative credit is also denied. The suggested provision of code credit to an applicant who passes the code element but not the written element of an examination, would present problems in the administration of such a procedure that would make it impracticable. To initiate such a procedure would place an extra burden on the Commission's field offices inasmuch as additional records would have to be maintained in all offices and searched to determine an applicant's past performance. Further, supervision of the code element is of such short duration that, time wise, it is to the examiner and examinees' advantage alike to repeat this segment forthright. The proposal to discount operating time accumulated under a foreign license toward satisfying the waiting period for the extra class is also denied. Acceptance of foreign amateur operating experience is in keeping with recognition extended to alien amateurs under existing reciprocal operating provisions and to deny accreditation of such operating experience would be totally unwarranted.

9. Finally, certain aspects of the proposals regarding code credit extension to include holders of valid commercial radiotelegraph operator licenses applying for the extra class license appear to merit further consideration. § 97.25(b) of the Commission's rules heretofore provided that an applicant for any class of amateur operator license, except the extra class, will be given credit for the telegraph code element if within 5 years prior to the receipt of his application he held a commercial radio telegraph operator license or permit issued by the Commission. However, since persons qualifying for the first class commercial telegraph operator licenses or those persons holding any commercial radiotelegraph operator license containing an aeronautical radiotelegraph endorsement are required to pass a Commission supervised code examination equal to or higher in speed than that required of amateur extra class licensees, it is considered appropriate to amend the rules to provide code credit to holders of a valid first class commercial radiotelegraph operator license or any commercial radiotelegraph operator license that also contains an aeronautical radiotelegraph endorsement. The proposal to provide code credit to holders of the commercial first and second class licenses, in lieu of the amateur extra first class for the same period, between 1923 and 1933, is denied due to the unavailability of licensing records for the licenses in question.

10. In view of the foregoing, the Commission finds that the amendments to Part 97, Amateur Radio Service, as set forth below are in the public interest, convenience and necessity. The authority for such amendments is contained in section 4(i) and 303 of the Communications Act, as amended.

11. *Accordingly, it is ordered,* That effective October 27, 1972, Part 97 of the Commission's rules is amended as set forth below.

12. *It is further ordered,* That, in addition to the three petitions set forth in the heading to this proceeding, the pending petitions of Mr. John E. Cunningham (RM–1843) filed August 9, 1971, Dr. Harold E. Stricker (RM–1811) filed June 10, 1971, Mr. Ernest L. Bracy (RM–1787) filed January 11, 1971, and Mr. Paul Williams (RM–1658) filed July 27, 1970, have been fully considered and to the extent that they are at variance with the rules changes adopted herein, they are denied.

13. *It is further ordered,* That this proceeding is terminated.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Adopted: September 7, 1972.

Released: September 13, 1972.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] BEN F. WAPLE,
Secretary.

Part 97 of the Commission's rules is amended as follows:

1. Section 97.9(a) is amended to read as follows:

§ 97.9 Eligibility for new operator license.

* * * * *

(a) *Amateur extra class.* Any citizen or national of the United States who either (1) any time prior to receipt of his application by the Commission has held for at least 1 year an amateur operator license of other than the novice or technician class, issued by any agency of the U.S. Government, or submits proof that he held for a period of 1 year an amateur operator license at least equivalent to a general class license issued by a foreign government, or (2) submits evidence of having held a valid amateur radio station or operator license issued by any agency of the U.S. Government during or prior to April 1917.

* * * * *

2. In Section 97.25, paragraph (b) is amended, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

§ 97.25 Examination credit.

* * * * *

(b) An applicant for an amateur operator license will be given credit for either telegraph code element 1(A) or 1(B) if within 5 years prior to the receipt of his application by the Commission he held a commercial radiotelegraph operator license or permit issued by the Federal Communications Commission. An applicant for an amateur extra class license will be given credit for the telegraph code element 1(C) if he holds a valid first class commercial radiotelegraph operator license or permit issued by the Federal Communications Commission or holds any commercial radiotelegraph operator license or permit issued by the Federal Communications Commission containing an aircraft radiotelegraph endorsement.

* * * * *

(d) An applicant for the amateur extra class operator license will be given credit for examination element 1(C) if he so requests and submits evidence of having held the amateur extra first class license, having continuously held its successor license. An applicant should present his proof in advance of the desired examination time to the Chief, Amateur and Citizens Division, Washington, D.C. 20554 and receive a letter of certification for presentation to the field office where the examination will be taken. No code credit will be given without the letter of certification.

* * * * *

[FR Doc.72–15998 Filed 9–19–72;8:55 am]

[1] Commissioners Johnson and H. Rex Lee absent.

Title 50—WILDLIFE AND FISHERIES

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

SUBCHAPTER B—HUNTING AND POSSESSION OF WILDLIFE

PART 10—MIGRATORY BIRDS

Open Seasons, Bag Limits, and Possession of Certain Migratory Game Birds

Correction

In F.R. Doc. 72–14774 appearing at page 17838 of the issue for Friday, September 1, 1972, in § 10.104(f) the reference in footnote 6 to the table should read "title 14 section 502" instead of "title 14 section 5032".

SUBCHAPTER C—THE NATIONAL WILDLIFE REFUGE SYSTEM

PART 32—HUNTING

Big Lake National Wildlife Refuge, Ark.; Correction

In F.R. Doc. 72–14818, appearing on page 17717 of the issue for Thursday, August 31, 1972, under § 32.22, subparagraphs (2) and (7) under special conditions should read as follows:

(2) Dogs are permitted during the racoon hunt but are prohibited during the squirrel hunt.

(7) The squirrel season will close at sunset on October 15, 1972.

C. EDWARD CARLSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 8, 1972.

[FR Doc.72-15929 Filed 9-19-72;8:45 am]

PART 32—HUNTING

Catahoula National Wildlife Refuge, La.

The following special regulations are issued and are effective on date of publication in the FEDERAL REGISTER (9-20-72).

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

LOUISIANA

CATAHOULA NATIONAL WILDLIFE REFUGE

Public hunting of squirrels on the Catahoula National Wildlife Refuge is permitted on the timbered portions of the refuge. Hunting shall be in accordance with State regulations governing the hunting of squirrels and raccoons except that the season extends from October 7-22, 1972. Hunters may enter the area 30 minutes prior to legal shooting time (30 minutes before sunrise) and must be out of the refuge 30 minutes after legal shooting hours (30 minutes after sunset).

The provisions of this special regulation supplement the regulations which govern hunting of wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through October 22, 1972.

C. EDWARD CARLSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 8, 1972.

[FR Doc.72-15931 Filed 9-19-72;8:45 am]

PART 32—HUNTING

Audubon National Wildlife Refuge, N. Dak.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (9-20-72).

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

NORTH DAKOTA

AUDUBON NATIONAL WILDLIFE REFUGE

Public hunting of deer on the Audubon National Wildlife Refuge, N. Dak., is permitted only in the area designated by signs as open to hunting. This open area, comprising 13,837 acres, is delineated on a map available at refuge headquarters and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer, subject to the following special conditions:

(1) Hunting is permitted from 12 noon, c.s.t., until sunset November 10, and from sunrise until sunset November 11 through November 19, 1972.

(2) All hunters must exhibit their hunting license, deer tag, game, and vehicle contents to Federal and State officers upon request.

(3) Vehicular traffic, including the use of boats, is prohibited by hunters on the refuge during the deer season.

The provision 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 November 19, 1972.

DAVID C. MCGLAUCHLIN,
Refuge Manager, Audubon National Wildlife Refuge, Coleharbor, North Dakota.

SEPTEMBER 12, 1972.

[FR Doc.72-15982 Filed 9-19-72;8:50 am]

PART 32—HUNTING

Wassaw Island National Wildlife Refuge, Ga.

The following special regulations are issued and are effective on the date of publication in the FEDERAL REGISTER (9-20-72).

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

GEORGIA

WASSAW ISLAND NATIONAL WILDLIFE REFUGE

Public hunting for deer and raccoon on Wassaw Island National Wildlife Refuge, Ga., is permitted on the area designated by signs as open to hunting. This open area, comprising 1,795 acres, is delineated on a map available at refuge headquarters, Route 1, Hardeeville, S.C. 29927, and from the office of the Regional Director, Bureau of Sport Fisheries and Wildlife, Peachtree-Seventh Building, Atlanta, Ga., 30323. Hunting shall be in accordance with all applicable State regulations covering the hunting of deer and raccoon subject to the following conditions:

(1) Deer and raccoon may be taken during the following period: November 21 through November 24, 1972.

(2) Hunting hours will be from 30 minutes before sunrise to 9:30 a.m. and from 3:30 p.m. until 30 minutes after sunset each day.

(3) The season bag limit is two deer: two bucks or one buck and one doe. There is no bag limit on raccoons.

(4) Only bows and arrows may be used. Firearms, crossbows, and mechanical bows are prohibited. The bows must have a draw weight of 40 pounds or more. Arrowheads must be ⅞-inch wide or wider.

(5) Dogs are prohibited.

(6) All camping will be at designated camping areas on Pine Island. Fires must be confined to the camping areas.

(7) Participants must arrange their own transportation to Pine Island and from Pine Island to Wassaw Island.

(8) Participants may not enter the refuge more than 1 day prior to the hunt. Hunters will be restricted to the camping area until the morning of the first day of each hunt period.

(9) Individuals under 18 years of age will not be permitted to hunt unless accompanied to the island by a parent or a responsible adult.

(10) Blazing trees, driving spikes in trees, or damaging trees and shrubbery in any manner is prohibited.

(11) Litter must be deposited in the proper trash receptacles.

(12) A Federal permit is required. Permit applications must be received by the Refuge Manager, Savannah National Wildlife Refuge, Route 1, Hardeeville, S.C. 29927 by November 1 for the November 21 through November 24 hunt.

The provisions of these special regulations 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 November 24 ,1972.

C. EDWARD CARLSON,
Regional Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 7, 1972.

[FR Doc.72-15930 Filed 9-19-72;8:45 am]

PART 32—HUNTING

Horicon National Wildlife Refuge, Wis.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER (9-20-72).

§ 32.32 Special regulations; big game for individual wildlife refuge areas.

WISCONSIN

HORICON NATIONAL WILDLIFE REFUGE

The public hunting of deer and foxes on the Horicon National Wildlife Refuge, Wis., is permitted only on the area designated by signs as open to hunting, during the period November 18 through November 26, 1972, with designated firearms, and during the period December 2 through December 31, 1972, with bow and arrow. The open area, comprising 20,700 acres, is delineated on maps available at refuge headquarters, Mayville, Wis., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Hunting shall be in accordance with all applicable State regulations.

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 January 1, 1973.

ROBERT G. PERSONIUS,
Refuge Manager, Horicon National Wildlife Refuge, Mayville, Wis.

SEPTEMBER 11, 1972.

[FR Doc.72-15936 Filed 9-19-72;8:46 am]

Title 6—ECONOMIC STABILIZATION

Chapter III—Price Commission

PART 300—PRICE STABILIZATION

Miscellaneous Amendments

The purpose of these amendments to Part 300 of the regulations of the Price Commission is to restate § 300.14, relating to service organizations; to make a correction to § 300.31(e) with respect to price increases by low profit retailers or wholesalers; to amend § 300.403 to provide that an average price received on May 25, 1970, may, under certain circumstances, be the base price; and to amend § 300.405 to provide for treatment of temporary special allowances by retailers and wholesalers.

The restatement of § 300.14 makes certain editorial and minor clarification changes; provides for limiting the aggregate price increases of service organizations providing the services of an attorney at law to 2.5 percent for the 12-month period beginning on November 14, 1971, and for each 12-month period beginning on November 14 thereafter; and clarifies the status of certain persons furnishing terminal facilities to shipping lines, railroads, and other common carriers. Another purpose of the restatement is to obviate any questions that might arise from the inadvertent omission, in the restatement of the section on September 7, 1972 (37 F.R. 18082), of a statement as to why the amendment was being issued without notice and public procedure thereon.

The Price Commission has determined that the limitation on price increases by attorneys at law is necessary for the effectiveness of the Economic Stabilization Program. The Commission has observed changes in the prices of various services as reflected in the Consumer Price Index. That index has shown a 13 percent increase in the prices for legal services during the period June 1971 through June 1972, including an 0.9 percent increase in the 1-month period of June 1972. The amendment to § 300.14 is designed to limit annual price increases for legal services to 2.5 percent, a percentage increase in line with the general goal of the Price Commission, and similar in effect to the 2.5 percent limitation on price increases by noninstitutional providers of health services provided in § 300.19.

For service organizations providing the services of an attorney at law which have already instituted price increases since November 13, 1971, aggregating more than 2.5 percent, the amendment to § 300.14 prohibits further increases until the accumulation of the 2.5 percent increase authorization accruing for each 12-month period beginning on November 14, 1971, is equal to or greater than the excess aggregate price increases of that organization instituted since November 13, 1971.

A service organization which provides the services of an attorney at law which does not use all of the 2.5 percent aggregate price increase authorized by this paragraph for any 12-month period beginning after November 13, 1971, may use any amount not so used in any subsequent 12-month period.

On September 16, 1972, (37 F.R. 18893), the Commission published revised regulations pertaining to public utilities. A question has arisen as to the status of wharfs, docks, warehouses, and other terminal facilities for shipping lines, railroads, and other common carriers. Although, in some respects, these facilities resemble public utilities, there is no consistency of regulatory approach or regulation of them by regulatory agencies and no consistency in their status under various laws. Since these facilities come clearly within the definition of "service organization" in § 300.5 and are not generally treated as pubilc utilities, it is the Commission's opinion that they should be treated entirely as service organizations for the purposes of price stabilization.

The amendment to § 300.31(e) makes it clear that a retailer or wholesaler may not increase the price of a product to an amount greater than the price which would result from a percentage markup that is 8 percent greater than the customary initial percentage markup.

In response to a request for a ruling in regard to the maximum markup that a low profit firm can make on a product under the limitations of § 300.31(e), the Price Commission has prepared a published ruling which provides that under the last sentence of § 300.31(e), a retailer or wholesaler may not increase the price of any of its products more than the price which would result from a percentage markup that is 8 percent greater than the customary initial percentage markup. To avoid any further misunderstanding of the limitations prescribed in that section, the language in the last sentence of § 300.31(e) is clarified to conform with that ruling of the Price Commission.

The amendment to § 300.403, dealing with the determination of base prices, provides that the average price which was received in arms-length transactions involving a unit of personal property or services on the May 25, 1970 limitation date is the base price for such property or service if that price is higher than the base price determined under § 300.405, based upon a calculation of certain transactions during the period July 16–August 14, 1971.

Section 300.403 currently provides that the regulations of the Price Commission will not be applied to require any person to establish a price for an item of personal property or services which is lower than the average price which was received by him in arms-length transactions involving that property or service on May 25, 1970. However, § 300.403 has not provided that the May 25, 1970 price is a base price. Rather, all firms have been required to determine their base prices under § 300.405 which provides that the base price with respect to a sale of a unit of personal property or services is the highest price at or above which at least 10 percent of those units were priced by the seller in transactions with a specific class of purchasers during the freeze base period, July 16–August 14, 1971. Firms with base prices (§ 300.405) higher than May 25, 1970 prices (§ 300.403) encountered no difficulty in treating the § 300.405 price as the base price. However, in light of the policy expressed in § 300.403 that the Commission would not require persons to establish prices below the May 25, 1970 average-transaction price, firms with base prices lower than May 25, 1970 prices experienced difficulty applying the regulations which limit price increases above base prices without specifically excluding from such limitation increases in price between the base price determined under § 300.405 and the May 25, 1970 price.

In order to resolve these difficulties, § 300.403 is being amended to provide that the base price is the higher of the May 25, 1970, average-transaction price or the base price determined under § 300.405.

The amendment to § 300.405(a) permits retailers and wholesalers to exclude from the computation of base prices any temporary special deal or allowance which was announced before August 15, 1971, and which was intended to be in effect for less than 93 days. This provision, which was applicable only to manufacturers and service organizations, is thus now made applicable to retailers and wholesalers, based on the Commission's determination that those persons require similar relief in the calculation of base prices. Sufficient information concerning the desirability of including retailers and wholesalers in the provision relating to special deals and allowances was not available when the rule was originally promulgated.

Since the purpose of these amendments is to make certain corrections, to perfect an existing provision, and to provide immediate guidance and information with respect to compliance with price stabilization rules, it is hereby found that notice and public procedure is unnecessary and impracticable and that good cause exists for making them effective less than 30 days after publication in the FEDERAL REGISTER.

(Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Public Law 92-210, 85 Stat. 743; and Executive Order No. 11640, as amended)

In consideration of the foregoing, Part 300 of Title 6 of the Code of Federal Regulations is amended as set forth herein, effective September 19, 1972.

Issued in Washington, D.C., on September 18, 1972.

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

1. Section 300.14 is revised to read as follows:

§ 300.14 Service organizations.

(a) *Applicability.* This section applies to all service organizations except—

(1) Public utilities covered by § 300.16 or § 300.16a or Subpart C of this part, but does apply to persons furnishing wharfage, dock, warehouse, and other terminal facilities to shipping lines, railroads, and other common carriers;

(2) Providers of health services covered by § 300.18 or § 300.19;

(3) Insurers covered by § 300.20;

(4) Brokers to the extent covered by § 300.21 or by a fee schedule which has been certified by the securities and Exchange Commission as being consistent with the Economic Stabilization Program;

(5) Any person who qualifies as a low profit firm under § 300.32, so long as that person remains subject to § 300.32; and

(6) Public benefit corporations covered by § 300.51(k).

(b) *General.* Except as provided in paragraph (c) of this section, a service organization may charge a price in excess of the base price only to reflect increases in allowable costs that it incurred since the last price increase, or that it incurred after January 1, 1971, whichever was later, with respect to the service concerned, and that it is continuing to incur, reduced to reflect productivity gains, and only to the extent that the increased price does not result in an increase in its profit margin over that which prevailed during the base period.

(c) *Special rule—attorneys at law.* A service organization which provides the services of an attorney at law may not increase its prices, pursuant to paragraph (b) of this section, for the 12-month period beginning on November 14, 1971, by an aggregate of more than 2.5 percent above base prices; and for each 12-month period thereafter beginning on November 14, may not increase its prices by an aggregate of more than 2.5 percent above the prices authorized pursuant to this section for those services at the end of the preceding 12-month period. However, a service organization which provides the services of an attorney at law and which, on September 5, 1972, has increased its prices by an aggregate of more than 2.5 percent above its base prices at any time during the 12-month period beginning on November 14, 1971, may not make any further price increases until the accumulation of the 2.5 percent increase authorization accruing for each 12-month period beginning after November 14, 1971, is equal to or greater than the excess aggregate price increases of that organization on September 5, 1972. A service organization which provides the services of an attorney at law and which does not use all of the 2.5 percent aggregate price increase authorized by this paragraph for any 12-month period beginning after November 13, 1971, may use any amount not so used in any subsequent 12-month period.

2. The last sentence of § 300.31(e) is amended to read as follows:

§ 300.31 Low profit firms: manufacturers, wholesalers, and retailers.

* * * * *

(e) *Price limitations.* * * * No retailer or wholesaler may, in the course of any of its fiscal years, increase the price of any of its products under this section by an amount which results in an increase of more than 8 percent of the cutomary initial percentage markup of such products.

3. Section 300.403 is revised to read as follows:

§ 300.403 Determination of base price for personal property or services.

The base price with respect to a unit of personal property or services is the higher of—

(a) The base price determined under § 300.405; or

(b) With respect to any class of purchasers, the average price which was received by the seller in transactions involving the property or service on May 25, 1970. In cases where there were no transactions on May 25, 1970, the nearest date preceding May 25, 1970, on which such a transaction did occur, shall be considered to be May 25, 1970, for the purposes of this section. However, this paragraph does not apply if the person did not offer the property or service on May 25, 1970, due to causes other than the temporary closing of his business.

4. The second sentence of § 300.405(a) is amended to read as follows:

§ 300.405 Sales and leases of personal property and services.

(a) *Sales.* * * * However, in computing the base price of an item of personal property or a service, a manufacturer, wholesaler, retailer, or service organization may exclude any temporary special deal or temporary special allowance on that property or service, if that deal or allowance was announced before August 15, 1971, and was intended to be in effect for less than 93 days, including any deal or allowance that was continued in effect for a longer period than intended because of the Phase I freeze or the regulations of the Price Commission. * * *

* * * * *

[FR Doc.72-16073 Filed 9-19-72;8:56 am]

Proposed Rule Making

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 221]

SAN CARLOS INDIAN IRRIGATION PROJECT, ARIZ.

Proposed Revision of Basic Charge

Pursuant to the authority vested in the Secretary of the Interior for issuance of irrigation operation and maintenance orders fixing per acre assessments against lands included in Indian Irrigation Projects, delegated to the Commissioner of Indian Affairs by Order No. 2508 (10 BIAM 2.1, section 15a) and redelegated to the area directors by 10 BIAM 4.1, notice is hereby given that it is proposed to modify § 221.110 *Basic charge*, of Title 25, Code of Federal Regulations, dealing with irrigation operation and maintenance assessments against tribal lands and trust patent Indian lands of the San Carlos Irrigation Project, Ariz., by increasing the annual basic assessment rate for the calendar year 1973 and subsequent years, unless changed by further order, from $8.50 to $11 per acre. The revised section will read as follows:

§ 221.110 **Basic charge.**

Pursuant to the provisions of section 10 of the Act of March 3, 1905 (33 Stat. 1081), as amended and supplemented by the Acts of August 24, 1912 (37 Stat. 522), August 1, 1914 (38 Stat. 583, 25 U.S.C. 385), section 5 of the Act of June 7, 1924 (43 Stat. 476), March 7, 1928 (45 Stat. 210, title 25 U.S.C. 387), and the Act of August 9, 1937 (50 Stat. 577), as amended by the Act of May 9, 1938 (52 Stat. 291–305), and in accordance with the public notice issued on December 1, 1932, operation and maintenance charges are assessable against the 50,000 acres of tribal lands and trust patent Indian lands of the San Carlos Indian Irrigation Project within the boundaries of the Gila River Indian Reservation, Ariz., and the basic rate assessed for the calendar year 1973 and the subsequent years unless changed by further order, is hereby fixed at $11. Such rate shall entitle each acre of land to have delivered for use thereon two (2) acre-feet of water per acre or its proportionate share of the available water supply. The assessment for the 50,000 acres of Indian land will be payable as provided in §§ 221.111 to 221.116, inclusive.

It is the policy of the Department of the Interior whenever practicable to afford the public an opportunity to participate in the rule making process. Accordingly, interested persons may submit written comments, suggestions, or objections, with respect to the proposed amendment, to John H. Artichoker, Area Director, Phoenix Area Office, Post Office Box 7007, Phoenix, AZ 85011, within 30 days from date of publication of this notice of intention in the daily issue of the FEDERAL REGISTER.

CURTIS GEIOGAMAH,
Acting Area Director.

[FR Doc.72-15932 Filed 9-19-72;8:46 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

VARIOUS CANNED FRUITS AND VEGETABLES

U.S. Standards for Grades; Correction

In the notice of proposed rule making for Amendments to U.S. Standards for Grades of Various Canned Fruits and Vegetables published in the FEDERAL REGISTER of August 31, 1972 (37 F.R. 17750) the following corrections are made:

1. In Subpart—U.S. Standards for Grades of Canned Asparagus § 52.2546, Table 2 appearing on page 17750 under the column headed "Green Tipped and White; White" the LL value opposite container designation No. 1 picnic now reading 7.6 is changed to read 6.6; and the LL value opposite 12 Z now reading 8.6 is changed to read 7.6.

In Table 3 appearing on page 17751 the last value in the row headed "Sample Size (number of sample units)" now reading 70 is changed to read 72.

2. In Subpart—U.S. Standards for Grades of Canned Sweet Cherries, § 52.827 in Table II appearing on page 17752 the last value in the row headed "Sample Size (number of sample units)" now reading 70 is changed to 72.

3. In Subpart—U.S. Standards for Grades of Canned Fruit Cocktail, § 52.1056 in Table IV appearing on page 17754 under the column headed "Container designation (metal, unless otherwise designated)" the second container designation now reading 5 oz.—211 x 200 is changed to read 5 oz.—211 x 202.

4. In Subpart—U.S. Standards for Grades of Canned Kadota Figs, § 52.2826 in Table I appearing on page 17756 the last value under the column headed "Height" now reading 77 is changed to read 7.

In Table II appearing on page 17756 the eighth and ninth values in the row headed "Sample Size (number of sample units)" now reading 67 and 70 respectively is changed to read 60 and 72 respectively.

5. In Subpart—U.S. Standards for Grades of Canned Grapes, § 52.4025 in Table II appearing on page 17757 the last value in the row headed "Sample Size (number of sample units)" now reading 70 is changed to read 72.

In § 52.4026 the table now headed "Recommended Fill Weight Values for Canned Grapes" is changed to read "Table III Recommended Fill Weight Values for Canned Grapes".

Dated: September 14, 1972.

JOHN C. BLUM,
Acting Administrator.

[FR Doc.72-16023 Filed 9-19-72;8:53 am]

[7 CFR Part 987]

DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Proposed Packaging and Handling Limitations

Notice is hereby given of a proposal to amend § 987.501 of Subpart—Container Regulation (7 CFR 987.501) by adding United States and Canada therein. Thus, the net weight content requirements prescribed in § 987.501 for certain plastic containers would apply only to whole or pitted dates which are packaged or handled to meet the trade demand of the United States and Canada. The subpart is operative pursuant to the marketing agreement, as amended, and Order No. 987, as amended (7 CFR Part 987), regulating the handling of domestic dates produced or packed in Riverside County, Calif. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

Consideration will be given to any written data, views, or arguments pertaining to the proposal which are received by the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than October 4, 1972. All written submissions made pursuant to this notice should be in quadruplicate and will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is as follows:

Section 987.501 of Subpart—Container Regulation (7 CFR 987.501) is amended by adding in the first sentence after the words "master shipping containers," the words "to meet the trade demand of the United States and Canada".

Dated: September 15, 1972.

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

[FR Doc.72-16025 Filed 9-19-72;8:53 am]

[7 CFR Parts 1007, 1071, 1073, 1090, 1094, 1096, 1097, 1098, 1102, 1103, 1108, 1104, 1106, 1120, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1138, 1060, 1061, 1063, 1064, 1065, 1068, 1069, 1070, 1076, 1078, 1079]

MILK IN CERTAIN MARKETING AREAS

Notice of Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Market	Docket No.
	GROUP I	
1007	Georgia	AO-366-A8.
1071	Neosho Valley	AO-227-A26.
1073	Wichita, Kans	AO-173-A26.
1090	Chattanooga, Tenn	AO-266-A15.
1094	New Orleans, La	AO-103-A33.
1096	Northern Louisiana	AO-257-A20.
1097	Memphis, Tenn	AO-219-A25.
1098	Nashville, Tenn	AO-184-A31.
1102	Fort Smith, Ark	AO-237-A20.
1103	Mississippi	AO-346-A14.
1108	Central Arkansas	AO-243-A22.
	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 Texas	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.
	GROUP III	
1060	Minnesota-North Dakota	AO-360-A6.
1061	Southeastern Minnesota-Northern Iowa.	AO-367-A5.
1063	Quad Cities-Dubuque	AO-105-A35.
1064	Greater Kansas City	AO-23-A42.
1065	Nebraska-Western Iowa	AO-86-A25.
1068	Minneapolis-St. Paul, Minn	AO-178-A28.
1069	Duluth-Superior	AO-153-A19.
1070	Cedar Rapids-Iowa City	AO-229-A26.
1076	Eastern South Dakota	AO-260-A17.
1078	North Central Iowa	AO-272-A20.
1079	Des Moines, Iowa	AO-295-A24.

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas, which was issued on August 28, 1972, in the form of three separate documents, is hereby extended to October 21, 1972.

This notice 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).

Signed at Washington, D.C., on September 15, 1972.

JOHN C. BLUM,
Deputy Administrator
Regulatory Programs.

[FR Doc.72-16024 Filed 9-19-72;8:53 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 146]

[CGD 72-162PH]

DICHLOROBUTENE

Proposed Addition to Hazardous Cargos Regulations

Correction

In F.R. Doc. 72-14669 appearing on page 17562 of the issue for Wednesday, August 30, 1972, in the table under amendatory paragraph 1, under the heading "Article", the words "Dichlorobutene (see" should be printed in italics.

Federal Aviation Administration

[14 CFR Part 121]

[Docket No. 12240; Notice 72-25]

DOMESTIC AND FLAG AIR CARRIERS

Use of Certificated Land Airports

The Federal Aviation Administration is considering amending Part 121 of the Federal Aviation Regulations to require domestic and flag air carriers that hold certificates of public convenience and necessity issued by the Civil Aeronautics Board and that operate large aircraft (other than helicopters) to conduct their scheduled operations into regular airports certificated by the FAA under the newly enacted airport certification and operations rules.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20591. All communications received on or before November 20, 1972, will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments in the rules docket, for examination by interested persons.

Part 139—Certification and operations: Land airports serving CAB-certificated scheduled air carriers operating large aircraft (other than helicopters) was issued on June 12, 1972, as an amendment to the Code of Federal Regulations effective July 21, 1972 (37 F.R. 12278). The new Part 139 provides, insofar as is pertinent here, that, after May 20, 1973, no person may operate a land airport regularly serving any scheduled CAB-certificated air carriers operating large aircraft (other than helicopters) into that airport, in any State of the United States, the District of Columbia, or any territory or possession of the United States, without or in violation of an airport operating certificate for that airport, or in violation of the approved airport operations manual for that airport.

Consistent with the safety objective of new Part 139, this proposal would require domestic and flag air carriers to use certificated regular airports for their scheduled operations conducted with large airplanes in any State of the United States, the District of Columbia, or any territory or possession of the United States.

In consideration of the foregoing, it is proposed to amend Subpart T of Part 121 of the Federal Aviation Regulations by adding a new § 121.590 to read as follows:

§ 121.590 Use of certificated land airports: domestic and flag air carriers certificated by the CAB.

After May 20, 1973, no person may operate a large airplane into a regular airport in scheduled operations in any State of the United States, the District of Columbia, or any territory or possession of the United States, unless that airport is certificated under Part 139 of this chapter. For the purposes of this section, a regular airport means one approved as a regular terminal or intermediate stop on an authorized route.

This amendment is proposed under the authority of sections 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on September 13, 1972.

JAMES F. RUDOLPH,
Director,
Flight Standards Service.

[FR Doc.72-15949 Filed 9-19-72;8:48 am]

Federal Highway Administration

[49 CFR Part 393]

[Docket No. MC-42; Notice 72-16]

FRONT CLEARANCE LAMPS ON TRAILERS

Proposed Installation Requirements

The Truck Trailer Manufacturers Association has filed a petition for rule making, asking the Director of the Bureau of Motor Carrier Safety to amend § 393.14(a) of the Motor Carrier Safety Regulations to eliminate the requirement for installation of two clearance lamps, one at each side, on the front of every semitrailer or full trailer 80 inches or more in overall width. The petitioner proposes that a requirement for two reflex reflectors be substituted for the present requirement. If § 393.14(a) were amended as specified in the petition, it would read as follows:

§ 393.14 Lamps and reflectors, large semitrailers and full trailers.

Every semitrailer or full trailer 80 inches or more in overall width, except

converter dollies, shall be equipped as follows:

(a) On the front, two reflex reflectors, one at each side;

* * * * *

In support of its request, the petitioner claims that front clearance lamps on trailers serve no useful purpose and may, in fact, increase the hazards of operating a motor vehicle combination. Tractors manufactured today are generally the same width as the trailers they tow and are equipped with clearance lamps that serve to warn motorists of the approach of the combination. From the standpoint of alerting motorists to an oncoming tractor-trailer combination, the front clearance lamps on the trailer, it is said, are redundant and useless.

In addition, the petitioner argues that, for many types of low-silhouette trailers, such as tank trailers, flat beds, platform trailers, and dry bulk trailers, the location of the amber front clearance lamps is hazardous; they are located in the field of view of the driver when he looks into his outside rearview mirror and produce a yellow glare which obscures the driver's indirect field of view. Petitioner says that, by substituting reflex reflectors for the front clearance lamps, the Director would eliminate the glare problem and, at the same time, would require trailers to be equipped with devices to mark their location and extremities when they are not attached to a tractor and are parked or disabled on the shoulder of a highway.

On August 9, 1972, the National Highway Traffic Safety Administration published a notice of proposed rule making proposing amendments to Motor Vehicle Safety Standard No. 108a, Lamps, Reflective Devices and Associated Equipment (49 CFR 571.108a). The National Highway Traffic Safety Administration is proposing that trailers of 80 or more inches overall width, having a gross vehicle weight rating of more than 10,000 pounds and manufactured after December 31, 1972, need not be equipped with front clearance lamps but may be equipped with amber reflex reflectors in lieu thereof (37 F.R. 16002).

Interested persons are invited to submit data, views, or arguments pertaining to the amendment proposed by the petitioner. In addition, the Director invites comments on amending the existing rule to make either front reflex reflectors or clearance lamps optional, thereby paralleling the requirements the National Highway Traffic Safety Administration has proposed to impose on trailer manufacturers. All comments should refer to the docket number and notice number appearing at the top of this notice. Comments should be submitted in three copies to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. All comments received before the close of business on October 31, 1972, will be considered before further action is taken. Comments will be available for public examination in the Docket Room of the Bureau of Motor Carrier Safety, Room 4136, 400 Seventh Street SW., Washington, DC 20590, before and after the closing date for comments.

This notice of proposed rule making is issued under the authority of section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority in §§ 1.48 and 389.4 of Title 49, CFR.

Issued on September 14, 1972.

KENNETH L. PIERSON,
Acting Director, Bureau of Motor Carrier Safety.

[FR Doc.72-15950 Filed 9-19-72;8:47 am]

National Highway Traffic Safety Administration

[49 CFR Part 571]

[Docket No. 71-10; Notice 2]

NEW AND RETREADED PASSENGER CAR TIRES

Performance Requirements

The purpose of this notice is to propose new requirements for the high speed performance and endurance tests for passenger car tires in Motor Vehicle Safety Standard No. 109, and, by incorporation, Motor Vehicle Safety Standard No. 117. A previous notice of proposed rule making regarding this subject was published May 27, 1971 (36 F.R. 9666).

Motor Vehicle Safety Standard No. 109 presently provides that in order for a tire to pass the requirements for high speed performance (S4.2.2.6) and endurance (S4.22.5) it shall not, after being subjected to the appropriate test wheel procedures, have "tread, ply, cord, or bead separation, chunking, or broken cords." Motor Vehicle Safety Standard No. 117, "Retreaded Pneumatic Tires", incorporates these criteria by reference.

NHTSA compliance testing has produced certain characteristics in tested tires, which while not within the present language, are considered by NHTSA to be evidence of structural weakness which may cause tire failure. These characteristics include tread-groove cracking, deep sidewall separations, and damage in areas such as the tire liner.

The May 27, 1971, notice of proposed rulemaking proposed to bring failures of this type within the purview of the standard by providing that tires, after being subjected to the high speed and endurance tests, have "no separation, splitting, or breaking of any portion or component of the tire." The notice also proposed a test for air loss, as the NHTSA is of the opinion that other than a minimal loss of air during the test wheel procedures should constitute a failure.

Since the publication of that notice, the NHTSA has proposed differently phrased criteria for tire failures in the endurance and high speed test modes, in the proposed Motor Vehicle Safety Standard No. 119, "Tires for Vehicles Other than Passenger Cars" (37 F.R. 13481). The NHTSA has tentatively determined that the criteria proposed in that notice should also apply to passenger car tires. These new criteria are responsive to the deficiencies which the NHTSA has found to exist in the present test criteria, and are more detailed than the criteria, proposed in the Notice of May 27, 1971. Because they differ materially from those criteria, however, they are issued as a proposed rule, affording opportunity for comment.

The criteria proposed by this notice would, when the tire is tested on a test rim which allows no loss of air and undergoes no permanent deformation, consider as a failure the displacement of any portion of the tire from its design position, including partial or complete separation of any portion or component, except for the exposure of chafer fabric and surface cracking that does not expose ply cord or belt cord. Cracks in the tread groove exceeding three-sixteenths of an inch in length would also be considered a nonconformity.

An air loss test is hereby proposed which also differs from that proposed on May 27, 1971. In this proposal, the tire pressure measured immediately after running either the high speed or the endurance test must be not less than 95 percent of the pressure at the start of the test. This requirement eliminates the costly 2-hour cooling period proposed earlier and establishes a more meaningful measure of a tire's ability to withstand the tests.

In light of the above, it is proposed that Motor Vehicle Safety Standard No. 109, § 571.109 of Title 49, Code of Federal Regulations, be amended as follows:

1. Paragraphs S4.2.2.5 and S4.2.2.6 would be amended to read:

S4.2.2.5 *Tire endurance.* When the tire has been subjected to the laboratory endurance test specified in S5.4, using a test rim that undergoes no permanent deformation and allows no loss of air through the portion that it comprises of the tire-rim pressure chamber:

(a) There shall be no displacement of any portion of the tire from its design position, including partial or complete separation of any portion or component of the tire from any other portion or component, except for the exposure of chafer fabric and surface cracking that does not expose ply cord or belt cord. However, no crack in a tread groove shall in any case exceed three-sixteenths of an inch in length.

(b) The tire pressure at the end of the test shall be not less than 95 percent of the initial pressure specified in S5.4.1.1.

S.4.2.2.6 *High speed performance.* When the tire has been subjected to the laboratory high speed performance test specified in S5.5, using a test rim that undergoes no permanent deformation and allows no loss of air through the portion that it comprises of the tire-rim pressure chamber, the tire shall meet the requirements set forth in S4.2.2.5 (a) and (b).

2. Two identical new paragraphs, S5.4.2.4 and S5.5.5, would be added, reading as follows:

Immediately after running the tire the required time, measure the tire inflation pressure.

Interested persons are invited to submit comments on the proposed requirements. Comments should identify the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5221, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on December 19, 1972, will be considered and will be available for examination in the docket at the above address both before and after the closing date. To the extent possible, comments filed after the above date will also be considered by the Administration. However, the rule making action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rule making. The Administration will continue to file relevant material, as it becomes available, in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new materials.

Proposed effective date: September 1, 1973.

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

Issued on September 14, 1972.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.72-15992 Filed 9-19-72;8:51 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 225]

[Docket No. 24757; EDR-232]

TARIFFS OF CERTAIN CERTIFICATED AIRLINES AND TRADE AGREEMENTS

Notice of Proposed Rule Making

SEPTEMBER 14, 1972.

Notice is hereby given that the Civil Aeronautics Board has under consideration an amendment to Part 225 of its economic regulations which would gradually reduce, by annual stages after 1973, and eliminate completely, by December 31, 1976, the exemption granted in the part to local service air carriers, and would extend the exemption granted to certain other classes of carriers until December 31, 1976. The amendment is discussed in the attached explanatory statement.

The amendment is proposed under authority of sections 204(a), 403, 404, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758 (as amended by 74 Stat. 445), 760 and 771; 49 U.S.C. 1324, 1373, 1374, and 1386.

Interested persons may participate in the proposed rule making through submission of twelve (12) copies of written data, views, or arguments pertaining thereto, addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. All relevant material in communications received on or before October 18, 1972, will be considered by the Board before taking final action upon the proposed rule. Copies of such communications will be available for examination by interested persons in the Docket Section of the Board, Room 712, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, upon receipt thereof.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

EXPLANATORY STATEMENT

Section 403(a) of the Act requires that rates, fares, and charges shown in any tariff be stated in terms of lawful money. This provision, together with the requirement of adherence to tariffs in section 403(b), prohibits air carriers from bartering air transportation for goods or services. However, acting under its exemption powers, the Board has, in Part 225 of the economic regulations, granted temporary authority, periodically extended, to local service and certain other categories of carriers to exchange transportation for advertising goods or services up to maximum specified amounts for each category, pursuant to one-year trade agreements filed in advance. The rule presently provides that any such agreement must be filed prior to December 18, 1972. Since any such agreement may go into effect no later than January 1, 1973, the present expiration date for the exemption authority granted by Part 225 is December 31, 1973.

When the Board most recently extended the expiration date of this Part 225 at the end of 1971, we referred to the fact that the trade agreements authorized thereunder have continued to meet the original purpose of this exemption authority, namely, to provide some degree of assistance in reducing cash needs for advertising and promotion on the part of local service and other subsidized carriers, thereby reducing their dependence upon subsidy.[1]

We stated, however, that the situation of the local service carriers vis-a-vis the trunk carriers has changed considerably from that which obtained when the trade agreement program was initiated, in that there is now a significant amount of head-to-head competition between the two classes of carriers; and for this reason, we announced our intention to issue a notice of proposed rule making directed toward phasing out the trade agreement program by annual reductions in the maximum amount of trade-out allowance.

[1] ER-718, Dec. 30, 1971, 37 F.R. 72.

We are therefore proposing a series of reductions in the maximum tradeout allowance for local service carriers, beginning with agreements becoming effective during 1973 (i.e., agreements which are filed after December 18, 1972, the present filing deadline), and culminating in the complete elimination of the trade agreement program for the local service carriers after December 31, 1976 (i.e., after completion of agreements filed prior to December 18, 1975). The proposed reductions would take the form of an initial elimination of each local service carrier's present flat $50,000 allowance and certain of the $4,000 per station allowances, followed by the gradual elimination of the remaining $4,000 per station allowances. The proposed rule employs the station classifications of Class Subsidy Rate VI, which are in turn based upon the air traffic hub classifications established by the Federal Aviation Administration and the Board in their semiannual publication, "Airport Activity Statistics of Certificated Route Carriers."[2]

Since the intra-Hawaii, intra-Alaska, and helicopter carriers do not compete directly with trunk carriers, we are not proposing to phase out their trade agreement authorization at this time. We are, however, taking this occasion to propose to extend until December 18, 1975, the authorization of the intra-Hawaii, intra-Alaska, and helicopter carriers to file trade agreements for the present maximum amounts.

PROPOSED RULE

It is proposed to amend Part 225 of the economic regulations (14 CFR Part 225), as follows:

1. Amend paragraph (a) of § 225.2 to read as follows:

§ 225.2 Filing of notice of trade agreement and cancellation of such agreement.

(a) *Notice of trade agreement.* Until December 18, 1975, any airline may file with the Board a notice of its intention to furnish air transportation in exchange for services of goods for advertising purposes. Every such notice shall be accompanied by an executed counterpart of a written agreement, containing all the terms of the agreement between the parties thereto, duly entered into by such air carrier with the supplier, and by an affidavit by the chief financial officer or other responsible officer of the airline having knowledge of the transaction in the form required by § 225.4. Every such notice shall be filed at least 14 days prior to the effective date specified in the trade agreement. Within the meaning of this part, air transportation shall be deemed to be furnished when the passenger is actually enplaned.

* * * * *

2. Amend paragraph (a) of § 225.5 to read as follows:

[2] The current station classifications are set forth in Order 72-6-72, June 16, 1972, Appendix C.

§ 225.5 **Provisions of agreement.**

Each trade agreement entered into by an airline hereunder shall provide:

(a) That it shall become effective on a specified day, on or before January 1, 1976;

* * * * *

3. Amend § 225.6 to read as follows:

§ 225.6 **Limitation on total value of trade agreements.**

The total value of trade agreements entered into by any single airline in accordance with the provisions of this part shall be limited, in the aggregate, to the following:

(a) For the airlines identified in § 225.1(a)(3), $200,000;

(b) For the airlines identified in § 225.1(a)(4) which have gross transport operating revenues of less than $2 million in the year prior to the effective date of the agreement in question, $20,000 each year;

(c) For the airlines identified in § 225.1(a)(4) which have gross transport operating revenues of $2 million or more in the year prior to the effective date of the agreement in question, $50,000 each year;

(d) For the airlines identified in § 225.1(a)(6), $100,000 each year;

(e) For the airlines identified in § 225.1(a)(1):

(1) $50,000 plus $4,000 per station operated on January 1, 1972, for agreements becoming effective during 1972.

(2) $4,000 per subsidy-eligible station operated on January 1, 1973, in Class Rate VI station classifications C, D, and E, for agreements becoming effective during 1973.

(3) $4,000 per subsidy-eligible station operated on January 1, 1974, in Class Rate VI station classifications D and E, for agreements becoming effective during 1974.

(4) $4,000 per subsidy-eligible station operated on January 1, 1975, in Class VI station classification E, for agreements becoming effective on and after January 1, 1975.

[FR Doc.72-15984 Filed 9-19-72;8:51 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

PESTICIDE CHEMICAL SAFETY

Proposed Toxicology Guidelines

A. Pesticide petitioners have raised questions about the kinds of data and other information which will satisfy the toxicology requirements of the pesticide procedural and interpretative regulations. Accordingly, it has been concluded that guidelines for studies to meet such requirements should be officially published to eliminate this uncertainty.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055; 21 U.S.C. 371(a)) and 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), it is proposed that Part 180 be amended by adding the following new section to Subpart B:

§ 180.36 **Toxicology guidelines for evaluating pesticide chemical safety of residue tolerances.**

(a) The following guidelines summarize in detail for the petitioner the Agency's toxicological data requirements for pesticide petitions. To determine the safety of a pesticidal chemical to whose toxic effects man or animals are exposed when that chemical is added directly or indirectly to food, the Agency will consider all relevant factors, including:

(1) Available toxicological data reflecting experimental studies in animals and controlled studies in man.

(2) Epidemiological data on effects from general exposures to the pesticide.

(3) Estimated average daily intake of the pesticide by those whose diet normally includes foods containing such pesticides.

(4) Adequacy of the safety factor with reference to severity of toxicity obtained by dividing the quantity of the substance that produces no effect in the most sensitive laboratory animal tested by the quantity of the substance expected in the diet of man on a mg./kg. daily, body weight basis.

(b) The toxicological investigation of a substance proposed for pesticide use may be conducted as outlined in the following sections. Where strong or alarming biological effects in the test animals are observed, it may be necessary to do animal studies in addition to those specifically prescribed before any usage of the substance will be permitted. Safety evaluation studies must be done under the guidance of qualified scientists who by training and experience can plan and employ reasonable experimental procedures to adequately explore unforeseen toxicological manifestations. Nothing in this guideline shall be construed as relieving the investigator of this responsibility.

(c) The toxicological data requirements for pesticidal chemicals are dependent upon the proposed use patterns for the specific chemical. The toxicity and impact upon other organisms in the environment must also be considered in the evaluation of the chemical. As protocols for such evaluations become available, they should be included in the testing programs.

(d) Limited use of a specific chemical may modify the data requirements. In specified instances, a temporary tolerance is granted to permit experimental pesticide field trials on a limited scale in accordance with a temporary permit. In these instances, for nonnegligible residues, a progress report on the lifespan feeding studies at approximately 1 year and the reproduction studies through the first generation will suffice.

(e) The pesticide used for toxicological testing should be the same chemically characterized technical product used and produced commercially. Test diets should be analyzed at intervals to check for stability of test substances.

(f) If plant residue studies show that a significant portion of the residue is a metabolite or degradation product of the parent compound, then acute toxicity (and in some instances subacute toxicity studies) for such a product will be required.

(g) Protocols should be designed so that the data can be evaluated statistically.

GUIDELINES

A. Toxicological data for all tolerances:

1. *Acute toxicity*—a. *Oral administration.* Oral LD_{50} in at least two species of laboratory animals. A full and complete description of effects observed should be reported.

b. *Neurotoxicity.* Neurotoxicity test for cholinesterase inhibitors.

i. *Species—Chickens.* Although phosphorus compounds have been shown to produce locomotor ataxia in some animals other than chickens, the observations in hens of this species are usually more clear cut.

ii. *Procedure.* Single oral dose at LD_{50} level [1] to be administered to hens over 9 months of age and the birds observed for 21 days. If no response, re-dose and observe another 21 days. Include negative and positive controls (TOCP, 500 mg./kg. orally).

c. *Observations.* The absence of clinical neurotoxic effects in birds surviving two LD_{50} doses of the compound at an interval of 3 weeks will be accepted as evidence that the compound probably has no neurotoxic potential. Selected nervous tissue of any birds showing doubtful responses should be examined, as well as positive controls.

2. *Subacute toxicity.* Oral exposure (direct dosing or in the diet).

a. *Number of species.* At least two species, one a nonrodent.

b. *Number of animals.* At least 15 of each sex at each dosage level for rodents. For nonrodents, four of each sex per level.

c. *Duration—Ninety days.* For the nonrodent (usually dogs), the study can be extended to 6 months and histopathological examination made at the end of that period instead of 3 months. (See B.3.c. under Nonrodent studies (long-term)).

d. *Dosage.* At least three dosage levels plus a control group. One dosage level should manifest severe pharmacological effects and one level should be "no-effect".

e. *Observations.* Growth, food consumption, general appearance, signs of local and systemic toxicity, mortality, hematology, urinalysis, organ function tests (SAP, blood sugar, urea, etc.), organ weights, and gross and microscopic pathology. Tissues examined should be those described in the WHO Technical Report Series No. 426 (1969).[1] Eyes should be examined both ante and post mortem. All animals dying before termination should be examined grossly and microscopically.

i. *Rodents.* All tissues from a representative number of rodents from the highest dosage level and the controls should be examined histopathologically, as well as major organs from each of the lower dosage levels. All gross lesions should be examined.

ii. *Nonrodents.* All tissues from every nonrodent at all levels should be examined.

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[1] Atropine or PAM may be used to insure survival of sufficient hens.

[1] Guidelines for a uniform reporting of pathological examinations are being prepared and will be made available when completed.

f. *Cholinesterase inhibition.* If the test compound is an organophosphate or carbamate pesticide, measurement of cholinesterase inhibition of plasma and red cells at appropriate intervals and of brain at termination is required.

3. *Negligible residue tolerances.* The completion of the acute and subacute toxicity studies are required for negligible residue tolerances for pesticide chemicals. The "negligible residue" concept defined in 40 CFR 180.1(l) as adding to the diet an amount of pesticide chemical which will be less than 1/2000 the amount demonstrated to have no effect from at least two 90-day feeding studies cannot be construed literally in all cases. A negligible level should refer to a residue that is toxicologically insignificant and usually about 0.1 p.p.m. or less on raw agricultural commodities for human consumption.

B. Toxicological data for nonnegligible tolerances:

1. See A. (Toxicological data for all tolerances.)

2. *Carcinogenicity studies (long-term)*—a. *Species.* Usually two rodents.

b. *Selection of animals.* Weanling randombred animals. At the option of the experimenter, these animals may be derived from a normal stock colony and maintained on the test diet for their lifespan or they may be the F_{1b} progeny from a reproduction study in which the parents have been treated with the pesticide.

c. *Dosage.* At least three dosage levels plus a control; the highest dosage should elicit any specific pharmacological action the test compound might have. One dose level should show no observable differences from control animals.

d. *Duration.* Two years for rats and hamsters, 18 months for mice.

e. *Number of animals.* The groups should be large enough to assure an adequate number of survivors at the end of the study. Depending upon the strain of rodent, from 25–50 animals of each sex per dose level is suggested.

f. *Observations.* i. Growth, food consumption, general appearance, signs of local and systemic toxicity, terminal organ weights, and gross and histopathological examination of both rodent species.[1]

ii. In one species (usually the rat), clinical laboratory tests should be performed at 3, 6, 12, 18, and 24 months. These should include routine hematological measurements, qualitative urinalysis, cholinesterase activity at intervals on plasma and red cells and terminally in the brain to determine "no-effect" level (in the case of carbamate and organophosphate pesticides), alkaline phosphatase determination (other serum enzymes if indicated such as SGOT), and organic blood constituent analysis (Ca, Cl, Na, K if indicated).

3. *Nonrodent studies (long-term)*—a. *Species.* Dogs, monkeys, and swine.

b. *Route.* Orally.

c. *Duration—Six months.* This may be accomplished by extending the 90-day subacute study until biochemical studies are completed.

d. *Dosage levels.* Three test plus a control.

e. *Number of animals.* Four of each sex at each level.

f. *Observations.* See under B.2.f. i, and ii.

4. *Reproduction study (long-term)*—a. *Species.* One mammalian species, usually one of the same rodent species used in the chronic toxicity test.

b. *Dosage levels.* Two dosage levels and a control. These levels may be derived from the 90-day study and should be (1) the lowest dose that caused a minimum effect and (2) one lower dose.

c. *Three successive generations.* One litter per generation is sufficient, provided the first litter in any generation is healthy.

d. *Observations.* Fertility index, viability index, survival to day four, weaning index, lactation index, body weights, and external abnormalities.

5. *Teratogenicity studies*—a. *Species.* Rat, mouse, hamster, rabbit, or monkey. If the rat is used for the reproduction study (B.4.), a different species should be used for this study.

b. *Number of animals.* Twenty pregnant female rodents per level, 10 pregnant female nonrodents per level.

c. *Dose levels.* Three levels plus a control, with levels selected so that a "no-effect" level will be ascertained even though an effect is found at the highest level.

d. *Route of administration.* Orally.

e. *Period of dosing.* Daily through the sensitive period of organogenesis. For example, days 6 through 15 for rats, days 6 through 10 for hamsters.

f. *Method of birth.* Except for monkeys, deliver fetuses by Caesarian section 1 day prior to term.

g. *Observations.* Number and position of resorption sites, number of corpora lutea and implantation sites, fetal weights, external malformations, and skeletal anomalies after clearing and staining with Alizarin red.

6. *Metabolism studies.* Metabolism studies are required. These may be radiotracer studies. One or two species should be studied, depending upon the use and the nature of the residue on the raw agricultural commodities.

7. *Mutagenicity studies.* If data from other toxicological tests indicate a mutagenic potential, then specific tests should be made. A survey of available methods indicates they are in an early developmental stage when applied to mammals. More data have been developed from the dominant lethal test, and this might be asked for if indicated.

8. *Special studies.* a. When appropriate, additional studies based upon similar chemical structure between the test compound and those (nitrophenolics, dioxins, etc.) known to produce specific toxic effects may be in order.

b. Proof of safety to livestock may be required if the tolerance requested is for nonnegligible residues in livestock feed or from dermal application.

c. Studies may be required to demonstrate reversibility of effects found after subacute feeding.

Any omission of data or information suggested by the guidelines or substitution of other types of data or information should be accompanied by an explanation of why the material was omitted or how such substituted data adequately fulfill the requirements to demonstrate the safety of the requested clearance.

B. Due to the addition of certain sections to Subpart B and to provide for future such additions, it is proposed that the center heading immediately preceding § 180.29 be revised to read "Miscellaneous Provisions."

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Objections Clerk, Environmental Protection Agency, Room 3125, South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C. 20460, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: September 6, 1972.

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

[FR Doc.72-15935 Filed 9-19-72;8:47 am]

[1] Histopathological examination should be done on all survivors at the highest dosage level and controls and on major organs in 10 males and 10 females at the lower levels. Changes in organs at the highest dosage level should be looked for in the lower feeding levels. All gross lesions at all levels should be examined.

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Docket No. 19518]

PUBLIC INTEREST GROUPS AS CONSULTANTS TO BROADCASTERS

Proposed Reimbursement for Legitimate and Prudent Expenses; Order Extending Time for Filing Comments and Reply Comments

In the matter of reimbursement for legitimate and prudent expenses of a public interest group for a consultancy to a broadcaster in certain instances.

1. The notice of inquiry and proposed rule making in the above-entitled proceeding, was adopted June 1, 1972, and published in the FEDERAL REGISTER on June 9, 1972, 37 F.R. 11592. Dates specified for filing comments and reply comments are September 11 and October 1, 1972, respectively.

2. On September 8, 1972, requests for extension of time for filing comments and reply comments were filed by Storer Broadcasting Co. (Storer) and by Black Efforts for Soul in Television (BEST). The former requested an extension to and including September 14, 1972 and the latter to and including October 2, 1972. BEST supports its request by stating it is presently laboring under extraordinarily heavy workloads, and also that the press of end of summer schedules has set them back in work schedules. It further states that the extension is necessary to afford full and thoughtful considerations to the questions raised in this proceeding and to prepare intelligent comments.

3. We are of the view that the requested extension of time is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing comments in the above docket is extended to and including October 2, and to October 13, 1972, for the filing of reply comments.

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

Adopted: September 12, 1972.

Released: September 13, 1972.

[SEAL] WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.72-16002 Filed 9-19-72;8:55 am]

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 338]

FAIR HOUSING LENDING PRACTICES

Notice of Proposed Rule Making

On December 29, 1971, the Federal Deposit Insurance Corporation published in the FEDERAL REGISTER (36 F.R. 25167) a notice of intention to consider a proposed regulation prohibiting discrimination in violation of section 805 of the Civil Rights Act of 1968 (42 U.S.C. 3605) by insured State nonmember banks in the granting of certain residential loans. The Corporation allowed 60 days for comment on the notice. The comment period having expired and the comments received having been analyzed and evaluated, the Corporation is publishing for further comment a proposed new Part 338 of its rules and regulations.

PART 338—FAIR HOUSING LENDING PRACTICES

Sec.

338.1 Definitions.
338.2 Nondiscrimination in residential lending and other financial assistance.
338.3 Nondiscrimination in applications.
338.4 Discriminatory advertising.
338.5 Equal Housing Lender Poster.
338.6 Records of racial and ethnic data on loan applicants.
338.7 Fair Housing Officer.
338.8 Enforcement.

AUTHORITY: The provisions of this Part 338 issued under sec. 7, 74 Stat. 547; 12 U.S.C. 1817; sec. 8, 80 Stat. 1046; 12 U.S.C. 1818; sec. 9, 64 Stat. 881; 12 U.S.C. 1819; sec. 10, 80 Stat. 1053; 12 U.S.C. 1820; sec. 808 of the Civil Rights Act of 1968, 82 Stat. 84; 42 U.S.C. 3608.

§ 338.1 Definitions.

(a) "Dwelling" means any building, structure, or portion thereof, including a mobile home, which is occupied as, or designed to be occupied as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure or portion thereof.

(b) "Family" includes a single individual.

(c) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(d) "Bank" means a State-chartered insured bank not a member of the Federal Reserve System, or a subsidiary thereof.

§ 338.2 Nondiscrimination in residential lending and other financial assistance.

No bank shall deny a loan or other financial assistance rendered by the bank for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or discriminate in the fixing of the amount, interest rate, duration, application procedures, collection, or enforcement procedures, or other terms or conditions of such loan or other financial assistance because of the race, color, religion, or national origin of

(a) An applicant for any such loan or other financial assistance rendered by such bank;

(b) Any person associated with such applicant in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance;

(c) The present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given; or

(d) The present or prospective owners, lessees, tenants, or occupants of other dwellings in the vicinity of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

(e) For the purposes of paragraph (b) of this section a person associated with an applicant shall be defined as any person who actively assists an applicant in the obtaining of credit whether as principal or agent or who seeks to influence the granting of such credit. Examples include but are not limited to brokers, builders, developers, and sureties or guarantors.

§ 338.3 Nondiscrimination in applications.

No bank shall refuse or decline to allow, receive, or consider any application, request, or inquiry with respect to a loan or other financial assistance rendered by the bank for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or discriminate in the imposition of conditions upon, or in the processing of, any such application, request, or inquiry, or make statements which discourage any such application, request, or inquiry because of the race, color, religion, or national origin of any prospective borrower or other person who

(a) Makes application for any such loan or other financial assistance;

(b) Requests forms or papers to be used to make application for any such loan or other financial assistance;

(c) Inquiries about the availability of such loans or other financial assistance.

§ 338.4 Discriminatory advertising.

(a) Any bank which directly or through third parties engages in any form of advertising of loans or other financial assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling shall prominently indicate in such advertising, in a manner appropriate to the advertising media and format utilized, that the bank makes such loans or other financial assistance without regard to race, color, religion, or national origin. Written or visual advertisements relating to real estate lending services shall include a facsimile of the logotype which is annexed hereto in order to increase public recognition of the nondiscrimination requirements and guarantees of title VIII. If other logotypes are used in the advertisement, then the facsimile of the annexed logotype shall be of a size equal to the largest of the other logotypes; if no other logotypes are used, the following guidelines shall be consulted with respect to size, provided that in all instances the type should be bold display face and no smaller than 8 points.

Approximate size of advertisement	*Size of logotype in inches*
One-half page or larger	2 by 2.
One-eighth page up to one-half page	1 by 1.
4-column inches to one-eighth page	½ by ½.
Less than 4-column inches	No logotype necessary.

The provisions of this paragraph shall not apply to radio advertisements and television advertisements (other than with respect to display advertisements) of 30 seconds or less.

(b) In no case shall words, phrases, symbols, directions, forms, models, or other means be used to express, imply or suggest a discriminatory preference or policy of exclusion in violation of the provisions of title VIII of the Civil Rights Act of 1968.

§ 338.5 Equal housing lender poster.

Every insured bank engaged in extending loans or other financial assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling shall conspicuously display in the public lobby of each floor where deposits are received and in the public area of each office where such loans are made, in a manner so as to be clearly visible to the general public entering such lobby or area the equal housing lender poster required by the Corporation's statement of policy on Civil Rights Act nondiscrimination requirements in real estate loan activities of April 24, 1972. The poster shall be not less than 14 inches in height by 11 inches in width with proportionate type size and face; provided that display of the poster supplied by the Federal Deposit Insurance Corporation to insured banks to facilitate compliance with the above-mentioned statement of policy or similar posters having dimensions of at least 14 by 10 inches acquired by such banks in compliance with the statement of policy prior to the effective date of this part shall be deemed compliance with this section. A facsimile of the poster is annexed hereto.

§ 338.6 Records of racial and ethnic data on loan applicants.

(a) *Recordkeeping requirements.* (1) Each bank shall require that every written application submitted to it for the purpose of obtaining a loan or other financial assistance to be secured by a lien or other security interest in a dwelling for the purpose of purchasing, constructing, improving, repairing, or main-

taining a dwelling shall have attached thereto for each applicant a "Fair Housing Informational Statement" as prescribed in paragraph (b) of this section or, in lieu thereof, a section in the bank loan application form containing the same material as the aforesaid "Fair Housing Informational Statement." Each loan applicant shall be requested to complete one copy of Part I of the "Fair Housing Informational Statement" at the time the remainder of the application is completed. This copy shall be retained by the bank as part of the loan application for at least 2 years following the date of such application whether or not the loan is approved. If no loan is granted, the bank shall complete Part II of the "Fair Housing Informational Statement," shall provide a loan applicant with a copy if he or she so requests, and shall retain for the retention period specified above, its copy of Part II as part of the written application in the manner set forth above. The bank shall also retain for the retention period specified above any other documents obtained in connection with the application, except for documents which are the property of the applicant and which the applicant requests be returned.

(2) Each bank shall insert in every loan application which involves a lien or other security interest in property located in a Standard Metropolitan Statistical Area as designated and defined by the Executive Office of the President, Office of Management and Budget, and which has been divided into census tracts by the Bureau of the Census, Department of Commerce of the United States, the number of the census tract in which the property is located. Information on census tracts and maps is available from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

(b) *Fair Housing Informational Statement.* The text of the Fair Housing Informational Statement of the application shall be as follows:

FAIR HOUSING INFORMATIONAL STATEMENT

The Federal Government, not this bank, asks you to provide the following information for your own protection under the Civil Rights Act of 1968. You do not have to fill it out if you do not want to. You are further advised that it is against the law for this bank to use your answers to deny you a loan.

Check here and sign below if you do not want to complete this form ☐

Part I. Please check the box below which you believe best describes you:

American Indian ☐
Asian ☐
Black/Negro ☐
White/Caucasian of Spanish descent ☐
White/Caucasian not of Spanish descent ☐
Other ☐

If you have reason to believe that you have been denied a loan because of race, color, religion, or national origin, you may request a copy of this statement including Part II, and file a complaint addressed to:

Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. 20410.

or your local HUD or FHA Office, or you may take such other appropriate actions as are provided by law.

_____
Signature of applicant

Part II. (To be filled in by bank only if no loan is granted.)
(a) Date of decision _____
(b) Reasons for decision _____
_____
_____
_____

§ 338.7 Fair housing officer.

The Board of Directors of every bank engaged in the making of loans or other financial assistance for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, shall appoint, from its executive staff, a fair housing officer who shall have responsibility for overall control, supervision, and coordination of the bank's civil rights compliance programs pursuant to title VIII of the Civil Rights Act of 1968 and this part.

§ 338.8 Enforcement.

Violations of title VIII of the Civil Rights Act of 1968 and this Part are deemed by the Corporation to constitute violations of law within the meaning of section 8 of the Federal Deposit Insurance Act.

Interested persons are invited to submit written data, views and arguments to the Office of the Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, by November 1, 1972, as to whether this proposal should be adopted, rejected, or modified. All comments received will be subject to public examination. A public hearing, subsequent to the close of the comment period, will be held so that interested persons may make a presentation with respect to the proposed regulations and the comments theretofore received by the Corporation. Notice of the time, place, and nature of that hearing will be published in the FEDERAL REGISTER at or about the close of the comment period, and in any event, not less than 30 days prior to the hearing date.

By order of the Board of Directors, September 14, 1972.

FEDERAL DEPOSIT INSURANCE CORPORATION,
[SEAL] E. F. DOWNEY,
Secretary.





We Do Business in Accordance With the Federal Fair Housing Law

IT IS ILLEGAL, BECAUSE OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN, TO:

- Deny a loan for the purpose of purchasing, constructing, improving, repairing or maintaining a dwelling or
- Discriminate in fixing of the amount, interest rate, duration, application procedures or other terms or conditions of such a loan.

IF YOU BELIEVE YOU HAVE BEEN DISCRIMINATED AGAINST, YOU MAY SEND A COMPLAINT TO:

Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development, Washington, D.C. 20410.

or call your local HUD or FHA office.

[FR Doc.72-15903 Filed 9-19-72;8:50 am]

FEDERAL RESERVE SYSTEM

[12 CFR Parts 204, 213]

[Regs. D, M]

EURODOLLAR BORROWINGS

Proposed Reserve Requirements

The Board of Governors is considering amending Parts 204 and 213 to reduce reserve requirements against certain transactions usually involving so-called "Eurodollars"—deposits of U.S. dollars with banks located outside the United States, including overseas branches of U.S. banks. The proposed amendments would apply a general reserve requirement of 10 percent to liabilities of member banks upon Eurodollar borrowings from foreign banks and to foreign branch deposits of member banks that support transactions of such branches with the domestic offices of their parent banks and credits extended by such branches to U.S. residents. This reserve requirement would replace a marginal reserve requirement of 20 percent which applies to the excess of such liabilities over reserve-free bases that are provided for under current regulations. The changes would eliminate such reserve-free bases and would also eliminate a special exemption—affecting small amounts of credit to U.S. residents—that had been granted for the purpose of moderating the administrative burden on the banks in adjusting the operations of their foreign branches to a new type of reserve requirement.

The change would reduce the rate of reserve requirements to the rate that prevailed before a special increase instituted in November of 1970, and at the same time would simplify the regulations

and apply the reserve requirements equally to all member banks regardless of their past use of Eurodollar borrowings.

Normally the Board does not offer proposed changes in reserve requirement percentages for public comment (see § 262.2(e) of the Board's rules of procedure). In this case, the amendments are being proposed for comment because they involve a restructuring of the reserve requirements. To aid in the consideration by the Board of this matter, interested persons are invited to submit relevant data, views, or arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 6, 1972. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's rules regarding availability of information.

To implement its proposal, the Board proposes to amend Regulations D and M in the following respects:

§ 204.5 Reserve requirements.

* * * * *

(c) *Reserve percentages against certain deposits by foreign banking offices.* Deposits represented by promissory notes, acknowledgements of advance, due bills, or similar obligations described in § 204.1(f) to foreign offices of other banks,[8] or to institutions the time deposits of which are exempt from the rate limitations of Regulation Q pursuant to § 217.3(g) of this chapter, shall not be subject to paragraph (a) of this section or to § 204.3(a) (1) and (2); but during each week of the 4-week period beginning (_____, 1973) and during each successive 4-week (maintenance) period, a member bank shall maintain with the Reserve Bank of its district a daily average balance equal to 10 percent of the daily average amount of such deposits during the 4-week computation period ending on the Wednesday 15 days before the beginning of the maintenance period. An excess or deficiency in reserves in any week of a maintenance period under this paragraph shall be subject to § 204.3(a)(3), as if computed under § 204.3(a)(2), and deficiencies under this paragraph shall be subject to § 204.3(b).[9]

2. Section 213.7 (a) and (b) of Regulation M would be amended to read as follows:

§ 213.7 Reserves against foreign branch deposits.

(a) *Transactions with parent bank.* During each week of the 4-week period beginning (_____, 1973) and during each week of each successive 4-week (maintenance) period, a member bank having one or more foreign branches shall maintain with the Reserve Bank of its district, as a reserve against its foreign branch deposits, a daily average balance equal to 10 percent of the daily average total of

(1) Net balances due from its domestic offices to such branches, and

(2) Assets (including participations) held by such branches which were acquired from its domestic offices (other than assets representing credit extended to persons not residents of the United States)

during the 4-week computation period ending on the Wednesday 15 days before the beginning of the maintenance period.

(b) *Credit extended to U.S. residents.* During each week of the 4-week period beginning (_____, 1973) and during each week of each successive 4-week maintenance period, a member bank having one or more foreign branches shall maintain with the Reserve Bank of its district, as a reserve against its foreign branch deposits, a daily average balance equal to 10 percent of the daily average credit outstanding from such branches to U.S. residents[7] (other than assets acquired and net balances due from its domestic offices) during the 4-week computation period ending on the Wednesday 15 days before the beginning of the maintenance period: *Provided*, That this paragraph does not apply to credit extended (1) to enable the borrower to comply with the requirements of the Office of Foreign Direct Investments, Department of Commerce,[8] or (2) under binding commitments entered into before September 8, 1972.

By order of the Board of Governors, September 7, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-15923 Filed 9-19-72;8:47 am]

[8] Any banking office located outside the States of the United States and the District of Columbia of a bank organized under domestic or foreign law.

[9] The term "computation period" in § 204.3(a)(3) and (b) shall, for this purpose, be deemed to refer to each week of a maintenance period under this paragraph.

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 749]

RECORDS PRESERVATION PROGRAM

Proposed Rule Making

Notice is hereby given that the Administrator of the National Credit Union Administration, pursuant to the authority conferred by section 120, 73 Stat. 635, 12 U.S.C. 1766, and section 209, 84 Stat. 1015, 12 U.S.C. 1789, is proposing the establishment of a new Part 749 (12 CFR Part 749) as set forth below.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed regulations to the Administrator, National Credit Union Administration, Washington, D.C. 20456, to be received not later than October 24, 1972.

HERMAN NICKERSON, JR.,
Administrator.

SEPTEMBER 13, 1972.

Sec.
749.0 Scope.
749.1 Definitions.
749.2 Implementation.
749.3 Vital records to be stored.
749.4 Storage service provided by Administration.

§ 749.0 Scope.

(a) This part establishes the minimum requirements with which all federally insured credit unions shall comply in a records preservation program of off-site storage for duplicate vital records which will be used for reconstruction purposes in the event of a catastrophe. Storage of duplicate vital records above the minimums set forth below may be undertaken by any credit union.

(b) This regulation prescribes the duplicate vital records which shall be stored, the frequency of storage, and sets time limits within which insured credit unions shall comply.

§ 749.1 Definitions.

(a) "Catastrophe" means any act which incapacitates a credit union's ability to operate because vital records have been destroyed or made useless, making it impossible to carry on operations.

(b) "Credit Union" means a Federal or State credit union whose members' shares and deposits are insured by the Administrator of the National Credit Union Administration.

(c) "EDP" means an electronic data processing system which is used to maintain the members' share and loan ledgers.

(d) "Hard copy" means any duplicate records other than those which are on microfilm or magnetic tape.

(e) "Magnetic tape" means a thin plastic tape mounted on reels which receives and stores magnetic impressions of information.

(f) "Microfilm" means a film containing photographs of data from vital records.

(g) "Sufficiently removed" means an off-site location far enough from the credit union to avoid a simultaneous loss of both the credit union records and the records it stores at the Vital Records Center from a single catastrophe such as a flood, hurricane, earthquake, etc.

(h) "Quarterly" means any 3-month period.

(i) "Reconstruction" means rebuilding the credit union's books and records utilizing information from duplicate

[7] (a) Any individual residing (at the time the credit is extended) in any State of the United States or the District of Columbia; (b) any corporation, partnership, association, or other entity organized therein (domestic corporation); and (c) any branch or office located therein of any other entity wherever organized. Credit extended to a foreign branch, office, subsidiary, affiliate, or other foreign establishment) foreign affiliate) controlled by one or more such domestic corporations will not be deemed to be credit extended to a U.S. resident if the proceeds will be used in its foreign business or that of other foreign affiliates of the controlling domestic corporation(s).

[8] The branch may in good faith rely on the borrower's certification that the funds will be so used.

vital records stored in an off-site location.

(j) "Records preservation program" means a program for identifying vital records, storing duplicate copies thereof in an off-site facility, and making them available for reconstruction in the event of a catastrophe.

(k) "Vital Records Center" is the off-site location where the credit union's duplicate vital records are stored.

(l) "Record date" means the effective date of the vital records that will be stored.

§ 749.2 Implementation.

(a) The treasurer of the credit union, subject to the general direction and control of the board of directors, is responsible for developing, maintaining, and operating an off-site records preservation program which equals or exceeds the requirements of this regulation.

(b) Any storage center may be selected as a Vital Records Center provided the center is sufficiently removed from the location of the credit union.

(c) The records preservation program must be developed within 4 months of the effective date of this regulation or 4 months after the effective date of the credit union's share insurance certificate, whichever is later. The treasurer shall have the initial set of duplicate vital records at the Vital Records Center not later than 6 months from the effective date of this regulation, or not later than 6 months after the effective date of the credit union's share insurance certificate, whichever is later. Thereafter, the treasurer of a credit union using EDP facilities shall prepare and send duplicate vital records to the Vital Records Center on a monthly basis to be mailed no later than the 15th day of the following month. The treasurer of each credit union which is not using EDP facilities to maintain its members' share and/or deposit and loan balances shall prepare and send duplicate vital records to the Vital Records Center on a quarterly basis to be mailed by the 15th day of the following month.

(d) The treasurer shall maintain a record, to be known as the records preservation log, of the duplicate vital records sent to the Vital Records Center. The log shall contain a description of the records sent to the center, the date they were sent, and the address of the center. The treasurer should sign and date the log each time the records have been sent to the center. The board of directors shall review this log at least quarterly.

§ 749.3 Vital records to be stored.

Duplicates of at least the records described in this section will be prepared and sent to the Vital Records Center in accordance with the schedule described in this regulation. Duplicates of the most recent monthend records will be used to commence the program. A magnetic tape or microfilm which contains at least the same information as the vital records may be substituted for any of the following records:

(a) A listing of the members' share and/or deposit and loan balances as of the record date. This list shall be handwritten or typewritten and in columnar form.

(1) Member's Account Number: That is, the number assigned by the credit union to the account. If the credit union uses another number (payroll number, badge number, etc.) for day-to-day operations, the credit union may choose which number to be used.

(2) Share and/or Deposit Balance: This will include balances of regular and special share and deposit accounts, and balances of installment payments on U.S. bonds.

(3) Loan Balance: If more than one loan for a borrower is outstanding, each balance shall be listed separately.

(i) Credit unions are encouraged to also included in columnar form the account name and address of all owners, trustees, and/or beneficiaries, etc. Because of the possible workload involved, listing of account names and addresses is optional.

(ii) Instead of a handwritten or typewritten listing of members' share and/or deposit and loan balances, an adding machine or accounting machine tape, showing the balances, identified by account numbers, may be stored.

(b) A financial and statistical report as of the record date. The report shall include at least a list of all asset and liability accounts as of the record date. The reverse side of the form will be used to record significant data about the credit union. This data will include the names and addresses of the credit union's banks, location of safe-deposit boxes and other places where records are stored, a detailed listing of all investments, breakdown of pertinent other asset accounts, and a list of insurance policies such as fire, casualty, life savings and borrowers protection, surety bond, etc., with the names and addresses of the insurers.

(c) Credit Unions Utilizing EDP—An insured credit union which maintains its members' share and/or deposit and loan ledgers on a data processing system, if the computer center is sufficiently removed from the credit union, shall be deemed to have met the requirements of this regulation regarding the storage of members' share and/or deposit and loan balances.

§ 749.4 Storage service provided by Administration.

In order to comply with this regulation, insured credit unions may choose to participate in the Administration's records preservation program at no cost for storage. To participate in this program, insured credit unions shall follow the instructions outlined below:

(a) Credit unions may store hard copy, magnetic tape, and microfilm records.

(b) Credit unions shall use preprinted envelopes or labels which are provided by the storage facility each time records are received for storage.

(c) Credit unions shall fill out all required information on the appropriate mailing envelope or label. Federal credit unions shall furnish charter number; insured State credit unions shall furnish insurance certificate number.

(d) Credit unions which desire to store records permanently shall so note (in large red letters) on the envelope or mailing label provided. If records are not marked "Permanent," except for magnetic tape, they will be destroyed when replacement records are received. Unmarked magnetic tape will be returned to said credit union annually for reuse.

(e) All duplicate records shall be packaged securely for mailing.

(f) Specific information for:

(1) *Hard copy records.* Material shall be no larger than 8½" x 11" so that envelope will fit into the designated storage drawer. If material is too bulky to fit into the envelope, the material should be wrapped securely with the envelope, address side up, placed on top of the package and tied for mailing. Envelopes will not be opened by the storage center.

(2) *Microfilm.* Place the microfilm inside the container in which the film is returned after developing. Microfilm will be filed in a storage tray with only the top visible; therefore, affix to the top of the container the "Microfilm or Magnetic Tape Records" label furnished. Fold the label where indicated and affix to the container so that it is positioned on two sides.

(3) *Magnetic tape.* Prepare in same manner as microfilm, affixing label without folding.

(4) *Mailing.* Mail directly to the Administration's storage location at:

Underground Vaults & Storage, Inc., Post Office Box 1723, Huchinson, KS 67501.

(g) Release of records to credit unions—in the event of a local emergency, records will be released directly from the storage center to the credit union by written request signed by any one of the authorized officials whose signature appears on the envelope or mailing label.

(h) In the event of a national emergency (only) the authorized official's written request for release of records should be addressed to one of the following sources in the order of priority listed:

(1) Regional Office of the National Credit Union Administration.

(2) Washington Office of the National Credit Union Administration.

(3) Underground Vaults & Storage, Inc., Post Office Box 1723, Huchinson, KS 67501.

[FR Doc.72-15939 Filed 9-19-72;8:48 am]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

NATIONAL INDIAN TRAINING CENTER

Notice of Name Change

SEPTEMBER 12, 1972.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2 (32 F.R. 13938). The name of the Instructional Service Center is changed to the National Indian Affairs by 230 DM 2 (32 F.R. 13938). mains Post Office Box 66, Brigham City, UT 84302. The National Indian Training Center develops training courses and provides training to Indians and Government employees working with Indian people.

JOHN O. CROW,
Deputy Commissioner.

[FR Doc.72-15952 Filed 9-19-72;8:48 am]

National Park Service

[Order No. 1]

ADMINISTRATIVE OFFICER, ARIZONA ARCHEOLOGICAL CENTER, ARIZ.

Delegation of Authority Regarding Execution of Purchase Orders for Supplies, Equipment, or Services

SECTION 1. *Administrative Officer.* Arizona Archeological Center, Tucson, Ariz., may execute, approve, and administer contracts in amounts less than $2,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to the availability of appropriations. This authority may be exercised by the Administrative Officer, in behalf of any unit under the administration of the Arizona Archeological Center.

SEC. 2. *Redelegation.* The authority delegated in this Order No. 1 may not be redelegated.

(National Park Service Order No. 63 (36 F.R. 5629) dated March 25, 1971)

Dated: August 3, 1972.

DOUGLAS H. SCOVILL,
Acting Chief,
Arizona Archeological Center.

[FR Doc.72-15937 Filed 9-19-72;8:46 am]

INDIANA DUNES NATIONAL LAKESHORE, IND.

Establishment

Notice is given, pursuant to section 3 of the Act of November 5, 1966 (80 Stat. 1309; 16 U.S.C. 460u), that there has been acquired within the boundaries of the Indiana Dunes National Lakeshore an acreage which is efficiently administrable for the purposes of said Act and, therefore, the Lakeshore is hereby established.

As established, the Lakeshore comprises the area within the boundaries delineated on map entitled "A Proposed Indiana Dunes National Lakeshore," dated September 1966, and bearing the number LNPNE-1008-ID, which map is on file in the Office of the Superintendent of the Lakeshore, and in the Offices of the National Park Service, Department of the Interior, Washington, D.C.

Dated: September 8, 1972.

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

[FR Doc.72-15933 Filed 9-19-72;8:46 am]

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

[Amdt. 2]

SALES OF CERTAIN COMMODITIES

Monthly Sales List

The CCC Monthly Sales List for the fiscal year ending June 30, 1973, published in 37 F.R. 13352 is amended as follows:

1. The provisions of section 26 entitled "Rice, rough—export as milled or brown" are deleted.

2. Section 32 entitled "Peanuts, shelled or farmers stock—restricted use sales" is amended by the insertion of a third sales item which reads as follows:

Farmers Stock: Segregation 1 may be purchased and milled to produce U.S. No. 1 or better grade shelled peanuts, which may be exported. The balance of the kernels including any graded peanuts not exported must be crushed domestically. Segregation 2 and 3 peanuts may be purchased for domestic crushing only.

3. The first sentence of section 44 entitled "Linseed Oil—unrestricted use sales" is revised to read as follows: Market price but not less than $0.095 per pound, basis intanks Minneapolis.

4. The first sentence of section 46 entitled "Flaxseed—unrestricted use sales (bulk-storable-basis grade 1 in-store Minneapolis and Duluth/Superior)" is revised to read as follows: Market price but not less than $2.80 per bushel plus transit value.

5. Section 25 entitled "Rice, rough—unrestricted use sales—FOB warehouse" published in 37 F.R. 13354, as amended in 37 F.R. 15887 is revised to read as follows:

The minimum price is the market price but not less than the formula price. The formula price is the 1972 loan rate plus 5 percent plus the monthly markup shown in this section. Basis of sale is f.o.b. warehouse as is, or at buyers option, basis outturn weights and grades with privilege of rejecting individual cars which are more than one grade below the listed grade or contain more than 1 percent smut in excess of the listed percentage.

MONTHLY MARKUPS—CENTS PER CWT.

1972		*1973*	
September	18	January	38
October	23	February	43
November	28	March	48
December	33	April	54
		May	59
		June	59

Effective date. 2:30 p.m., e.d.t., August 31, 1972.

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

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

[FR Doc. 72-15959 Filed 9-19-72;8:49 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

30-POUND MF (MACHINE FINISH) KRAFT WRAPPING PAPER FROM CANADA

Determination of Sales at Less Than Fair Value

SEPTEMBER 15, 1972.

Information was received on June 3, 1971, that 30-pound MF (Machine Finish) kraft wrapping paper from Canada was being sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act").

A "Withholding of Appraisement Notice" issued by the Acting Commissioner of Customs was published in the FEDERAL REGISTER of June 17, 1972.

I hereby determine that for the reasons stated below, 30-pound MF (Machine Finish) kraft wrapping paper from Canada is being, or is likely to be, sold at less than fair value within the meaning of section 201(a) of the Act (19 U.S.C. 160(a)).

Statement of reasons on which this determination is based. Analysis of information from all sources revealed that the proper basis of comparison for fair value purposes is between purchase price and the adjusted home market price of such or similar merchandise.

Purchase price was calculated by deducting freight, brokerage fees, U.S. Customs duties, and where appropriate, cash discounts from the C & F duty-paid price.

Home market price was based on the delivered-customer-premises price, with a deduction for inland freight. Adjustments were made for commissions and selling expenses, and discounts, where appropriate.

Using the above criteria, purchase price was found to be lower than the adjusted home market price of such or similar merchandise.

The U.S. Tariff Commission is being advised of this determination.

This determination is being published pursuant to section 201(c) of the Act (19 U.S.C. 160(c)).

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

SEPTEMBER 15, 1972.

[FR Doc.72-16134 Filed 9-19-72;9:38 am]

DEPARTMENT OF COMMERCE

Bureau of International Commerce

[File 28(71)-23]

LEONARD DREYER AND DEK ELECTRONICS LTD.

Order Terminating Related Party Status

In the matter of Leonard Dreyer, 1 Shaar Hagai Street, Haifa, Israel, and DEK Electronics Ltd., 18 Hillel Street, Haifa, Israel, File: 28(71)-23.

On August 9, 1972, effective August 15, 1972, an order was issued against Jacob Kelmer, Haifa, Israel, respondent, denying U.S. export privileges for an indefinite period (37 F.R. 16511). In said order a determination was made that the above-mentioned Leonard Dreyer and DEK Electronics Ltd., were related parties to the respondent Kelmer and the restrictions of said order were made applicable to said related parties.

Satisfactory evidence has now been presented to show that the affiliation and connection of Kelmer with Dreyer and DEK, on the basis of which the related party action was taken, has now been severed.

Accordingly, it is hereby ordered that the status of Leonard Dreyer and DEK Electronics Ltd., as related parties to Jacob Kelmer be and the same is hereby terminated and the export privileges of Dreyer and DEK are hereby restored.

Dated: September 14, 1972.

RAUER H. MEYER,
Director, Office of Export Control.

[FR Doc.72-15983 Filed 9-19-72;8:51 am]

Office of the Secretary

[Dept. Organization Order 25-5B, Amdt. 2]

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Organization and Functions

This order effective August 31, 1972, further amends the material appearing at 37 F.R. 6411 of March 19, 1972, and 37 F.R. 14421 of July 20, 1972.

Department Organization Order 25-5B, effective March 10, 1972, is hereby further amended as follows:

1. In SEC. 15. *National Environmental Satellite Service*, paragraph .03 is revised as follows, and a new paragraph .05 is added.

.03 The Office of Systems Engineering shall provide conceptual and detailed engineering to implement new or modified environmental satellite systems. It shall conduct design studies; specify, procure, install, and check out ground equipment required for the environmental satellite systems; modify existing hardware to accommodate spacecraft changes; and originate development of new equipment when required.

.05 The Office of Systems Integration shall conduct definition studies, provide overall planning, arrange for the development of major elements, and coordinate the integration and check out the environmental satellite system. It shall coordinate the efforts of other NESS offices, other NOAA services, other agencies, and industrial and other groups for the establishment of these capabilities; establish system objectives, performance, cost criteria, and interface standards; and provide assessments of system performance and requirements for new system capabilities.

2. The organization chart of June 12, 1972, attached as Exhibit 1 to Department Organization Order 25-5B, is superseded by the organization chart attached to this amendment. A copy of the organization chart is on file with the original of this document in the Office of the Federal Register.

GUY W. CHAMBERLIN, JR.,
Acting Assistant Secretary for Administration.

[FR Doc.72-15955 Filed 9-19-72;8:48 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[DESI 11836; Docket No. FDC-D-219; NDA 11-836, etc.]

ANTIDEPRESSANT DRUGS

Amitriptyline Hydrochloride, Imipramine Hydrochloride; Amendment and Followup Notice

In the FEDERAL REGISTER of August 26, 1970 (35 F.R. 13608), the Food and Drug Administration announced its conclusions pursuant to evaluation of reports received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, concerning the following drugs:

1. Injection Elavil HCl, containing 10 milligrams amitriptyline hydrochloride per milliliter (NDA 12-704), and

2. Elavil HCl Film Coated Tablets, containing 10 milligrams, 25 milligrams, or 50 milligrams amitriptyline hydrochloride per tablet (NDA 12-703); marketed by Merck Sharp and Dohme, Division of Merck and Co., Inc., West Point, Pa. 19486.

3. Tofranil Ampuls, containing 25 milligrams imipramine hydrochloride per 2 milliliters (NDA 11-838), and

4. Tofranil Tablets, containing 10 milligrams or 25 milligrams imipramine hydrochloride per tablet (NDA 11-836); marketed by Geigy Pharmaceuticals, Division of Ciba-Geigy Corp., Saw Mill Road, Ardsley, N.Y. 10502.

For all of the listed drugs, that announcement required, among other things, that complete updating information be provided with respect to previously approved new drug applications, and that full new drug applications be submitted by other persons who distribute or intend to distribute such drug.

Upon further consideration, the Commissioner of Food and Drugs concludes that abbreviated original new drug applications, containing full manufacturing information, will be accepted. Therefore, new applications should meet the conditions specified in § 130.4(f) (1), (2), and (3) (21 CFR 130.4) except that full information with respect to items 7 and 8 of Form FD-356H is required. Such applications should include adequate data to assure the biologic availability of the drug in the formulation which is proposed for marketing.

With respect to previously approved new drug applications, clinical trials which have established effectiveness of the drug may also serve to establish the bioavailability of the drug if such trials were conducted on the currently marketed formulation.

The FEDERAL REGISTER announcement of August 26, 1970 (35 F.R. 13608), stated that imipramine hydrochloride was regarded as effective, possibly effective, and as lacking substantial evidence of effectiveness for its various labeled indications. The possibly effective indications: For senile depression and depression associated with organic lesions (cerebral arteriosclerosis, parkinsonism); and for the depression associated with other psychiatric disorders (schizophrenia, alcoholism, mental deficiency), have been reclassified as lacking substantial evidence of effectiveness in that no new evidence of effectiveness for these indications has been submitted pursuant to the notice of August 26, 1970.

Geigy Pharmaceuticals, Division of Ciba-Geigy Corp., the holder of the only approved new drug applications for imipramine hydrochloride ampuls and tablets, supplemented the applications to delete the possibly effective indications from the drug's labeling.

Any such preparation on the market with labeling bearing indications for which substantial evidence of effectiveness is lacking may be subject to regulatory proceedings.

The possibly effective indications for amitriptyline hydrochloride injection and tablets continue to be under review and

will be the subject of another announcement.

This notice is issued pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–53, as amended; 21 U.S.C. 352, 355) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 2.120).

Dated: September 13, 1972.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.72–15934 Filed 9–19–72;8:47 am]

Office of the Secretary

ADVISORY COMMITTEE ON OLDER AMERICANS

Committee Meeting Announcement

The Advisory Committee on Older Americans was established by the Older Americans Act of 1965 for the purpose of advising the Secretary of Health, Education, and Welfare on matters bearing on his responsibilities under this Act and related activities of his Department.

The committee will hold a regular meeting on September 22, 9 a.m. to 4 p.m., HEW North Building, Room 3173, 330 Independence Avenue SW., Washington, DC. The committee will review the status of the pending Older Americans Act amendments, the effect of the 20 percent Social Security increase on eligibility for other Federal benefits, the training of physicians and other medical personnel in geriatric care, and the effectiveness of communication and management channels for implementation of the Older Americans Act. Meeting open to public observation.

Dated: September 12, 1972.

CLEONICE TAVANI,
Staff Director.

[FR Doc.72–15995 Filed 9–19–72;8:55 am]

ADVISORY COMMITTEE ON OLDER AMERICANS

Health Subcommittee Meeting Announcement

The Advisory Committee on Older Americans was established by the Older Americans Act of 1965 for the purpose of advising the Secretary of Health, Education, and Welfare on matters bearing on his responsibilities under this Act and related activities of his Department.

The Health subcommittee of the committee will meet on September 21, 9 a.m. to 4 p.m., HEW North Building, Room 3627, 330 Independence Avenue SW., Washington, DC. Representatives of several medical organizations and various HEW officers will present their views on the preparation needed for medical personnel, especially physicians, for care of the elderly. Also to be discussed is the nature and extent of Federal aid for this purpose. Meeting open to public observation.

Dated: September 12, 1972.

CLEONICE TAVANI,
Staff Director.

[FR Doc.72–15994 Filed 9–19–72;8:55 am]

GRANTS ADMINISTRATION ADVISORY COMMITTEE

Notice of Advisory Subcommittee Meeting

A Subcommittee of the Grants Administration Advisory Committee, which advises the Secretary on matters relating to administrative and fiscal policies for grants administered by the Department, will meet on September 21, 1972, in Suite 301, 1150 17th Street NW., Washington, DC. The session will begin at 9:30 a.m. and is open to the public. The agenda covers discussion on financial reporting and other aspects of the administration of health programs. A roster of committee members may be obtained from Dr. Ernest M. Allen, Deputy Assistant Secretary for Grant Administration Policy, Department of Health, Education, and Welfare, 330 Independence Avenue SW., Washington, DC 20201.

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

MATTHIAS LASKER,
Acting Deputy Assistant Secretary for Grant Administration Policy, Executive Secretary, Grants Administration Advisory Committee.

[FR Doc.72–15997 Filed 9–19–72;8:55 am]

HEAD START NATIONAL ADVISORY COMMITTEE

Notice of Sub-Committee Meeting

There will be a meeting of the Program Review Sub-Committee of the Head Start National Advisory Committee, on Monday and Tuesday, September 25th and 26th, 1972. The meeting will be held at the Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD, from 9 a.m. until 4:30 p.m., and is open to the public. The purpose of the Program Review Sub-Committee is to advise the Director of Project Head Start on matters and policies affecting the operations of Head Start programs. The upcoming meeting will focus on the review of proposed performance standards for local Head Start programs.

Dated: September 14, 1972.

CLEMENTINE BROWN,
Acting Executive Secretary.

[FR Doc.72–15996 Filed 9–19–72;8:55 am]

Social and Rehabilitation Service

MEDICAL ASSISTANCE ADVISORY COMMITTEE

Notice of Meeting

The Medical Assistance Advisory Committee will hold a regular meeting on Friday, September 22 and Saturday, September 23, 1972, in Room 5169, North Building, 330 Independence Avenue SW., Washington, DC. The Committee will consider a variety of topics related to the medicaid program and health services for the poor, including providers of care under the medicaid program; early and periodic screening, diagnosis, and treatment of children; consumer affairs; and medical care for the elderly and chronically ill. The meeting is open to the public.

The Council was created by section 1906 of the Social Security Act and serves to advise the Secretary of Health, Education, and Welfare on the administration of the title XIX program (medicaid) and related matters.

BARNEY SELLERS,
Staff Director.

SEPTEMBER 7, 1972.

[FR Doc.72–16022 Filed 9–19–72;8:53 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

[Docket No. N–72–115]

OCEAN SHORES DEVELOPMENT CORP. ET AL.

Notice of Hearing

Notice is hereby given that:

1. Ocean Shores Development Corp., its officers and agents, hereinafter referred to as "Respondent" being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Public Law 90–448) 15 U.S.C. 1701 et seq.), received a notice of proceedings and opportunity for Hearing dated August 3, 1972, which was sent to the developer pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45 (b)(1) informing the developer of information obtained by the Office of Interstate Land Sales Registration showing that a change had occurred which affected material facts in the developer's statement of record for Ocean Shores and the failure of the developer to amend the pertinent sections of the statement of record and property report.

2. The Respondent filed an answer which was received August 22, 1972, in answer to the allegations of the notice of proceedings and opportunity for a hearing.

3. In said answer the Respondent requested a hearing on the allegations contained in the notice of proceedings and opportunity for a hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(b): *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the notice of proceedings and opportunity for hearing will be held before David Knight in Room 9230, Department of HUD Building, 451 Seventh Street SW., Washington, DC, on November 6, 1972, at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the OILSR Docket Clerk, HUD Building, Room 9258, Washington, D.C. 20410, on or before October 31, 1972.

5. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceeding shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein identified shall be issued pursuant to 24 CFR 1710.45(b)(1).

This notice shall be served upon the respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.72-16018 Filed 9-19-72;8:53 am]

[Docket No. N-72-114]

SANGRE DE CRISTO DEVELOPMENT CO., INC. ET AL.

Notice of Hearing

In the matter of Colonias de Santa Fe.
Notice is hereby given that:

1. Sangre de Cristo Development Co., its officers and agents, hereinafter referred to as "Respondent" being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Public Law 90-448) (15 U.S.C. 1701 et seq.), received a notice of proceedings and opportunity for hearing dated August 11, 1972, which was sent to the developer pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) informing the developer of information obtained by the Office of Interstate Land Sales Registration showing that a change had occurred which affected material facts in the developer's statement of record for Colonias de Santa Fe and the failure of the developer to amend the pertinent sections of the statement of record and property report.

2. The Respondent filed an answer on August 29, 1972, in answer to the allegations of the notice of proceedings and opportunity for a hearing.

3. In said answer the Respondent requested a hearing on the allegations contained in the notice of proceedings and opportunity for a hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(b): *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the notice of proceedings and opportunity for hearing will be held before David Knight in Room 9230, Department of HUD Building, 451 Seventh Street SW., Washington, DC, on October 30, 1972, at 10 a.m.

The following time and procedure is applicable to such hearing:

All affidavits and a list of all witnesses are requested to be filed with OILSR Docket Clerk, HUD Building, Room 9258, Washington, D.C. 20410, on or before October 23, 1972.

5. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.72-16017 Filed 9-19-72;8:53 am]

[Docket No. N-72-116; Administrative Division File No. 72-5]

SKYLINE LAKES ET AL.

Notice of Hearing

Notice is hereby given that:

1. Price-Radin Associates, Inc./First American Land Corp., Skyline Associates, Inc., their officers and agents, hereinafter referred to as "Respondent" being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Public Law 90-448) 15 U.S.C. 1701 et seq.), received a notice of proceedings and opportunity for hearing dated August 11, 1972, which was sent to the developer pursuant to 15 U.S.C. 1706(d) and 24 CFR 1710.45(b)(1) informing the developer of information obtained by the Office of Interstate Land Sales Registration showing that a change had occurred which affected material facts in the developer's statement of record for Skyline Lakes and the failure of the developer to amend the pertinent sections of the statement of record and property report.

2. The Respondent filed an answer which was received August 31, 1972, in answer to the allegations of the notice of proceedings and opportunity for a hearing.

3. In said answer the Respondent requested a hearing on the allegations contained in the notice of proceedings and opportunity for a hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(b): *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the notice of proceedings and opportunity for hearing will be held before David Knight in Room 9230, Department of HUD Building, 451 Seventh Street SW., Washington, D.C., on October 16, 1972, at 10 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the OILSR Docket Clerk, HUD Building, Room 9258, Washington, D.C. 20410, on or before October 9, 1972.

5. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceeding shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

By the Secretary.

GEORGE K. BERNSTEIN,
Interstate Land Sales Administrator.

[FR Doc.72-16019 Filed 9-19-72;8:53 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Docket No. RST-1, Waiver Petitions Nos. 4 and 5, Notice No. 1]

WELLSVILLE, ADDISON AND GALETON RAILROAD CORP. AND NORWOOD & ST. LAWRENCE RAILROAD CO.

Petitions Regarding Track Safety Standards; Notice of Hearing

SEPTEMBER 15, 1972.

The Wellsville, Addison and Galeton Railroad Corp. and the Norwood & St. Lawrence Railroad Co. have petitioned the Federal Railroad Administration for an exemption and extension of time in which to comply with certain requirements of the FRA Track Safety Standards (49 CFR Part 213) published in the FEDERAL REGISTER on October 20, 1971 (36 F.R. 20336).

The Wellsville, Addison and Galeton Railroad Corp. (Waiver Petition No. 4) seeks an exemption from the track safety standards with respect to 37 miles of track running from Wellsville, N.Y., to Galeton, Pa.; and an extension of 18 months from October 1972 to comply with the track safety standards with respect to track running from Galeton, Pa., to its connection with the Penn Central at Ansonia, Pa., and to Elkland, Pa.

The Norwood & St. Lawrence Railroad Co. (Waiver Petition No. 5) request an extension of time in which to comply with all of the FRA Track Safety Standards (49 CFR Part 213).

The Railroad Safety Board has voted that a public hearing be held before

entering its decision in these proceedings. Accordingly, a public hearing is hereby set for 10 a.m. on October 11, 1972, Rooms 5334 and 5336, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The hearing will be an informal one, and will be conducted in accordance with Rule 31 of the FRA rule making procedures (49 CFR 211.31), by a representative designated by the Board. The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The representative of the Board will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary, for the conduct of the hearing will be announced at the hearing.

Interested persons may also participate in these proceedings by submitting written data, views, or comments. Communications should identify the docket, waiver, and notice numbers, and should be submitted to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590. Communications received by October 10, 1972, will be considered before the Board acts on these petitions. Comments received after that date will be considered so far as practicable.

These petitions and all comments received will be available for examination by interested persons. The dockets may be examined during regular business hours in Room 5428, Nassif Building, 400 Seventh Street SW., Washington, DC.

This notice is issued under the authority of the Federal Railroad Safety Act of 1970 (84 Stat. 971 et seq.; 45 U.S.C. 421 et seq.) and § 1.49(n) of the regulation of the Office of the Secretary of Transportation (49 CFR 1.49(n)).

JOHN E. ROURKE,
Chairman,
Railroad Safety Board.

[FR Doc.72-15944 Filed 9-19-72;8:47 am]

ATOMIC ENERGY COMMISSION

[Dockets Nos. 50-317, 50-318]

BALTIMORE GAS & ELECTRIC CO.

Notice of Hearing on a Facility Operating License

In the matter of Baltimore Gas & Electric Co. (Calvert Cliffs Nuclear Power Plant Units Nos. 1 and 2).

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," and Part 2, rules of practice, notice is hereby given that a hearing will be held at a time and place to be set in the future by an Atomic Safety and Licensing Board, in or in the vicinity of Calvert County, Md., to consider the application filed under section 104b of the Act by the Baltimore Gas & Electric Co. (applicant) for facility operating licenses which would authorize the operation of the pressurized water reactors (facility) identified as Calvert Cliffs Nuclear Power Plant Units Nos. 1 and 2, at steady-state power levels up to a maximum of 2,570 megawatts thermal each, at the applicant's site in Calvert County, Md.

The hearing will be conducted by an Atomic Safety and Licensing Board (Board) designated by the Atomic Energy Commission (Commission), consisting of Dr. Dale F. Babcock, Dr. John R. Lyman, and Charles A. Haskins, Esq., Chairman. Dr. Forrest J. Remick has been designated as a technically qualified alternate, and Robert M. Lazo, Esq., has been designated as an alternate qualified in the conduct of administrative proceedings.

Construction of the facility was authorized by Provisional Construction Permits Nos. CPPR-63 and CPPR-64 issued by the Commission on July 7, 1969, following a public hearing.

A notice of consideration of issuance of an operating license for the facility was published by the Commission on March 25, 1972 (37 F.R. 6222). The notice provided that, within 30 days from the date of publication, any person whose interest may be affected by the issuance of a license could file a petition for leave to intervene in accordance with the requirements of 10 CFR Part 2, rules of practice. A petition for leave to intervene was thereafter filed by Chesapeake Environmental Protection Association, Inc. (Association). Answers to the petition were filed by the applicant and by the Atomic Energy Commission's regulatory staff.

As set forth in a memorandum and order on this matter dated September 13, 1972, the Commission has determined that a public hearing will be held and that the Association should be admitted as a party to the proceeding.

As to the matters to be considered in the ensuing proceeding, the Commission's memorandum and order provided that the issue for hearing consideration will be the matter referred to in paragraph C5 of the petition, as follows:

> Whether, in view of the cooling water discharge velocity of the plant, and the increased siltation and effects therefrom in Chesapeake Bay, if any, the proposed licenses should be granted, denied, or appropriately conditioned to protect environmental values.

A prehearing conference will be held by the Board, at a date and place to be set by it, to consider pertinent matters in accordance with the Commission's rules of practice, 10 CFR Part 2, including section 11 of Appendix A. The date and place of the hearing will be set by the Board at or after the prehearing conference. Notices as to the dates and places of the prehearing conference and the hearing will be published in the FEDERAL REGISTER.

As part of the prehearing procedure, the Association may file with the Licensing Board an amended petition describing with greater particularity the contentions listed as paragraphs C3, C4, and C6 of its petition. Any such amended contention which, in the judgment of the Licensing Board, meets the requirement of 10 CFR 2.714 will also be considered as a hearing issue in the proceeding.

Depending on the resolution of the issue specified above and any additional issue which may be specified by the Licensing Board, authorization for issuance of the license may be granted or denied, or the license may be authorized as appropriately conditioned. An operating license would be issued only after appropriate findings are made by the Director of Regulation on the matters set forth below which are not embraced by the Board's decision (and upon compliance with the applicable provisions of Appendix D to 10 CFR Part 50, dealt with hereinafter):

1. Whether construction of the facility has been substantially completed in conformity with the construction permit and the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

2. Whether the facility will operate in conformity with the application, as amended, the provisions of the Act, and the rules and regulations of the Commission.

3. Whether there is reasonable assurance (i) that the activities authorized by the operating license can be conducted without endangering the health and safety of the public, and (ii) that such activities will be conducted in compliance with the regulations of the Commission.

4. Whether the applicant is technically and financially qualified to engage in the activities authorized by the operating license in accordance with the regulations of the Commission.

5. Whether the applicable provisions of 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements," of the Commission's regulations have been satisfied.

6. Whether the issuance of the license will be inimical to the common defense and security or to the health and safety of the public.

The Commission has issued regulations for the implementation in its licensing procedures of the National Environmental Policy Act of 1969 (NEPA), Appendix D to 10 CFR Part 50. The instant proceeding is covered by section C said Appendix D, which sets forth procedures applicable to review of environmental considerations for production and utilization facilities for which construction permits were issued prior to January 1, 1970. As provided in said section C, the provisions of sections A.10 and A.11 of said Appendix D will apply to the extent pertinent.

The application for the facility operating licenses and other documents pertinent to the matters under consideration, including the transcripts of the prehearing conference and of the hearing, have or will be placed in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, where

they will be available for inspection by members of the public. Copies of those documents will also be made available at the Calvert County Courthouse, Route 2, Prince Frederick County, Md., for inspection by members of the public. Copies of the applicant's supplemental environmental report dated November 8, 1971, the Commission's draft detailed statement of environmental considerations pursuant to 10 CFR Part 50, the report of the Advisory Committee on reactor safeguards on the application for a facility operating license for the Calvert Cliffs facility; the Commission's final detailed statement of environmental considerations pursuant to 10 CFR Part 50, Appendix D; the safety evaluation prepared by the Division of Reactor Licensing; and the proposed facility operating licenses, when available and to the extent of supply, may be obtained by request to the Director of the Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Any person who wishes to make an oral or written statement in this proceeding setting forth his position on the issues specified, but who has not filed either a petition for leave to intervene or a request for a hearing as noted above, may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715 of the Commission's rules of practice. Limited appearances will be permitted at the time of the hearing in the discretion of the Board, within such limits and on such conditions as may be fixed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. A person permitted to make a limited appearance does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of the hearing as specified in the issues set out above. A member of the public does not have the right to participate unless he has been granted the right to intervene as a party or the right of limited appearance.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 of the Commission's rules of practice, must be filed by the parties to the proceeding (other than the regulatory staff) not later than twenty (20) days from the date of publication of this notice in the FEDERAL REGISTER. Papers required to be filed in this proceeding may be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Branch, or may be filed by delivery to the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708 of the Commission's rules of practice, an original and 20 copies of each such paper with the Commission.

With respect to this proceeding, the Commission has delegated to the Atomic Safety and Licensing Appeal Board the authority and the review function which would otherwise be exercised and performed by the Commission. The Commission has established the Appeal Board pursuant to 10 CFR 2.785 of the Commission's rules of practice, and has made the delegation pursuant to paragraph (a)(1) of this section. The membership of the Appeal Board for this proceeding will be designated by the Commission in in a subsequent notice to be published in the FEDERAL REGISTER.

Dated at Germantown, Md., this 13th day of September 1972.

UNITED STATES ATOMIC ENERGY COMMISSION,
PAUL C. BENDER,
Secretary of the Commission.

[FR Doc.72-15922 Filed 9-19-72;8:45 am]

[Dockets Nos. 50-259, 50-260, and 50-296]

TENNESSEE VALLEY AUTHORITY

Notice of Consideration of Issuance of Facility Operating Licenses and Opportunity for Hearing

In the matter of Tennessee Valley Authority (Browns Ferry Nuclear Plant Units 1, 2, and 3).

The Atomic Energy Commission (the Commission) will consider the issuance of facility operating licenses to the Tennessee Valley Authority (TVA) which would authorize TVA to possess, use, and operate the Browns Ferry Nuclear Plant Units 1, 2, and 3, three single cycle, forced circulation, boiling water nuclear reactors (the facilities), located on the applicant's site at Wheeler Lake, Limestone County, Ala. Each unit would operate at steady-state power levels not to exceed 3,293 megawatts thermal in accordance with the provisions of the license and the technical specifications appended thereto. The licenses would be issued upon the receipt of a report on the applicant's application for facility operating licenses by the Advisory Committee on Reactor Safeguards, the submission of a favorable safety evaluation on the application by the Commission's Directorate of Licensing, and a finding that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (Act), and the Commission's regulations in 10 CFR Chapter I. TVA, as an agency of the Federal Government, and as the "lead agency" under the guidelines of the Council on Environmental Quality, has already prepared draft and final environmental statements for the facilities. TVA's final environmental statement incorporates comments by the Commission on the draft environmental statement. Construction of the facilities was authorized by Provisional Construction Permits Nos. CPPR-29, CPPR-30, and CPPR-48, issued by the Commission on May 10, 1967, and July 31, 1968, respectively.

Prior to issuance of any operating licenses, the Commission will inspect the facilities to determine whether they have been constructed in accordance with the application, as amended, and the provisions of the above-noted construction permits. In addition, the license will not be issued until the Commission has made the findings, reflecting its review of the application under the Act which will be set forth in the proposed licenses, and has concluded that the issuance of the licenses will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the licenses, the applicant will be required to execute an indemnity agreement as required by section 170 of the Act and 10 CFR Part 140 of the Commission's regulations.

The Browns Ferry Nuclear Plant Units 2 and 3 are subject to the provision in 10 CFR Part 50, Appendix D, section C.2 for notice of opportunity for filing petitions for leave to intervene and requests for hearing on environmental considerations related to continuation, modification, termination, or conditioning of the construction permits. The Browns Ferry Nuclear Plant Unit 1 is subject to the provision in 10 CFR, Part 50, Appendix D, section C.3.

Accordingly, notice is hereby given, pursuant to 10 CFR Part 2, rules of practice, and Appendix D of 10 CFR Part 50, "Implementation of the National Environmental Policy Act of 1969," that the Commission is providing an opportunity for hearing with respect to whether, considering those matters covered by Appendix D to 10 CFR Part 50, the provisional construction permits for Units 2 and 3 in the captioned proceeding should be continued, modified, terminated, or appropriately conditioned to protect environmental values.

Within thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER, the applicant may file a request for a hearing and any person whose interest may be affected by this proceeding may file a petition for leave to intervene (1) with respect to whether, considering those matters covered by Appendix D to 10 CFR Part 50, the construction permits for Units 2 and 3 should be continued, modified, terminated, or appropriately conditioned to protect environmental values and (2) with respect to the issuance of the facility operating licenses for Units 1, 2, and 3. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's rules of practice in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed within the time prescribed in this notice, the Commission will issue a notice of hearing or an appropriate order.

A petition for leave to intervene must be filed under oath or affirmation in accordance with the provisions of 10 CFR 2.714. As required by 10 CFR 2.714, a petition for leave to intervene shall set

forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and any other contentions of the petitioner including the facts and reasons why he should be permitted to intervene, with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. Any such petition shall be accompanied by a supporting affidavit identifying the specific aspect or aspects of the subject matter of the proceeding as to which the petitioner wishes to intervene and setting forth with particularity both the facts pertaining to his interest and the basis for his contentions with regard to each aspect on which he desires to intervene. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

A request for a hearing or a petition for leave to intervene must be filed with the Office of the Secretary of the Commission, U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Public Proceedings Staff, or the Commission's Public Document Room, 1717 H Street NW., Washington, DC, not later than thirty (30) days from the date of publication of this notice in the FEDERAL REGISTER. A petition for leave to intervene which is not timely will not be granted unless the Commission determines that the petitioner has made a substantial showing of good cause for failure to file on time and after the Commission has considered those factors specified in 10 CFR 2.714(a).

For further details pertinent to the matters under consideration, see the application for the facility operating license dated September 23, 1970, as amended, and TVA's draft and final environmental statements, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Athens Public Library, South and Forrest, Athens, Ala. 35611. As they become available, the following documents also will be available at the above locations: (1) The report of the Advisory Committee on Reactor Safeguards on the application for facility operating licenses; (2) the safety evaluation prepared by the Directorate of Licensing; (3) the proposed facility operating licenses; and (4) the proposed technical specifications, which will be attached to the proposed facility operating licenses.

Copies of items (2) and (3) may be obtained by request to the Deputy Director for Reactor Projects, Directorate of Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Dated at Bethesda, Md., this 15th day of September 1972.

For the Atomic Energy Commission.

A. GIAMBUSSO,
Deputy Director for Reactor Projects, Directorate of Licensing.

[FR Doc.72-16084 Filed 9-19-72;8:56 am]

CIVIL AERONAUTICS BOARD

[Docket No. 21998 etc.]

CHICAGO HELICOPTER AIRWAYS, INC.

Acqusition of Control; Postponement of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that the hearing in the above-entitled proceeding, which was assigned to be held on October 3, 1972 (37 F.R. 18579, September 13, 1972) will be held on October 24, 1972, at 10 a.m., local time, in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before the undersigned.

Dated at Washington, D.C., September 15, 1972.

[SEAL] HYMAN GOLDBERG,
Administrative Law Judge.

[FR Doc.72-15987 Filed 9-19-72;8:51 am]

[Docket Nos. 24759, 22859; Order 72-9-60]

CONTINENTAL AIR LINES, INC.

Order of Suspension and Investigation Regarding Domestic Air Freight Rate Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 15th day of September 1972.

By tariff revision filed August 18,[1] and marked to become effective September 17, 1972, Continental Air Lines, Inc. (Continental) proposes to establish LD-3 container rates and charges from Chicago to Hilo/Honolulu applicable to parcel post traffic[2] tendered in LD-3 containers subject to a minimum shipment weight of 3,000 pounds. The proposed charge of $265 is subject to a pivot weight of 980 pounds, as compared to the current general commodity charge of $363, for typical LD-3 pivot weight of 1,100 pounds; the proposed rate per 100 pounds for excess weight over the pivot weight is $27, compared to the current rate of $23. The proposed rate for a minimum shipment would be $27.04 or 18.1 percent below the current standard service general commodity LD-3 rate per 100 pounds of $33, for a pivot weight of 1,100 pounds.[3]

A complaint requesting investigation and suspension has been filed by American Airlines, Inc. (American). The complaint alleges, inter alia, that Continental has failed to provide economic support of its proposal as required by §221.165 of the Board's economic regulations; the proposal constitutes a multicontainer rate and has not been cost justified; and the proposed rate represents an unwarranted reduction in the level of rates, which has the potential of undermining the entire container rate structure.

In answer to the complaint and in support of its proposal, Continental asserts that the Board has permitted substantially similar container rates to become effective pursuant to Orders 71-5-139 and 70-10-16; the proposed container rate reflects the $1 unitization discount from a bulk rate constructed to reflect the same per ton-mile yield as the current bulk parcel post rate in the Chicago-Los Angeles market; that the proposed rate results in a higher yield per ton-mile than current LD-3 parcel post rates in the Chicago-Los Angeles market; that the proposal will not undercut Type A charges since a substantial differentiation exists between regular traffic and parcel post traffic, which renders the two incompatible for rate-setting criteria. Continental further asserts that the proposal is designed to divert traffic from the postal system, would increase sales in the State of Hawaii from the Chicago area, and would produce additional revenues of $40,000 per year, growing to $100,000 per year.

Upon consideration of the complaint and other relevant matters, the Board finds that the proposal may be unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and should be investigated. (The container rates and charges in question also come within the scope of the Domestic Air Freight Rate Investigation, Docket 22859.) The Board further concludes that the proposal should be suspended pending investigation.

The proposed rates apply for a minimum of 3,000 pounds, and although the capacity of an LD-3 is as much as 3,500 pounds, the density of parcel post type traffic is such that three LD-3's would be

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[1] This filing was rejected for technical reasons and has been refiled on August 31 under special tariff permission, maintaining the September 17 effective date.

[2] Parcels affixed with U.S. postage by the shipper, consigned to a U.S. Post Office for movement beyond in the U.S. Postal Service.

[3] The proposed rate is also lower than the daylight service rate level, which is $31.72 per 100 pounds at the minimum weight of 1,248 pounds, involving an average density of 8.3 pounds per cubic foot. A lower rate of $24.31 per 100 pounds exists for LD-3's in this market, but is subject to a pivot weight of 1,983 pounds, requiring a density of approximately 13 pounds per cubic foot. These densities are above the average density of parcel post traffic.

required to move a 3,000-pound shipment. Thus, the proposal raises a significant issue as to whether it is unjustly discriminatory in that it, in effect, establishes a discount which is available only to multicontainer shipments.

The Board, in its decision in Docket 22340, Container Rates for B–747 Aircraft Proposed by Continental Air Lines, Inc., Order 71–7–156, found that discounts for multicontainer shipments for 10 or more containers were unjustly discriminatory because they were not justified by cost of service, value of service, or promotional considerations. Continental's current proposal, for shipments with a minimum weight of 3,000 pounds, necessarily involves the consignment of more than one container, based upon the density of parcel post traffic. Continental, however, does not attempt to justify the proposal on the grounds indicated above.[4]

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 1002 thereof,

It is ordered, That:

1. An investigation is instituted to determine whether the rates, charges, and provisions described in Appendix A hereto, and rules, regulations, or practices affecting such rates, charges, and provisions are or will be, unjust, unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or otherwise unlawful, and if found to be unlawful, to determine and prescribe the lawful rates, charges and provisions, and rules, regulations, or practices affecting such rates, charges, and provisions;

2. Pending hearing and decision by the Board, the rates, charges, and provisions described in Appendix A[5] hereto are suspended and their use deferred to and including December 15, 1972, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

3. The proceeding herein designated Docket 24759, be assigned for hearing before an administrative law judge of the Board at a time and place to be designated;

4. Except to the extent granted herein, the complaint of American Airlines, Inc., in Docket 24709, is dismissed; and

5. Copies of this order shall be filed with the tariff and served upon Continental Air Lines, Inc., and American Airlines, Inc., which are hereby made parties to Docket 24759.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72–15985 Filed 9–19–72;8:51 am]

[4] The proposed yield per ton-mile is 12.7 cents, and Continental has not shown why such rate is uneconomic for a single container shipment.

[5] Appendix A filed as part of the original document.

[Docket No. 23333; Order 72–9–35]

INTERNATIONAL AIR FREIGHT ASSOCIATION

Order Regarding Cargo Rates

Agreement adopted by the Traffic Conferences of the International Air Transport Association relating to cargo rate matters, Docket 23333, Agreement CAB 23185, R–1 through R–12.

Issued under delegated authority, September 11, 1972.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's economic regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of the traffic conferences of the International Air Transport Association (IATA). The agreement, which has been assigned the above-designated CAB agreement number, was adopted at the special cargo conference of Traffic Conferences 2 and 3 held May 30–June 2, 1972, at Geneva.

The agreement would rescind earlier resolutions, previously considered by the Board[1] so as to preclude application in air transportation, which provided for the imposition of an international route charge as a surcharge on the air waybill. As a consequence of the rescission of these resolutions and in accordance with the action of other traffic conferences, the subject agreement encompasses general increases of approximately 2 percent in minimum charges for cargo, general cargo rates, and specific commodity rates within the area comprised of Europe/Africa/Middle East, and between that area and Asia/Australasia. The agreement also includes procedural, technical, and clarifying changes to an existing resolution governing bulk unitization charges.

We will herein approve the agreement which has limited application in air transportation as defined by the Act insofar as it affects rates to/from U.S. possessions in the Pacific area and might indirectly affect air transportation in the construction of through rates to/from other U.S. points.

Pursuant to authority duly delegated by the Board in the Board's regulations, 14 CFR 385.14, it is not found that the following resolutions, which are incorporated in the agreement as indicated, are adverse to the public interest or in violation of the Act:

[1] Order 71–9–43 dated September 9, 1971.

Agreement CAB 23185	IATA Number	Title	Application
R–1	002	Standard Revalidation Resolution	2.
R–2	002	Standard Revalidation Resolution	2/3; 1/2/3.
R–3	003	Standard Rescission Resolution	2.
R–4	003	Standard Rescission Resolution	2/3; 1/2/3.
R–5	501	Minimum Charges for Cargo (Revalidating and Amending)	2.
R–6	501	Minimum Charges for Cargo (Revalidating and Amending)	2/3.
R–7	501	Minimum Charges for Cargo (Revalidating and Amending)	1/2/3.
R–8	535	JT23 Bulk Unitization Charges (Revalidating and Amending)	2/3.
R–9	552	TC2 General Cargo Rates (Revalidating and Amending)	2.
R–10	555	JT23 and JT123 General Cargo Rates (Revalidating and Amending).	2/3; 1/2/3.
R–11	590	Specific Commodity Rates Board (Revalidating and Amending).	2.
R–12	590	Specific Commodity Rates Board (Revalidating and Amending).	2/3; 1/2/3.

Accordingly, it is ordered, That:

Agreement CAB 23185, R–1 through R–12, be and hereby is approved.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period, unless within such period a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72–15986 Filed 9–19–72;8:51 am]

FEDERAL COMMUNICATIONS COMMISSION

PBX ADVISORY TECHNICAL SUBCOMMITTEE TASK GROUP

Notice of Public Meeting

SEPTEMBER 15, 1972.

In accordance with Executive Order No. 11671, dated June 7, 1972, announcement is made of a public meeting of the PBX Advisory Technical Subcommittee Task Group, to be held Wednesday, at 10 a.m., September 20, 1972, and continuing through Thursday, September 21, 1972. The task group will meet at General Telephone & Electronics, 730 Third Avenue, New York, NY, in the ninth floor conference room.

1. *Purpose.* The purpose of this task group is to prepare recommended standards for equipment test and inspection

of a customer provided repeat coil and coupled PBX for connection to the public network;

2. *Membership.* The task group is chaired by Gordon Orelli and is composed of the following: J. C. Caldwell, Gerhard Jahn, J. J. Grumblatt, Kelley Armstrong, W. Glenn Pracejus, J. T. Walker, R. E. Overby, P. H. Bennett, Patrick Grace, and Louis Feldner;

3. *Activities.* As at prior meetings, task group members and observers present their suggestions and recommendations regarding the various technical criteria and standards that should be considered with respect to interconnection. Task group members include representatives of the Federal Government, manufacturers, carriers, and users;

4. *Agenda.* The agenda for the September 20 and 21 meetings will include:

a. Review of draft "Changes to Second Working Draft of a Repeat Coil Coupled PBX."

b. Review of A. T. & T.'s proposed recommendations regarding hazardous voltages.

It is suggested that those desiring more specific information about the meeting call the Domestic Rates Division 202—632–6457.

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

[FR Doc.72–16004 Filed 9–19–72;8:55 am]

FRANCHISE PROVISIONS AT VARIANCE WITH CABLE TELEVISION RULES

AUGUST 22, 1972.

The following letter has been sent to Western Communications, Inc., by Sol Schildhause, Chief of the Cable Television Bureau, in response to an inquiry about the extent to which Federal-State/local franchising authorities can establish regulations which are different from those established by the FCC for cable television systems:

This is in reply to your letter of August 3, 1972, in which you question the extent to which franchising authorities can establish regulations in excess of or different than the regulations established by the Commission in the Cable Television Report and Order. I have taken the liberty of combining some of your questions and rephrasing others for purposes of clarity.

1. Q. May a franchising authority in a major television market specify a minimum channel capacity in excess of 20 channels?

A. In footnote 25 of the "Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order," the Commission stated that while it has preempted the area of channel capacity, it would not foreclose a system from meeting more stringent local requirements * * * "upon a demonstration of need for such channel capacity and the system's ability to provide it." Also see paragraph 132 and footnote 70 of the "Cable Television Report and Order."

2. Q. May a franchising authority outside a major market specify a minimum channel capacity and, if so, can this minimum channel capacity be in excess of what this Commission requires for a major market?

A. Cities outside major markets may specify a minimum channel capacity, but such capacity may not be in excess of what the Commission requires for systems in major markets. See § 76.251(b) of the rules and paragraph 148 of the "Cable Television Report and Order."

3. Q. May a franchising authority located outside a major television market require a cable system to maintain a plant having the technical capacity for nonvoice return communications?

A. Yes—See § 76.251(b) of the Commission's rules and paragraphs 132 and 148 of the "Cable Television Report and Order."

4. Q. May any franchising authority require a more sophisticated form of return communications?

A. In footnote 25 of the "Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order" the Commission stated, "Where a franchising authority 'has a plan for actual use' of a more sophisticated two-way capability and the cable operator can demonstrate its feasibility both practically and economically, we will consider, in the certificating process, allowing such equipment."

5. Q. Can a franchising authority require all access services to be made available at no charge?

A. No—the Commission will consider in the certificating process, however, requirements that additional public access channels or some educational channels be offered at no charge or at reduced cost on an experimental basis. See paragraph 132 of the "Cable Television Report and Order."

6. Q. Can a franchising authority require the franchisee to make available more access channels than those specified by the Commission?

A. No—unless during the certificating process the Commission is shown that such additional channels are necessary and capable of being used according to an existing, viable plan. See § 76.261(a)(11)(iv) of the rules, and paragraph 132 of the "Cable Television Report and Order."

7. Q. Can a franchising authority require a franchisee to provide access services outside major markets?

A. Yes—but to no greater extent than the Commission requires for systems in major markets. See § 76.251(b) and paragraphs 132 and 148 of the "Cable Television Report and Order."

8. Q. May a franchising authority impose a franchise fee based upon revenues derived from "auxiliary" services such as advertising revenues, leased channel revenues, pay cable revenues, etc.?

A. No—subscriber revenues are considered to be those revenues derived from regular subscriber services; i.e., the carriage of broadcast signals and required nonbroadcast services.

9. Q. May a franchising authority insist on a franchise fee higher than 3 percent if the excess fee is to be used for funding public access services?

A. There is no hard-and-fast answer to this question at present. Clearly, however, the factors that would bear heavily in the Commission's consideration of any such scheme would include the amount of excess fee, the danger that, through funding, local governments would control public access programing, and the possibility of other alternatives.

10. Q. May a franchising authority require a faster construction schedule than that suggested by the Commission?

A. Yes—see § 76.31(a)(2) of the Commission's rules.

11. Q. May a franchising authority require systems with fewer than 3,500 subscribers to engage in local origination?

A. The Commission has preempted this field. See paragraph 48, First Report and Order, 20 FCC 2d 201, at 223. See also "Clarification of CATV First Report as to Scope of Federal Pre-Emption," 20 FCC 2d 741. Under these circumstances, I believe the Commission would reject such a requirement. Further, the Commission preemption extends to policy concerning any waiver of the origination rule.

12. Q. May a franchising authority establish technical standards in excess of those required by the Commission?

A. Yes—(see paragraph 91 of the "Memorandum Opinion and Order on Reconsideration of the Cable Television Report and Order"). The Commission will not, however, assume responsibility for enforcement of more stringent technical standards. Local authorities should therefore be prepared to assume the burden of such enforcement.

13. Q. May a franchising authority limit a franchisee to providing services that can be performed only by the franchisee itself?

A. No—clearly the concept of access services is to offer the benefits of a multiplicity of channels to the public. Thus in § 76.251(a)(11)(i) and (iii), system operators are specifically forbidden to exercise control over the program content of public and leased access channels.

The foregoing responses to your questions should indicate the degrees to which the Commission will sanction franchise provisions at variance with its cable regulatory program. Where variances are sought, as for instance where a franchise calls for extra access channels, greater channel capacity, or a higher franchise fee, detailed showings will be required during the certificating process. If such a showing is inadequate, the Commission will not issue a certificate of compliance.

It is recommended, therefore, that franchises be drawn to include severability clauses that will enable the Commission to authorize system operations without the delay that might be created by the necessity for franchise amendments.

I hope the foregoing is responsive to your inquiry. If I can be of further assistance to you, do not hesitate to call on me.

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

[FR Doc.72–16005 Filed 9–19–72;8:56 am]

FEDERAL HOME LOAN BANK BOARD

[H. C. No. 135]

FIDELITY CORP. AND TRANSOHIO FINANCIAL CORP.

Receipt of Application for Permission to Acquire Control of United Savings Association

SEPTEMBER 14, 1972.

Notice is hereby given that the Federal Savings and Loan Insurance Corporation has received an application from the Fidelity Corp., and its subsidiary, Transohio Financial Corp., unitary savings and loan holding companies, both of Richmond, Va., for approval of acquisition of control of United Savings Association, Cleveland, Ohio, an insured institution under the provisions of section 408(e) of the National Housing Act, as amended (12 U.S.C. 1730a(e)), and § 584.4 of the regulations for savings and loan holding companies, said acquisition to be effected by an exchange of shares of

Transohio common stock for the shares of the capital stock of United Savings Association. Comments on the proposed acquisition should be submitted to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, Washington, D.C. 20552, within 30 days of the date this notice appears in the FEDERAL REGISTER.

[SEAL] EUGENE M. HERRIN,
Assistant Secretary,
Federal Home Loan Bank Board.

[FR Doc.72-15988 Filed 9-19-72;8:51 am]

FEDERAL POWER COMMISSION

[Project No. 2307]

A. J. INDUSTRIES, INC., AND JUNEAU HYDROELECTRIC, INC.

Notice of Application for Transfer of License

SEPTEMBER 13, 1972.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a-825r) by A. J. Industries, Inc. (Licensee) and Juneau Hydroelectric, Inc. (Transferee) (correspondence to Mr. George A. Fitzpatrick, president, 10889 Wilshire Boulevard, Suite 1240, Los Angeles, CA 90024; and Mr. H. E. Holman, secretary, 10889 Wilshire Boulevard, Suite 1240, Los Angeles, CA 90024) for transfer of major license of the Salmon and Annex Creek Project No. 2307, located on Salmon Creek, a tributary to Gastineau Channel, lying wholly within the Juneau townsite boundary and on Annex Creek lying wholly within the Tongass National Forest in the First Judicial District, Alaska, in the vicinity of the city of Juneau, affecting lands of the United States within the Tongass National Forest and U.S. land excluded therefrom by Juneau Townsite Elimination Survey No. 1762.

In its application, A. J. Industries, Inc., seeks Commission approval to transfer the license for Salmon and Annex Creek Project No. 2307 to Juneau Hydroelectric, Inc., a wholly owned subsidiary of A. J. Industries, Inc.

The Salmon and Annex Creek Project are comprised of three hydroelectric developments. The Salmon Creek No. 1 Development consists of a 4-foot by 5-foot wood flume 9,876 feet long extending from the tailrace of Powerhouse No. 2 to a forebay and two steel penstocks 1,625 feet long varying in diameter from 42 to 30 inches extending from the forebay to Powerhouse No. 1, containing two 1,400 kw. generators. Salmon Creek No. 2 Development consists of a concrete arch dam 170 feet high with a 648-foot crest (including spillway) on Salmon Creek, creating a reservoir with a storage capacity of 19,000 acre-feet, and steel pipe conduit 4,477 feet long varying in diameter from 40 to 30 inches extending to Powerhouse No. 2, containing two 1,400 kw. generators.

Annex Creek Development is the third hydroelectric development of the Salmon and Annex Creek Project. It consists of a wood-frame buttress dam 25 feet high and 115 feet long on Upper Annex Creek creating a reservoir with a storage capacity of 23,400 acre-feet; an 8 by 8-foot tunnel 1,418 feet long, the last 250 feet of which is lined with a 78-inch diameter steel liner; and 6,409 feet of 42-inch and 703 feet of 36-inch steel pipe extending to a powerhouse containing two 1,750 kw. generators; and the project also consists of interconnected transmission lines and other necessary appurtenances.

Any person desiring to be heard or to make protests with reference to said application should on or before October 30, 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 a proceeding. Persons wishing to become parties 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. The application is on file with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16016 Filed 9-19-72;8:52 am]

[Docket No. RP73-24—RP73-34]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Proposed Rate Changes

SEPTEMBER 15, 1972.

Consolidated Gas Supply Corp., Docket Nos. RP73-24, RP73-25, RP73-26, RP73-27, RP73-28, RP73-29, RP73-30, RP73-31, RP73-32, RP73-33, RP73-34.[1]

Take notice that on August 31, 1972, Consolidated Gas Supply Corp. (Consolidated) tendered for filing proposed tariff sheets [2] to its FPC gas tariff, Original Volume No. 3, containing changes in its rate schedules applicable to field sales of natural gas produced in the southern Louisiana area. These tariff sheets are proposed to be effective as of August 1, 1972.

Consolidated states that these tariff sheets are submitted pursuant to the provisions of section 4 of the Natural Gas Act and the Commission's Order No. 456, issued August 4, 1972, in Docket No. R-450, State of Louisiana Severance Tax—Increased Rate Filings. Consolidated further states that the proposed changes reflect only the increase in the Louisiana severance tax, up to the higher rates permitted by the contract provisions of the said schedules, but not in excess of the applicable area ceiling rates established by the Commission's Opinion No. 598, as amended, issued July 16, 1971, in Docket Nos. AR61-2, et al., and AR-69-1, as adjusted by Order No. 456.

Copies of the proposed tariff sheets were served on Texas Gas Transmission Corp. and Southern Natural Gas Co., the two customers involved.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 25, 1972. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. This application is on file with the Commission and is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16006 Filed 9-19-72;8:52 am]

[1] The filings in these dockets are being noticed simultaneously herein, but they have not been consolidated.

[2] Original Sheets Nos. 81-A, 144-A, 229-A, 382-A, 412-A, 568-A, 603-A, 662-A, 691-A, and 720-A.

[Docket No. CP73-56]

COLUMBIA GAS TRANSMISSION CORP.

Notice of Application

SEPTEMBER 13, 1972.

Take notice that on August 29, 1972, Columbia Gas Transmission Corp. (Applicant), 20 Montchanin Road, Wilmington, DE 19807, filed in Docket No. CP73-56 an application pursuant to section 7 (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain natural gas facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Due to projected curtailments in deliveries by three of Applicant's five nonaffiliated pipeline suppliers, Applicant seeks authorization to construct and operate three projects it states are required to permit maximum utilization of its existing underground storage facilities during the 1973 summer and 1973-74 winter season. Applicant states that it must offset the continuing effect of the projected curtailments and replace additional storage withdrawals during the 1972-73 period if its storage facilities are to be at maximum working capacity by November 1, 1973. Applicant indicates that sufficient gas supply is available under its present contracts in southern Louisiana to offset the curtailments during the 1973 storage injection cycle. Applicant states, however, that its transmission facilities in Zone 4 (Ohio) cannot transport the necessary additional volumes to storage above current levels.

Applicant states that the proposed projects will provide the additional capacity required to transport and deliver the required additional volumes

from their point of availability in Zone 1 (Kentucky-West Virginia State line) to storage.

Applicant states that the estimated cost of the proposed facilities, including filing fees, is $6,925,500, which it proposes to finance from funds on hand. The specific facilities Applicant proposes to construct and operate consist of the following projects:

Project No. 1: Approximately 25.2 miles of 24-inch pipeline in Jackson and Vinton Counties, Ohio, being an extension of line R-701 looping part of lines R-501 and R-601.

Project No. 2: A 2,700 Bhp angle type compressor unit at Crawford Compressor Station, Fairfield County, Ohio.

Project No. 3: Approximately 9.1 miles of 30-inch pipeline in Licking County, Ohio, being an extension of line K-260 looping part of line K-170 and K-205.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it 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.72-16007 Filed 9-19-72;8:52 am]

[Dockets Nos. RP73-19—RP73-21]

EL PASO NATURAL GAS CO.

Notice of Proposed Changes In Rates and Charges

SEPTEMBER 15, 1972.

El Paso Natural Gas Co., Dockets Nos. RP73-19, RP73-20, RP73-21.[1]

Take notice that El Paso Natural Gas Co. (El Paso), on August 30, 1972, tendered for filing proposed revised tariff sheets to its FPC Gas Tariff, Original Volume No. 2A. The tendered tariff sheets provide for a correction in the reference to the authorized rate to be collected from time to time for service rendered under El Paso's Rate Schedules FS-26, FS-27, and FS-28 and the proposed changes in these rate schedules have been docketed as Dockets Nos. RP 73-19, RP73-20, and RP73-21, respectively.

El Paso states that the rate for natural gas as annual excess exchange deliveries under Rate Schedules FS-26, FS-27, and FS-28 is keyed to, and identical with, the rate to be collected from time to time under El Paso's Rate Schedule FS-25 and that the proposed changes are necessary to bring the rate in the former schedules into line with the rate under Rate Schedule FS-25, as revised effective June 22, 1972, July 1, 1972, July 6, 1972, and August 12, 1972. El Paso says that the proposed revised tariff sheets reflect, in Rate Schedules FS-26, FS-27, and FS-28, the rate placed into effect on each of these respective dates under Rate Schedule FS-25. El Paso requests that inasmuch as the tariff sheets tendered contain rates pending final determination of the Commission in Docket No. RP71-13, such sheets be accepted subject to final determination of the proceedings in that docket.

Copies of the filing were served on Pioneer Natural Gas Co. and Caprock Pipeline Corp., the customers involved in the exchange, transportation, and sales arrangement, to which the subject rate schedules pertain.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 25, 1972. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. This application is on file with the Commission and is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16008 Filed 9-19-72;8:52 am]

[1] The filings in these dockets are being noticed simultaneously herein but they have not been consolidated.

[Project 1218]

GEORGIA POWER CO.

Notice of Issuance of Annual License

SEPTEMBER 13, 1972.

On February 26, 1970, Georgia Power Co., Licensee for Flint River Project No. 1218 located on Flint River in Dougherty and Lee Counties, Ga., near the city of Albany, filed an application for a new license under section 15 of the Federal Power Act and Commission regulations thereunder (§§ 16.1-16.6).

The license for Project No. 1218 was issued effective January 1, 1933, for a period ending September 16, 1971. In order to authorize the continued operation of the project pursuant to section 15 of the Act pending completion of Licensee's application and Commission's action thereon, it is appropriate and in the public interest to issue an annual license to Georgia Power Co. for continued operation and maintenance of Project No. 1218.

Take notice that an annual license is issued to Georgia Power Co. (Licensee) under section 15 of the Federal Power Act for the period September 17, 1972, to September 16, 1973, or until Federal takeover, or the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Flint River Project No. 1218, subject to the terms and conditions of its license.

KENNETH F. PLUMB,
Secretary.

[FR Doc.72-16009 Filed 9-19-72;8:52 am]

[Docket No. RP73-17]

GRANITE STATE GAS TRANSMISSION, INC.

Notice of Proposed Change In Rates and Charges

SEPTEMBER 15, 1972.

Take notice that on August 30, 1972, Granite State Gas Transmission, Inc. (Granite State), tendered for filing revised tariff sheets to its FPC Gas Tariff, Original Volume No. 1, proposed to be effective as of October 1, 1972.

Granite State states that the revised tariff sheets are designed to establish a purchased gas adjustment provision

(PGA) in the tariff, to make other conforming changes made necessary by the PGA provision, and to cancel certain tariff provisions no longer necessary or applicable to the service rendered to its parent, Northern States, Inc., Granite State's only jurisdictional customer.

Copies of the filing were served upon Northern States and upon all interested State Commissions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 441 G Street NW., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 25, 1972. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16010 Filed 9-19-72;8:52 am]

[Docket No. E-7770]

IOWA POWER & LIGHT CO.

Notice of Application

SEPTEMBER 13, 1972.

Take notice that on September 5, 1972, Iowa Power & Light Co. (Applicant), of Des Moines, Iowa, filed an application seeking authority pursuant to section 204 of the Federal Power Act to issue on or before September 30, 1973, up to $45 million short-term promissory notes, of which aggregate amount up to $22,500,000 could be in the form of commercial paper, with final maturities no later than September 30, 1974.

Applicant is incorporated under the laws of the State of Iowa with its principal business office at Des Moines, Iowa, and is engaged in the electric and gas utility businesses within the State of Iowa.

The notes are to be issued from time to time to banking institutions and/or sold through commercial paper dealers.

Notes to banking institutions will be issued in accordance with various informal lines of credit agreements. The notes are to have maturities of not more than 1 year from their dates and in any event on or before September 30, 1974, and are to bear interest at the prime rate in effect at the time of issuance.

Commercial paper will be issued as unsecured promissory notes through established commercial paper dealers. Commercial paper notes are to have maturities of not more than 9 months from their dates and in any event on or before June 30, 1974, and the interest rate will be dependent upon the terms of the notes and money market conditions at the time of issuance.

The proceeds from the issuance of notes will be used as interim financing of the Applicant's construction program to September 30, 1973.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 29, 1972, file with the Federal Power Commission, Washington, D.C. 20426, 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. The application is on file with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16011 Filed 9-19-72;8:52 am]

[Docket No. E-7773]

MINNESOTA POWER & LIGHT CO.

Notice of Application

SEPTEMBER 15, 1972.

Take notice that on September 14, 1972, Minnesota Power & Light Co. (Applicant) filed an application with this Commission seeking authorization to enter into a guaranty agreement with the trustee of pollution control revenue bonds to be issued by the village of Hoyt Lakes, Minn., in the amount of $4,750,000 which bonds will be sold by the village as soon as possible after obtaining approval of this guaranty.

Applicant is incorporated under the laws of the State of Minnesota, with its principal place of business at Duluth, Minn., and is engaged in the electric utility business within the State of Minnesota.

The bonds of the village will be sold to purchase pollution abatement equipment at Minnesota Power & Light Co.'s Aurora Steam Electric Generating Station at Hoyt Lakes, Minn., which installation is expected to be completed in the fall of 1972. Said equipment will be leased by the village to the Applicant and payments under said lease will be sufficient to pay principal, premium if any, and interest due on said bonds. The bonds will not be issued by the Applicant. The rate of interest will be negotiated at a private sale of the bonds between the village and the underwriters.

The authorization sought is for Applicant to issue an independent guaranty to the trustee and holders of the bonds of payment of principal, premium if any, and interest on said bonds. No payments will be required under the guaranty if all payments are made pursuant to the lease.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 26, 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. The application is on file with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16012 Filed 9-19-72;8:52 am]

[Project No. 2310]

PACIFIC GAS AND ELECTRIC CO.

Notice of Application for Approval of Lease of Project Lands

SEPTEMBER 13, 1972.

Public notice is hereby given that application has been filed under the Federal Power Act (16 U.S.C. 791a–825r) by the Pacific Gas and Electric Co. (Correspondence to: Mr. J. F. Roberts Jr., Vice President, Rates and Valuation, Pacific Gas and Electric Co., 77 Beale Street, San Francisco, CA 94106) for the approval of lease of project lands of the Drum Spaulding Project No. 2310, located in Nevada and Placer Counties, Calif.

The licensee proposes to lease about 3 miles of project No. 2310 transmission line right-of-way to Mr. Sam Ikeda of Auburn, Calif., for the purpose of Christmas tree culture and harvesting. The proposed 10-year lease would commence October 1, 1972, and would contain a provision requiring that use of the land shall not endanger health, create a nuisance or otherwise be incompatible with overall project recreational use. The land is located in sections 23, 25, and 26 all in T. 17 N., R. 14 E., M.D.B.L.M.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 31, 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 protestant parties to a proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16013 Filed 9-19-72;8:52 am]

[Docket No. CP73-58]

TRUNKLINE GAS CO.

Notice of Application

SEPTEMBER 13, 1972.

Take notice that on August 30, 1972, Trunkline Gas Co. (Applicant), Post Office Box 1642, Houston, TX 77001, filed in Docket No. CP73-58 an application for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act authorizing the construction and operation of certain facilities to receive and transport synthetic pipeline gas (SPG) purchased from Coastal States Energy Co. (Coastal), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to purchase a daily quantity of 125,000 Mcf of SPG and an annual quantity of 45,600,000 Mcf of SPG at $1.10 per 1 million B.t.u.'s subject to upward or downward adjustment with the price of crude petroleum, east of California. In order to receive and transport the SPG, Applicant requests authority to construct and operate:

(1) Approximately 98 miles of 20-inch pipeline extending from its Corpus Christi, Tex., compressor station to a mainline tie-in 9.6 miles south of its station No. 23,

(2) Approximately 11 miles of 26-inch mainline loop extending northeasterly from the end of an existing 26-inch loop north of its station No. 23,

(3) Approximately 24.6 miles of 24-inch mainline loop extending northeasterly from a point on the existing mainline to station No. 31, and

(4) One 9,000 horsepower station located adjacent to Coastal's Corpus Christi SPG plant, at the inlet of the 20-inch pipeline described in (1) above.

Applicant proposes to construct the facilities in time to accept Coastal's first production from the proposed Corpus Christi plant, estimated to be in March 1974. Applicant states that the overall cost of the facilities proposed is estimated to be $18,750,000, which will be financed from a combination of short-term bank borrowings and by internally generated funds. Applicant proposes to commence construction of the facilities in sufficient time to be able to accept SPG from Coastal from the proposed date of _____.

Applicant states that the purchase of the volumes of SPG proposed is necessary in order to offset its worsening gas supply deficiency conditions.

In conjunction with the proposed purchase, Applicant requests authority to include the cost of the SPG in its cost of purchased gas and to recover such costs through operation of its existing purchased gas adjustment clause, as the same may be revised or modified from time to time in accordance with Commission authorizations.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 6, 1972, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it 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 Applicants to appear or be represented at the hearing.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16015 Filed 9-19-72;8:52 am]

[Docket No. E-7698]

UNION ELECTRIC CO.

Notice of Application

SEPTEMBER 13, 1972.

Take notice that on August 18, 1972, Union Electric Co. (Applicant), filed an application seeking authority pursuant to section 204 of the Federal Power Act to extend to not later than March 31, 1974, the issuance date and to not later than December 31, 1974, the final maturity date of short-term, unsecured promissory notes authorized to be issued under the Commission's order of July 10, 1972. In that order, the Commission authorized Applicant to issue up to $150 million principal amount of short-term promissory notes, of which aggregate amount a maximum of $75 million could be in the form of commercial paper, with final maturities not later than December 31, 1973, and with no notes to be issued after December 31, 1972.

Applicant is incorporated under the laws of the State of Missouri with its principal business office at St. Louis, Mo., and is authorized to do business in the States of Missouri, Illinois, and Iowa.

The interest rate applicable to the promissory notes will be, in the case of demand notes issued to commercial banks, the prime rate in effect during the period they are; in the case of notes issued to commercial paper dealers, the market rate (or discount rate) at the date of issuance for commercial paper of comparable quality and of the particular maturity sold to commercial paper dealers; and in the case of commercial paper placed directly with purchasers of such commercial paper for their own accounts, the market rate (or discount rate) at the date of issuance for commercial paper of comparable quality and of the particular maturity placed directly by the issuer thereof. The Applicant contemplates the issuance of promissory notes, including the "roll-over" of commercial paper and promissory notes, without further application to this Commission, at any time and from time to time, each of such notes to have a maturity date of not later than December 31, 1974.

The proceeds will be used to finance in part Applicant's construction program to December 31, 1974. The construction program of Applicant, as now scheduled, calls for plant expenditures of approximately $498 million through 1974.

Any person desiring to be heard or to make any protest with reference to said application should, on or before September 29, 1972, file with the Federal Power Commission, Washington, D.C. 20426, petition 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. The application is on file with the Commission and is available for public inspection.

MARY B. KIDD,
Acting Secretary.

[FR Doc.72-16014 Filed 9-19-72;8:52 am]

FEDERAL RESERVE SYSTEM

FIRST FLORIDA BANCORPORATION

Acquisition of Bank

First Florida Bancorporation, Tampa, Fla., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 85 percent or more of the voting shares of Marine Bank of Punta Gorda, Punta Gorda, Fla., a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Reserve bank to be received not later than October 9, 1972.

Board of Governors of the Federal Reserve System, September 13, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-15924 Filed 9-19-72;8:45 am]

FIRST NATIONAL CITY CORP.

Proposed Acquisition of Acceptance Finance Co.

First National City Corp., New York, N.Y., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y, for permission to acquire voting shares of Acceptance Finance Co., Clayton, Mo. Notice of the application was published in newspapers of general circulation in each of the communities in Georgia, Florida, Arizona, California, Colorado, Nevada, Utah, Washington, Oregon, Louisiana, New Mexico, Missouri, Wyoming, and Oklahoma in which the activities of Acceptance Finance Co. are conducted.

Applicant states that the proposed subsidiary would engage in the activities of making consumer installment personal loans, purchasing consumer installment sales finance contracts, and acting as broker for the sale of consumer credit related life/accident and health insurance and consumer credited related property and casualty insurance. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 13, 1972.

Board of Governors of the Federal Reserve System, September 12, 1972.

[SEAL] TYNAN SMITH,
Secretary of the Board.

[FR Doc.72-15925 Filed 9-19-72;8:45 am]

HAMILTON BANCSHARES

Acquisition of Bank

Hamilton Bancshares, Inc., Chattanooga, Tenn., has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 50.06 percent of the voting shares of Hardeman County Savings Bank, Bolivar, Tenn. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than October 2, 1972.

Board of Governors of the Federal Reserve System, September 12, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-15926 Filed 9-19-72;8:45 am]

NATIONAL CENTRAL FINANCIAL CORP.

Formation of One-Bank Holding Company

National Central Financial Corp., Lancaster, Pa., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to National Central Bank, Lancaster, Pa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Philadelphia. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than October 2, 1972.

Board of Governors of the Federal Reserve System, September 13, 1972.

[SEAL] MICHAEL A. GREENSPAN,
Assistant Secretary of the Board.

[FR Doc.72-15927 Filed 9-19-72;8:45 am]

FEDERAL TRADE COMMISSION

GENERAL COUNSEL

Delegation of Authority and Implementing Procedure

Pursuant to the authority provided by Reorganization Plan No. 4 of 1961 (26 F.R. 6191), the Federal Trade Commission has made the following delegation of authority:

In regard: Authority to waive requirements for affidavits in the disclosure of identities of holders of registered identification numbers (RN's).

The Commission has delegated authority to the General Counsel to approve staff recommendations to waive the requirements of Rule 4.11(b) of an affidavit for release of the identity of holders of registered identification numbers under the Textile Fiber Products Identification Act, the Fur Products Labeling Act, and the Wool Products Labeling Act, when such applications fall within the following criteria:

1. For official use of Federal or State agencies;
2. For use in trademark infringement suits;
3. For use in copyright infringement suits;
4. For use in patent infringement suits;
5. For use by a private litigant in a treble-damage action to be brought under the Federal antitrust laws;
6. For use in civil suits involving personal injuries;
7. For use by private litigants in cases of passing off or simulation either of their trademark, design, or trade name where it is apparent that public deception is present; and
8. In any other application where the applicant establishes to the satisfaction of the Bureau of Consumer Protection and the Commission that the purpose for which the information is intended will be in the public interest and advance the Commission's enforcement efforts.

The above procedure was adopted as an interim measure pending the Commission's determination to abolish the system of registered identification numbers one year after publication of such announcement in the FEDERAL REGISTER approved by Commission action of April 24, 1972 (37 F.R. 9498).

As a further interim measure pending its determination to abolish the system of registered identification numbers the Commission adopted the following procedure:

The staff was instructed to submit to the Secretary, via the General Counsel, affirmative recommendations for the release of the identities of holders of RN's under the Textile, Fur, and Wool Labeling Acts, when applications for release fall within the criteria set forth above.

Upon receipt of the staff's affirmative recommendation, the letter or affidavit of the applicant and the proposed letter to the applicant, the Secretary shall circulate simultaneously to all Commissioners the staff recommendation.

If upon the expiration of 5 working days, no Commissioner shall have objected, the Secretary shall enter upon the records of the Commission the granting of the application and take such other action as required.

In the event the staff recommendation for disclosing the information is negative, the subject file shall be submitted to the Commission by the General Counsel, via the Secretary's Office.

By directions of the Commission dated September 7 and 11, 1972.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.72-15928 Filed 9-19-72;8:45 am]

NATIONAL ADVISORY COMMITTEE ON OCCUPATIONAL SAFETY AND HEALTH

STATE PROGRAMS

Notice of Public Meeting

Advice, consultations, and recommendations under the Williams-Steiger Occupational Safety and Health Act of 1970.

Notice is hereby given that there will be a meeting of the Subcommittee on State Programs of the National Advisory Committee on Occupational Safety and Health commencing at 9 a.m. on Saturday, September 23, 1972, in Conference Room 216 A and B, lower level, Main Labor Department Building, 14th and Constitution Avenue NW., Washington, D.C.

The National Advisory Committee on Occupational Safety and Health is established under section 7(a) of the Williams-Steiger Occupational Safety and Health Act (29 U.S.C. 656). The Committee is directed to advise, consult with, and make recommendations to the Secretary of Labor and the Secretary of Health, Education, and Welfare on matters relating to the administration of the Act.

The meeting of the subcommittee shall be open to the public. The purpose of the meeting is to discuss Department of Labor policy concerning the expiration of State agreements pursuant to section 18(h) of the Occupational Safety and Health Act of 1970. A verbatim transcript shall be kept. The transcript shall be available for public inspection and copying at the office of the Committee's Executive Secretary, which is located in Room 1120, 1726 M Street NW., Washington, D.C. Copies may also be obtained by making arrangements at the meeting with the Executive Secretary. If copies are subsequently requested, the applicants shall be referred to the reporting service.

Signed at Washington, D.C., this 18th day of September 1972.

ROGER W. GRANT,
Executive Secretary.

[FR Doc.72-16105 Filed 9-19-72;8:56 am]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR SOCIAL SCIENCES

Notice of Public Meeting

Notice is hereby given in accordance with Executive Order 11671, section 13.a (1) and (2), dated June 5, 1972, that the Advisory Committee for Social Sciences will meet at 9:30 a.m. on October 2 and 3, 1972, in Room 540, 1800 G Street NW., Washington, DC 20550.

The purpose of this committee is to provide advice, counsel, and critical review with respect to the social science activities of the Foundation, with particular emphasis on the programs of the Division of Social Sciences of the Directorate for Research.

The agenda for this meeting will include presentations by senior National Science Foundation officials on NSF activities since the last committee meeting; special reports on recent Division efforts in the Law and Social Sciences and Social Indicators research; a status report on RANN (Research Applied to National Needs) activities; and a report by the committee chairman on a survey conducted to assess the need for new social science projects.

The meeting shall be open to the public as observers only. Summary minutes of this meeting may be obtained from the Management Analysis Office, Room 245, 1800 G Street NW., Washington, DC 20550.

T. E. JENKINS,
Assistant Director for Administration.

SEPTEMBER 15, 1972.

[FR Doc.72-15979 Filed 9-19-72;8:51 am]

ADVISORY PANEL ON THE MATERIALS RESEARCH LABORATORIES

Notice of Meeting

Pursuant to Executive Order 11671, notice is hereby given that a meeting of the Advisory Panel on the Materials Research Laboratories will be held at 9 a.m. on September 29, 1972, in Room 338, 1800 G Street NW., Washington, DC 20550. The purpose of this panel is to provide advice and recommendations (a) concerning the programs and funding of existing materials research laboratories and guidance on the establishment of new laboratories; and (b) as part of the review and evaluation process for specific proposals and projects.

The agenda will be devoted to the review and evaluation of pending proposals or projects, therefore, the meeting will not be open to the public in accordance with the determination by the Director of the National Science Foundation on August 23, 1972, pursuant to the provisions of Executive Order 11671, section 13(d).

Summary minutes relative to this meeting may be obtained by contacting the Management Analysis Office, Room 245, 1800 G Street NW., Washington, DC 20550.

T. E. JENKINS,
Assistant Director for Administration.

SEPTEMBER 15, 1972.

[FR Doc.72-15981 Filed 9-19-72;8:51 am]

SCIENCE INFORMATION COUNCIL

Notice of Public Meeting

Notice is hereby given in accordance with Executive Order 11671, section 13.a. (1) and (2), dated June 5, 1972, that the Science Information Council will meet at 9:30 a.m. on October 5 and 6, 1972, in Room 540, 1800 G Street NW., Washington, DC 20550.

The purpose of the Council, established pursuant to Public Law 85-864, is to advise, to consult with, and to make recommendations to the Science Information Service.

The agenda for the meeting is as follows:

October 5 session—9:30 a.m. to 5:00 p.m.

1. Call to order and welcome by the Assistant Director, National and International Program.
2. Remarks by the Director, National Science Foundation.
3. Remarks by the Chairman, Science Information Council.
4. Presentation on National Science Computer Network.
5. Review of Research Program.
6. Review of Publications Program.
7. Review of Data Systems Program.
8. Review of Special Foreign Currency Program.

October 6 session—9:30 a.m. to 5:00 p.m.

1. Presentation on support of International Information Activities.
2. Council discussion for views on how science, technology and education will be affected by and will affect communications and information technology.
3. Council discussion for views on improving user involvement in the development and operation of information systems.
4. Council recommendations on Office of Science Information Service initiatives.
5. Election of chairman.
6. New business.

The meeting shall be open to the public as observers only. Persons who may want to attend should notify the Office of Science Information Service, either by phone (202—632-5824) or by mail (1800 G Street NW., Washington, DC 20550), not later than September 29, 1972. Summary minutes of this meeting may be obtained from the Management Analysis Office, Room 245, 1800 G Street NW., Washington, DC 20550.

T. E. JENKINS,
Assistant Director for Administration.

SEPTEMBER 15, 1972.

[FR Doc.72-15980 Filed 9-19-72;8:51 am]

OFFICE OF EMERGENCY PREPAREDNESS

VIRGINIA

Amendment to Notice of Major Disaster

Notice of major disaster for the State of Virginia, dated June 29, 1972, and published July 4, 1972 (37 F.R. 13218); amended July 2, 1972, and published July 14, 1972 (37 F.R. 13825); amended July 19, 1972, and published July 25, 1972 (37 F.R. 14838); and amended August 18, 1972, and published August 23, 1972 (37 F.R. 16999), is hereby further amended to include the following counties among those counties and cities determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 23, 1972:

The counties of:

Appomattox.	Henrico.
Buckingham.	Loudoun.
Cumberland.	Shenandoah.
Goochland.	

Dated: June 29, 1972.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[FR Doc.72-15940 Filed 9-19-72;8:47 am]

WISCONSIN

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in me by the President under Executive Order 11575 of December 31, 1970; and by virtue of the Act of December 31, 1970, entitled "Disaster Relief Act of 1970" (84 Stat. 1744), as amended by Public Law 92-209 (85 Stat. 742); notice is hereby given that on September 10, 1972, the President declared a major disaster as follows:

I have determined that the damages in certain areas of the State of Wisconsin from heavy rains and flooding, beginning about August 15, 1972, are of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 91-606. I therefore declare that such a major disaster exists in the State of Wisconsin. You are to determine the specific areas within the State eligible for Federal assistance under this declaration.

Notice is hereby given that pursuant to the authority vested in me by the President under Executive Order 11575 to administer the Disaster Relief Act of 1970 (Public Law 91-606, as amended), I hereby appoint Mr. Robert E. Connor, Regional Director, OEP Region 5, to act as the Federal Coordinating Officer to perform the duties specified by section 201 of that Act for this disaster.

I do hereby determine the following areas in the State of Wisconsin to have been adversely affected by this declared major disaster:

The Counties of:

Ashland.	Iron.
Bayfield.	

Dated: September 14, 1972.

G. A. LINCOLN,
Director,
Office of Emergency Preparedness.

[FR Doc.72-15941 Filed 9-19-72;8:47 am]

POSTAL RATE COMMISSION

NOTICE OF VISITS TO POST OFFICES

Notice is hereby given that employees of the Postal Rate Commission will be visiting Postal Service facilities on the dates indicated for the purpose of acquiring general background knowledge of postal operations.

No particular matter at issue in contested proceedings before the Commission nor the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission will be discussed.

Reports of the visits will be on file in the Commission's docket room.

Place of Visit	*Date of Visit*
Washington, D.C. post office	Sept. 26, 1972
Northern Virginia Sectional Center Facility	Sept. 28, 1972

By direction of the Commission.

DAVID F. HARRIS,
Acting Secretary.

[FR Doc.72-16075 Filed 9-18-72;2:00 pm]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 2-16033, 22-2730]

DUQUESNE LIGHT CO.

Notice of Application and Opportunity for Hearing

SEPTEMBER 12, 1972.

Notice is hereby given that Duquesne Light Co. (the Company) has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the Act) for a finding by the Commission that the trusteeship of Pittsburgh National Bank (the Bank) under an indenture dated March 1, 1960 (the 1960 Indenture) which was heretofore qualified under the Act, and the trusteeship of the Bank under an indenture to be dated as of August 1, 1972 (the 1972 Indenture) which will not be qualified under the Act, is not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the 1960 Indenture and under the 1972 Indenture.

Section 310(b) of the Act provides in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within 90 days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under a qualified indenture and becomes trustee under another indenture of the same obligor. However, pursuant to clause (ii) of subsection (1) there may be excluded from the operation of this provision under another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for hearing thereon, that trusteeship under a qualified indenture and another indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Company alleges that:

(1) The Company proposes to enter an installment sales agreement with Allegheny County Industrial Development Authority (the Authority). Upon execution of the agreement, the authority will enter the 1972 Indenture with the Bank as trustee, pursuant to which the Authority will issue and sell $24 million principal amount of its Pollution Control Revenue Bonds (Duquesne Light Co. Project), Series A (Series A Bonds) and pursuant to which the Authority may, with the concurrence of the Company, issue additional bonds to finance the cost of pollution control facilities for the Company. The principal of and interest and premium, if any, on the Series A Bonds are payable solely from receipts and revenues paid by the Company to the authority under the agreement.

(2) By virtue of section 3(a)(2) of the Securities Act of 1933 (the 1933 Act), the Series A Bonds are exempt from registration under the 1933 Act, because interest on the Series A Bonds is excludable from the gross income of the recipient under section 103(a)(1) of the Internal Revenue Code of 1954 (the Code), by reason of the application of paragraph (4)(F) of section 103(c), since the proceeds from the sale of the Series A Bonds are to be used to provide pollution control facilities.

(3) By virtue of section 304(a)(4)(B) of the Trust Indenture Act of 1939 (the 1939 Act) the 1972 Indenture is not required to be qualified under the 1939 Act and certain provisions required by the 1939 Act are not contained in the 1972 Indenture.

(4) As of March 31, 1972, the Company has outstanding $14,800,000 principal amount of its 5 percent Sinking Fund Debentures due March 1, 2010, issued under an Indenture dated as of March 1, 1960 (the 1960 Indenture), between the Company and the Bank, as Trustee. The Sinking Fund Debentures were registered under the 1933 Act at No. 2-16033

and the 1960 Indenture was qualified under the 1939 Act at No. 22-2730.

(5) The obligations of the Company under the 1960 Indenture, as well as its obligations under the agreement to pay the purchase price for the pollution control facilities sold thereunder, are both wholly unsecured and each such obligation ranks equally with the other. The Company is not in default under the 1960 Indenture.

(6) The provisions of the 1960 Indenture and those of the 1972 Indenture and the agreement are not so likely to involve the Bank in a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under either of said indentures.

(7) The Company hereby waives notice of hearing and waives hearing in connection with matters referred to in this application and also waives any and all rights to specify procedures under the rules of practice of the Commission with respect to this application.

For a more detailed statement of the matters of the fact and law asserted, all persons are referred to paid application which is a public document on file in the offices of the Commission at 500 North Capitol Street NW., Washington, DC 20549.

Notice is further given that any interested person may not later than September 25, 1972, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and the interest of investors unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

[SEAL] RONALD F. HUNT,
Secretary.

[FR Doc.72-15942 Filed 9-19-72;8:46 am]

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30; Revision 14; Amdt. 2]

REGIONAL DIRECTORS

Delegation of Authority to Conduct Program Activities in the Field Offices

Delegation of Authority No. 30 (Revision 14) (37 F.R. 12651), as amended (37 F.R. 14840), is hereby further amended to extend authority to Regional Directors for the rental of motor vehicles from commercial sources thereby removing the limitation of rental from the General Services Administration.

Part VIII, section A, paragraph 3, is revised to read as follows:

3. To rent motor vehicles and garage space for the storage of such vehicles when not furnished by this Administration.

Effective date: July 1, 1972.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.72-15943 Filed 9-19-72;8:47 am]

DEPARTMENT OF LABOR

Office of Foreign Economic Policy

ABEX CORP.

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 the Columbus, Ohio, plant of the Denison Division of Abex Corp. (TEA-W-149). 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 29, 1972.

Signed at Washington, D.C., this 12th day of September 1972.

GLORIA G. VERNON,
Director, Office of Foreign Economic Policy.

[FR Doc.72-15962 Filed 9-19-72;8:49 am]

INTERSTATE COMMERCE COMMISSION

[Notice 79]

ASSIGNMENT OF HEARINGS

SEPTEMBER 15, 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 97394 Sub 11, Bowling Green Express, Inc., now assigned October 2, 1972, will be held in the Holiday Inn, Interstate 65 Interchange, Cave City, Ky.

MC-F-11495, Arrow Motor Freight Line, Inc.—Control and Merger—Rite Trucking Co., Inc., now assigned September 26, 1972, at Chicago, Ill., is canceled.

I & S-M-25958, Classification ratings on cushions, pads or pillows, now assigned hearing September 25, 1972, at Washington, D.C. is postponed to October 5, 1972, same time and place.

MC-99208 (Sub-No. 9), Skyline Transportation, Inc., now being assigned hearing November 27, 1972 (1 week), at Frankfort, Ky., in a hearing room to be later designated.

MC-C-7822, Mississippi Chemical Express, Inc., and Stauffer Chemical Co., Inc.—Investigation of Operations, assigned September 21, 1972, at New Orleans, La., will be held at the Sheraton Charles Hotel, 211 St. Charles Avenue.

MC 51146 Sub 252, Schneider Transport, Inc., now assigned September 21, 1972, at Chicago, Ill., is canceled and the application dismissed.

MC-C-7776, Cooper Transfer Co., Inc.—Investigation and Revocation of Certificates, now being assigned November 28, 1972, at Birmingham, Ala., in a hearing room to be later designated.

MC 73165 Sub 305, Eagle Motor Lines, Inc., MC 73688 Sub 49, Southern Trucking Corp., MC 106644 Sub 129, Superior Trucking Co., Inc., MC 126305 Sub 44, Boyd Brothers Transportation Co., Inc., now being assigned November 27, 1972 (1 day), at Birmingham, Ala., in a hearing room to be later designated.

MC 115162 Sub 238, Poole Truck Line, Inc., now being assigned November 30, 1972 (2 days), at Birmingham, Ala., in a hearing room to be later designated.

MC 73165 Sub 302, Eagle Motor Lines, Inc., now being assigned December 4, 1972 (1 day), at Birmingham, Ala., in a hearing room to be later designated.

MC 20783 Sub 85, Tompkins Motor Lines, Inc., now being assigned December 5, 1972 (2 days), at Birmingham, Ala., in a hearing room to be later designated.

MC 72243 Sub 28, The Aetna Freight Lines, Inc., now being assigned December 7, 1972 (2 days), at Birmingham, Ala., in a hearing room to be later designated.

MC-C-7697, Travel Ideas, Inc.; American Automobile Association, Wisconsin Division; Agnes J. Ryan; and Travel & Tour Service, Inc.—Investigation of operations and revocation of license, now assigned September 26, 1972, at Madison, Wis., is postponed to October 25, 1972, in Room 301B City Hall, 200 East Wells Street, Milwaukee, Wis.

MC-59967 Sub 7, Lasham Cartage Co., now being assigned hearing October 30, 1972 (1 week), at Miami, Fla., in a hearing room to be later designated.

MC 84449 Sub 4, Calvalcade Trucking, Inc., now assigned October 3, 1972, at Washington, D.C., is canceled and the application is dismissed.

MC 32882 Sub 50, Mitchell Bros. Truck Line, and MC 83539 Sub 282, C & H Transportation Co., Inc., now assigned October 30, 1972, at San Francisco, Calif., will be held at the Del Webb's Towne House, Eighth and Market Streets, instead of Room 13025, 13th Floor, Federal Building.

MC 77972 Sub 19, Merchants Truck Line, Inc., now being assigned November 27, 1972 (2 weeks), at Jackson, Miss., in a hearing room to be later designated.

MC 29120 Sub 139, All-American Transport, Inc., now assigned October 30, 1972, at St. Louis, Mo., will be held in the French Market Room, Downtown Roadway Inn, 2600 Market Street, instead of the Hickock Room, Stouffer's River Front Inn, 200 South Fourth Street.

MC-F-11534, Associated Freight Lines—Control—Best-Way Transportation, MC 112123 Sub 7, Best-Way Transportation, and MC-F-11602, Associated Freight Lines—Purchase (Portion)—Doudell Trucking Co., now assigned October 30, 1972, at San Francisco, Calif., postponed to November 27, 1972 (1 week), at the Sir Francis Drake, Powell and Sutter Streets, San Francisco, Calif., December 4, 1972 (1 week), at the Los Angeles Hilton, 930 Wilshire Boulevard, Los Angeles, Calif., and December 11, 1972 (1 week), at the Caravan Inn, Phoenix, Ariz.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-15973 Filed 9-19-72;8:50 am]

[Notice No. 25]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

SEPTEMBER 15, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application) to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Passengers, 1969 (49 CFR 1042.2(c)(9)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.2(c)(9)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.2(c)(9)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PASSENGERS

No. MC-67308 (Deviation No. 7), COLONIAL TRAILWAYS, 212 St. Francis Street, Mobile, AL 36601, filed August 22, 1972. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *passengers and their baggage*, and *express* and *newspapers* in the same vehicle with passengers, over a deviation route as follows: From junction U.S. Highway 90 and Interstate Highway 10 at Spanish Fort, Ala., over Interstate Highway 10 to junction U.S. Highway 29, near Pensacola, Fla., thence over U.S. Highway 29 to Pensacola, Fla., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport passengers and the same property, over a pertinent service route as follows: From junction U.S. Highway 31 and unnumbered highway east of Mobile, Ala. (formerly Camp Baldwin, Ala.), over unnumbered highway to junction U.S. Highway 90, near Malbis, Ala., thence over U.S. Highway 90 through Loxley, Ala., to junction unnumbered highway near Rosinton, Ala., thence over unnumbered highway to junction U.S. Highway 90 approximately 3.5 miles east of Robertsdale, Ala., thence over U.S. Highway 90 through Seminole, Ala., to junction Alternate U.S. Highway 90, thence over Alternate U.S. Highway 90 to junction U.S. Highway 29, thence over U.S. Highway 29 to Pensacola, Fla., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc. 72-15974 Filed 9-19-72;8:50 am]

[Notice 29]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

SEPTEMBER 15, 1972.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969 (49 CFR 1042.4(d)(11)) and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(d)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(d)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules-Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-60012 (Deviation No. 4), RIO GRANDE MOTOR WAY, INC., 1400 West 52d Avenue, Denver, CO 80221, filed August 22, 1972. Carrier's representative: Wally Fletchinger, same address as applicant. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Alamosa, Colo., over Colorado Highway 17 to the Colorado-New Mexico State line, thence over New Mexico Highway 17 to Farmington, N. Mex., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service route as follows: From Alamosa, Colo., over U.S. Highway 160 to Durango, Colo., thence over U.S. Highway 550 to Farmington, N. Mex., and return over the same route.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72-15975 Filed 9-19-72;8:50 am]

NOTICE OF FILING OF MOTOR CARRIER INTRASTATE APPLICATIONS

SEPTEMBER 15, 1972.

The following applications for motor common carrier authority to operate in intrastate commerce seek concurrent motor carrier authorization in interstate or foreign commerce within the limits of the intrastate authority sought, pursuant to section 206(a)(6) of the Interstate Commerce Act, as amended October 15, 1962. These applications are governed by § 1.245 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of April 11, 1963, page 3533, which provides, among other things, that protests and requests for information concerning the time and place of State commission hearings or other proceedings, any subsequent changes therein, any other related matters shall be directed to the State commission with which the application is filed and shall not be addressed to or filed with the Interstate Commerce Commission.

Montana Docket No. Unknown, filed September 6, 1972. Applicant: OVANDO, HELMVILLE STAGE (U.S. MAIL SERVICE), Ovando, Mont. Applicant's representative: Robert D. Sackman, Ovando, Mont. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of

General commodities, from the Drummond Depot and delivered to the Ovando, Helmville residents. Both intrastate and interstate authority sought.

Hearing: Date, time, and place unknown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Montana Public Service Commission, 1227 Eleventh Avenue, Helena, MT 59601, and should not be directed to the Interstate Commerce Commission.

Texas Docket No 4354, filed July 29, 1972. Applicant: ALLISON-LOGAN FREIGHT LINE, INC., 106 West High Street, Post Office Box 724, Terrell, TX 75160. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities* except in bulk, excluding explosives, automobiles, livestock, frozen products and produce. Texas Highway No. 34 from Terrell, Tex., to Quinlan, Tex., thence Texas Highway No. 34 at the intersection of FM Road No. 35 to the intersection of FM Road No. 35 and RM Road No. 513, on the one hand and FM Road Nos. 47 and 35 on the other to connect with existing authority, serving all intermediate points, returning over the same routes. Both intrastate and interstate authority sought.

Hearing: Approximately 30 days after publication in the FEDERAL REGISTER. Place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Railroad Commission of Texas, Capitol Station, Post Office Drawer 12967, Austin, TX 78711, and should not be directed to the Interstate Commerce Commission.

Nebraska State Docket No. M–11710, Supplement No. 4, filed June 7, 1972. Applicant: STROMSBURG MOTOR FREIGHT, INC., Post Office Box 488, Grand Island, NE. Applicant's representative: Robert J. Gartner, 2103 West Charles, Grand Island, NE. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *General commodities,* except those requiring special equipment, between points within a 30-mile radius of Grand Island, Nebr., and between points within said radial area on the one hand, and, on the other hand, all points in Nebraska, over irregular routes. (As issued under Nebraska Intrastate Authority No. M–11387.) Both intrastate and interstate authority sought.

Hearing: Date, time, and place to be determined later. Requests for procedural information including time for filing protests concerning this application should be addressed to the Nebraska State Railway Commission, Office of the Railway Commission, Third Floor, 1342 M Street, Lincoln, NE 68508, and should not be directed to the Interstate Commerce Commission.

California Docket No. 53570, filed September 6, 1972. Applicant: DI SALVO TRUCKING CO., 800 Phelps Street, San Francisco, CA. Applicant's representative: Marshall G. Berol, 100 Bush Street, San Francisco, CA 94104. Certificate of public convenience and necessity sought to operate a freight service as follows: Transportation of *general commodities* from, to, and between all points and places located: (A)(1) On or within 5 miles of U.S. Highway No. 40 between San Francisco and Sacramento including San Francisco and Sacramento; (2) on or within 5 miles of U.S. Highway No. 50 and U.S. Highway No. 99 between Oakland and Sacramento, including both Oakland and Sacramento; (3) on or within 10 miles of State Highway No. 4 from its intersection with U.S. Highway No. 40 near Pinole to and including Stockton; (4) on or within 10 miles of unnumbered county road between State Highway 4 and U.S. Highway 50 via Byron and Bethany; (5) on or within 10 miles of State Highway No. 24 between Oakland and Sacramento, including both Oakland and Sacramento; (6) on State Highway No. 21 from its intersection with State Highway No. 4 near Pacheco, Calif., to and including its intersection with U.S. Highway No. 50 near Dublin; (7) on or within 20 miles of U.S. Highway No. 99 between Sacramento and Bakersfield, including both Sacramento and Bakersfield; (8) on or within 5 miles of U.S. Highway No. 99 between Bakersfield and Los Angeles; (9) on or within 10 miles of State Highway No. 1 between San Francisco and San Luis Obispo; (10) on or within 15 miles of U.S. Highways Nos. 101 and 101A between San Francisco and Los Angeles; (11) within a 20-mile radius of Sacramento; (12) within a 20-mile radius of Fresno; (13) within a 20-mile radius of Bakersfield; (14) within the San Francisco territory as described in Appendix B, attached hereto; (15) within the Los Angeles Basin Territory as that territory is described in Appendix C attached hereto.

(16) On State Highway No. 152 between Gilroy and Califa; (17) on or within 3 miles of State Highway No. 33 between its intersection with U.S. Highway No. 50 near Tracy and Maricopa; (18) on or within 20 miles of Interstate Highway 5 between Wheeler Ridge and junction with Interstate Highway 580 (near Tracy). (B) Between all points and places enumerated in paragraph (A) (subparagraphs 1 through 18), on the one hand, and all points located on or within 10 miles laterally of U.S. Highways Nos. 101, 101A, and 395 between Los Angeles basin territory and San Ysidro, on the other hand. (C) Service may be performed between certificated points via any and all streets and highways. (D) The authority herein granted is subject to the condition that Di Salvo Trucking Co., shall not transport any shipments of: (1) Used household goods and personal effects not packed in accordance with the crated property requirements set forth in paragraph (d) of Item No. 10–C of Minimum Rate Tariff No. 4–A. (2) Automobiles, trucks, and buses, viz: New and used, finished or unfinished passenger automobiles (including jeeps), ambulances, hearses, and taxis; freight automobiles, automobile chassis, trucks, truck chassis, truck trailers, trucks and trailers combined, buses and bus chassis. (3) Livestock, viz: Bucks, bulls, calves, cattle, cows, dairy cattle, ewes, goats, hogs, horses, kids, lambs, oxen, pigs, sheep, sheep-camp outfits, sows, steers, stags, or swine. (4) Liquids, compressed gases, commodities, in semiplastic form and commodities in suspension in liquids in bulk, in tank trucks, tank trailers, tank semitrailers or a combination of such highway vehicles. (5) Commodities when transported in bulk in dump trucks or in hopper-type trucks. (6) Commodities when transported in motor vehicles equipped for mechanical mixing in transit. (7) Articles of extraordinary value. (8) Fruits, fresh or green (not cold pack or frozen). (9) Vegetables, fresh or green (not cold pack or frozen).

Appendix B. San Francisco territory includes all the city of San Jose and that area embraced by the following boundary: Beginning at the point the San Francisco-San Mateo County boundary line meets the Pacific Ocean; thence easterly along said boundary line to a point 1 mile west of U.S. Highway 101; southerly along an imaginary line 1 mile west of and paralleling U.S. Highway 101 to its intersection with Southern Pacific Co. right-of-way at Arastradero Road; southeasterly along the Southern Pacific Co. right-of-way to Pollard Road, including industries served by the Southern Pacific Co. spur line extending approximately 2 miles southwest from Simla to Permanente; easterly along Pollard Road to West Parr Avenue; easterly along West Parr Avenue to Capri Drive; southerly along Capri Drive to East Parr Avenue; easterly along East Parr Avenue to the Southern Pacific Co. right-of-way; southerly along the Southern Pacific Co. right-of-way to the Campbell-Los Gatos city limits; easterly along said limits and the prolongation thereof to the San Jose-Los Gatos Road; northeasterly along San Jose-Los Gatos Road to Foxworthy Avenue; easterly along Foxworthy Avenue to Almaden Road; southerly along Almaden Road to Hillsdale Avenue; easterly along Hillsdale Avenue to U.S. Highway 101; northwesterly along U.S. Highway 101 to Tully Road; northeasterly along Tully Road to White Road; northwesterly along White Road to McKee Road; southwesterly along McKee Road to Capitol Avenue; northwesterly along Capitol Avenue to State Highway 17 (Oakland Road); northerly along State Highway 17 to Warm Springs; northerly along the unnumbered highway via Mission San Jose and Niles to Hayward; northerly along Foothill Boulevard to Seminary Avenue; easterly along Seminary Avenue to Mountain Boulevard; northerly along Mountain Boulevard and Moraga Avenue to Estates Drive; westerly along Estates Drive, Harbord Drive, and Broadway Terrace to College Avenue; northerly along College Avenue to Dwight Way; easterly along Dwight Way to the Berkeley-Oakland boundary line; northerly along said boundary line to the campus boundary of the University of California; northerly and westerly along the campus boundary of the University

of California to Euclid Avenue; northerly along Euclid Avenue to Marin Avenue; westerly along Marin Avenue to Arlington Avenue; northerly along Arlington Avenue to U.S. Highway 40 (San Pablo Avenue); northerly along U.S. Highway 40 to and including the city of Richmond; southwesterly along the highway extending from the city of Richmond to Point Richmond; southerly along an imaginary line from Point Richmond to the San Francisco waterfront at the foot of Market Street; westerly along said waterfront and shoreline to the Pacific Ocean; southerly along the shoreline of the Pacific Ocean to point of beginning.

Appendix C. Los Angeles Basin territory includes that area embraced by the following boundary: Beginning at the point the Ventura County-Los Angeles County boundary line intersects the Pacific Ocean; thence northeasterly along said county line to the point it intersects State Highway No. 118, approximately 2 miles west of Chatsworth; easterly along State Highway No. 118 to Sepulveda Boulevard; northerly along Supulveda Boulevard to Chatsworth Drive; northeasterly along Chatsworth Drive to the corporate boundary of the city of San Fernando; westerly and northerly along said corporate boundary to McClay Avenue; northeasterly along McClay Avenue to its prolongation to the Angeles National Forest boundary; southeasterly and easterly along the Angeles National Forest and San Bernardino National Forest boundary to the county road known as Mill Creek Road; westerly along Mill Creek Road to the county road 3.8 miles north of Yucaipa; southerly along said county road to and including the unincorporated community of Yucaipa; westerly along Redlands Boulevard to U.S. Highway No. 99; northwesterly along U.S. Highway No. 99 to the corporate boundary of the city of Redlands; westerly and northerly along said corporate boundary to Brookside Avenue; westerly along Brookside Avenue to Barton Avenue; westerly along Barton Avenue and its prolongation to Palm Avenue; westerly along Palm Avenue to La Cadena Drive; southwesterly along La Cadena Drive to Iowa Avenue; southerly along Iowa Avenue to U.S. Highway No. 60; southwesterly along U.S. Highways Nos. 60 and 395 to the county road approximately 1 mile north of Perris; easterly along said county road via Nuevo and Lakeview to the corporate boundary of the city of San Jacinto; easterly, southerly, and westerly along said corporate boundary to San Jacinto Avenue; southerly along San Jacinto Avenue to State Highway No. 74; westerly along State Highway No. 74 to the corporate boundary of the city of Hemet; southerly, westerly, and northerly along said corporate boundary to the right-of-way of The Atchison, Topeka & Santa Fe Railway Co.; southwesterly along said right-of-way to Washington Avenue; southerly along Washington Avenue, through and including the unincorporated community of Winchester to Benton Road; westerly along Benton Road to the county road intersecting U.S. Highway No. 395, 2.1 miles north of the unincorporated community of Temecula; southerly along said county road to U.S. Highway 395; southeasterly along U.S. Highway No. 395 to the Riverside County-San Diego County boundary line; westerly along said boundary line to the Orange County-San Diego County boundary line; southerly along said boundary line to the Pacific Ocean; northwesterly along the shoreline of the Pacific Ocean to point of beginning.

EXPLANATORY NOTE

Applicant is presently authorized in MC 96788 (Sub-No. 2) to perform operations in interstate or foreign commerce covering most of the authority above stated. The purpose of this application is to seek the following extensions: (A) In Route No. 7—service to points within 20 miles of U.S. Highway 99 between Fresno and Sacramento, rather than service to points within 5 miles of this highway between these points as presently authorized (applicant is presently authorized to serve points within a 20-mile radius of Fresno, Sacramento, and Bakersfield, and also within 20 miles of U.S. Highway 99 between Fresno and Bakersfield); (B) Route No. 10—service to points within 15 miles of U.S. Highways 101 and 101A between San Francisco and Los Angeles, rather than service to points within 10 miles of these highways as presently authorized; and (C) Route No. 18—service on Interstate Highway 5 between Wheeler Ridge and its junction with Interstate Highway 580 (near Tracy) and points within 20 miles of this route (applicant is presently authorized to serve portions of this route by virtue of its authority to serve on or within 3 miles of State Highway No. 33 between its intersection with U.S. Highway No. 50 near Tracy and Mariposa). Both intrastate and interstate authority sought.

HEARING: Date, time, and place not shown. Requests for procedural information including the time for filing protests concerning this application should be addressed to the Public Utilities Commission, State of California, State Building, Civic Center, 455 Golden Gate Avenue, San Francisco, CA 94102 and should not be directed to the Interstate Commerce Commission.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72-15972 Filed 9-19-72;8:50 am]

[Notice 75]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

SEPTEMBER 15, 1972.

The following publications[1] are governed by the new Special Rule 1100.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications as filed by applicant, and may include descriptions, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable to the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 29120 (Sub-No. 132) (Republication), filed November 17, 1971, published in the FEDERAL REGISTER issue of December 16, 1971, and republished this issue. Applicant: ALL-AMERICAN TRANSPORT INC., 1500 Industrial Avenue, Post Office Box 769, Sioux Falls, SD 57101. Applicant's representative: Mead Bailey (same address as applicant). A report of the Commission, Review Board No. 4, decided August 8, 1972, and served September 7, 1972, finds that the present and future public convenience and necessity require operation by applicant, as a common carrier by motor vehicle, over irregular routes, of bags from the plantsite of the Chase Bag Co. at or near Sibley, Iowa, to points in Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota; that applicant is fit, willing, and able properly to perform the service and to conform to the rules and regulations of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings herein a notice of the authority actually granted in this report will be published in the FEDERAL REGISTER and issuance of a certificate herein will be withheld for a period of 30 days from the date of such republication, during which period any proper party in interest may file an appropriate petition or other pleading.

No. MC 85819 (Sub-No. 5) (Republication), filed October 12, 1971, published in the FEDERAL REGISTER issues of November 11, 1971, and December 9, 1971, and republished this issue. Applicant: GULF COAST MOTOR LINES, INC., 105 South Myrtle Avenue, Clearwater, FL 33516. Applicant's representative: S. Harrison Kahn, Suite 733, Investment Building, Washington, D.C. 20005. An order of the Commission, Operating Rights Board, dated August 23, 1972, and served September 12, 1972, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of (a) passengers and their baggage in the same vehicle with passengers, in special operations, in round trip sightseeing and pleasure tours, beginning and ending at points in Pinellas, Hillsborough, Pasco,

[1] Except as otherwise specifically noted, each applicant (on applications filed after Mar. 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

Hernando, Sumpter, Lake, and Orange Counties, Fla., and extending to points in the United States (including Alaska but excluding Hawaii), and (b) passengers and their baggage in charter operations beginning and ending at points in Pinellas, Hillsborough, Pasco, Hernando, Sumpter, Lake, and Orange Counties, Fla. and extending to points in the United States (including Alaska but excluding Hawaii); that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice in the FEDERAL REGISTER of the application as originally published may have an interest in and would be prejudiced by the lack of proper notice of the grant of authority herein, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of the certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been prejudiced.

No. MC 135984 (Republication), filed August 18, 1971, published in the FEDERAL REGISTER issue of October 7, 1971, and republished this issue. Applicant: ROBERT C. HILTZ, INC., 236 Main Street, Gloucester, MA 09130. Applicant's representative: John F. Curley, 15 Court Square, Boston, MA 02108. A supplemental order by the Commission, Operating Rights Board, dated August 22, 1972, and served September 7, 1972, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a common carrier by motor vehicle, over irregular routes, of retail store merchandise in retail delivery only, from the retail stores of Sears Roebuck and Co. located at Danvers and Peabody, Mass., to points in Cheshire, Hillsboro, Merrimack, Rockingham, and Strafford Counties, N.H.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described in the findings of this order, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of such publication, during which period any proper party in interest may file an appropriate petition for leave to intervene in the proceeding setting forth in detail the precise manner in which it has been so prejudiced.

NOTICES FOR FILING OF PETITIONS

No. MC 7832 (Notice of Filing Petition for Modification of Permit to add Shipper), filed July 26, 1972. Petitioner: SAM LOWENSTEIN AND STANLEY LOWENSTEIN, a partnership, doing business as SUPER M FOODS DELIVERY, 411A North Wood Avenue, Linden, NJ 07036. Petitioner's representative: Bert Collins, 140 Cedar Street, New York, NY 10006. Petitioner states it holds authority under MC 7832, as a contract carrier, authorizing, as here pertinent, the transportation of, among other things, such merchandise as is dealt in by wholesale, retail, and chain grocery and food business houses, and, in connection therewith, equipment, materials, and supplies used in the conduct of such business, between Linden, N.J., on the one hand, and, on the other, points in Connecticut, Massachusetts, Rhode Island, and portions of New Hampshire and New York State, under contract with Food Fair Stores, Inc., under permanent grant, and another shipper, J. L. Prescott Co., Inc., under temporary grant. By the instant petition, petitioner seeks to modify MC 7832 by adding an additional shipper of Dole Co. to be served under a continuing contract or contracts. Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support fo or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 96098 (Sub-No. 51) (Notice of Filing of Petition to add Name of Shipper), filed April 18, 1972. Petitioner: MILTON TRANSPORTATION, INC., Rural Delivery 1, Box 207, Milton, PA 17847. Petitioner's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Petitioner holds authority in No. MC 96098 (Sub-No. 51), as here pertinent, to transport printing paper, from Stamford, Conn., to Dayton, Ohio, under a continuing contract or contracts with St. Regis Paper Co., of New York, N.Y. The papermill at Dayton, Ohio, was purchased by the Howard Paper Mills, Inc., from St. Regis Paper Co. and Howard Paper Mills, Inc., desires to continue to use the services of petitioner. Premises considered, petitioner requests that the name of the additional shipper, Howard Paper Mills, Inc., of Dayton, Ohio, be added to its permit. Any interested person desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 114789 (Sub-No. 28) (Notice of Filing of Petition for Removal of Restriction), filed August 17, 1972. Petitioner: NATIONWIDE CARRIERS, INC., Post Office Box 104, Maple Plain, MN 55389. Petitioner's representative: Donald L. Stern, Suite 530, Univac Building, 7100 West Center Road, Omaha, NE 68106. Petitioner presently holds a permit in No. MC 114789 (Sub-No. 28), authorizing, as pertinent, operation as a contract carrier by motor vehicle, over irregular routes, of general commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment because of size or weight), from the plantsites and other facilities of Minnesota Mining and Manufacturing Co. at St. Paul, Minn., and Ames, Iowa, to points in Connecticut, Delaware, Illinois, Indiana, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, West Virginia, and the District of Columbia, with no transportation for compensation on return except as otherwise authorized, restricted against service to storage and warehouse facilities of Minnesota Mining and Manufacturing Co., under a continuing contract, or contracts with Minnesota Mining and Manufacturing Co. of St. Paul, Minn. By the instant petition, petitioner seeks removal of the restriction against service to storage and warehouse facilities of Minnesota Minning and Manufacturing Co. Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 127487 (Sub-No. 2) (Notice of Filing Petition for Reconsideration and Modification of a Portion of Certificate), filed August 7, 1972. Petitioner: HOLT MOTOR EXPRESS, INC., Gloucester City, N.J. Petitioner's representative: Alan Kahn, Suite 1920, 2 Penn Center Plaza, Philadelphia, PA 19102. Petitioner is authorized under MC 127487 (Sub-No. 2), as a common carrier which reads in part as follows: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, lumber, meats, perishable food products, films, commodities in bulk, commodities requiring special equipment and those injurious or contaminating to other lading), between Philadelphia, Pa., and points within a radius of 200 miles of Philadelphia, restricted to shipments moving to or from public warehouses in Philadelphia. By the instant petition, petitioner seeks modification of its certificate to read as follows: "restricted to shipments moving to or from Philadelphia". Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 128217 (Notice of Filing of Petition for Modification of Permit To Add Additional Contracting Shipper), filed August 14, 1972. Petitioner: REINHART MAYER, doing business as, MAYER TRUCK LINE, Jamestown, N. Dak. Petitioner's representative: Gene P. Johnson,

425 Gate City Building, Fargo, N. Dak. 58102. Petitioner holds authority in No. 128217, authorizing, as here pertinent, motor carrier operations, as a contract carrier, in the transportation over irregular routes of: Iron and steel articles as described in Group III of Appendix V to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209, from Broadview, Chicago, and Chicago Heights, Ill., and Minneapolis, Minn., to points in North Dakota and elsewhere, limited to a transportation service to be performed under a continuing contract or contracts with Le Fevre Sales, Inc., and Haybuster Manufacturing, Inc., both of Jamestown, N. Dak., and Joseph T. Ryerson and Sons, Inc., of Chicago, Ill. By the instant petition, petitioner seeks to add Clark Equipment Co., Melrose Division, Gwinner, N. Dak., as an additional contracting shipper pursuant to the request by the shipper that the same be done to transport its articles from Broadview, Chicago, and Chicago Heights, Ill., and Minneapolis, Minn., to Gwinner and Cooperstown, N. Dak. Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 129629 (Notice of Filing Petition to Amend Contract Carrier Permit to Authorize Service for Additional Shippers and for Elimination of Two (2) Shippers), filed August 2, 1972. Petitioner: PAUL L. RYAN, doing business as, PAT RYAN, 3038 North Wilton Street, Chicago, IL 60657. Petitioner's representative: Robert E. Cleveland, 11 South La Salle Street, Chicago, IL 60603. Petitioner states it presently holds a contract carrier permit under MC 129629 as revised and issued July 18, 1972, which among other things authorizes the transportation of: Carpet, carpet materials, and uncrated furniture, from points in Chicago, Ill., to Milwaukee, Wis. Service above authorized is limited to transportation service to be performed under a continuing contracts with Walton Rug and Furniture, Chicago, Ill., Carson Pirie Scott and Co., Chicago, Ill., World Carpets, Inc., Niles, Ill., Galaxy Carpet Mills, Elk Grove Village, Ill. By this petition, petitioner seeks to amend the permit by eliminating Walton Rug and Furniture and Carson Pirie Scott and Co., both of Chicago, Ill. Also it seeks to add Venture Carpet Mills, Elk Grove Village, Ill.; Barwick Carpet Distributors, Elk Grove Village, Ill.; James A. Butler, Elk Grove Village, Ill.; John Manville, Chicago, Ill.; Majestic Carpet, Chicago, Ill.; and Monarch Carpet Distributors, Chicago, Ill., as shippers for whom service is to be performed from the same origins to the same destinations. Any interested person desiring to participate may file an original and six copies of his written representations, views, or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 13415 (Sub-No. 1) (Notice of Filing Petition for Modification of Permit and Motion To Dismiss), filed August 17, 1972. Petitioner: NORTH STAR TRANSPORT, INC., Post Office Box 51, Thief River Falls, MN 56701. Petitioner's representative: Anthony C. Vance, Suite 501, 1111 E Street NW., Washington, DC 20004. Petitioner presently holds a permit in MC 134145 (Sub-No. 1), issued April 29, 1971, authorizing, as pertinent, operation as a contract carrier by motor vehicle, over irregular routes, of snowmobiles, boats, motorbikes, and racing vehicles, from Minneapolis, Minn., among other points, to points in the United States; and "materials, supplies, and equipment used in the manufacture" of the above-named commodities, from points in 24 named States to Minneapolis, Minn., among other points, under continuing contract with three named shippers, including Arctic Enterprises, Inc. By the instant petition, petitioner seeks modification of its permit, if necessary, as follows: (a) Expand the first commodity description of Sub-1 so that "parts and accessories" is added; (b) add "and parts" to the second commodity description of Sub-1; and (c) add another shipper (Arctic Metals Products) to the three contract shippers now authorized in Sub-1. If such authority is not required, then North Star requests that this petition to modify be dismissed. Any person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 134323 (Sub-No. 4) (Notice of Filing of Petition for Modification of Permit), filed August 25, 1972. Petitioner: JAY LINES, INC., Post Office Box 4146, Amarillo, TX 79105. Petitioner's representative: Gailyn Larsen, 521 South 14th Street, Post Office Box 80806, Lincoln, NE 68501. Petitioner presently holds a permit in MC 134323 (Sub-No. 4), authorizing, as pertinent, operations as a motor carrier over irregular routes, transporting meats, meat product, and meat byproducts, and articles distributed by meat packinghouses as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 facilities of Missouri Beef Packers, Inc., and 766, from the plantsites and storage at or near Plainview, Amarillo, and Cactus, Tex., to points in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia, under a continuing contract, or contracts with Missouri Beef Packers, Inc., of Amarillo, Tex. By the instant petition, petioner seeks modification of its permit by the addition of Lubbock, Tex., as an origin point. Any interested person desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition wtihin 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 134806 (Sub-No. 1) (Notice of Filing of Petition for Modification of Permit), filed August 16, 1972. Petitioner: B–D–R TRANSPORT, INC., Post Office Box 813, Brattleboro, VT 05301. Petitioner's representative: Francis J. Ortman, 1100 17th Street NW., Suite 613, Washington, DC 20036. Petitioner holds authority in No. MC 134806 (Sub-No. 1), as here pertinent, to transport tanned leather, over irregular routes, from Milwaukee and Fond du Lac, Wis., and Chicago, Ill., to Wilton, Maine, under a continuing contract, or contracts, with G. H. Bass & Co. The shipper has now made arrangements to obtain additional leather of a different type or quality from a supplier in Waukegan, Ill. By the instant petition, petitioner requests that its permit in No. MC 134806 (Sub-No. 1) be modified so as to add Waukegan, Ill., as an origin point. Any interested person desiring to participate may file an original and six copies of his written representations, views or argument in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATION FOR CERTIFICATES OR PERMITS WHICH ARE TO BE PROCESSED CONCURRENTLY WITH APPLICATIONS UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 71043 (Sub-No. 7), filed September 5, 1972. Applicant: LAPORTE TRANSIT CO., INC., Post Office Box 578, LaPorte, IN 46350. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk and those requiring special equipment) between points in Lake, McHenry, Kane, Cook, Boone, Du Page, De Kalb, Kendall, and Will Counties, Ill. NOTE: Applicant states that the requested authority can be tacked with its present authority under MC 71043 and subs thereto at Chicago, Ill. Persons interested in the tacking possibilities are cautioned that failure to oppose the application may result in an unrestricted grant of authority. This is a matter directly related to MC–F 11659, published in the FEDERAL REGISTER issue of September 13, 1972. If a hearing is deemed necessary, applicant requests it be held at Chicago, Ill.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers

of property or passengers under sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto. (49 CFR 1.240.)

MOTOR CARRIER OF PROPERTY

No. MC–F–11653. Authority sought for purchase by INDIAN VALLEY BULK CARRIERS, INC., Ridge Road, Tylersport, PA 18971, of the operating rights and property of JOHN WAGNER, Rural Delivery No. 2, Box 841, Pottsville, PA 17901, and for acquisition by CARMEN A. DANELL, NICHOLAS C. DANELLA, both of 250 Diamond Avenue, Norristown, PA 19401, and PAUL YERK, JR., also of Tylersport, PA 18971, of control of such rights and property through the purchase. Applicants' attorney: Theodore Polydoroff, 1250 Connecticut Avenue NW., Washington, DC 20036. Operating rights sought to be transferred: *Coal*, as a *common carrier* over irregular routes, from points in Schuylkill County, Pa., to Brooklyn and Corona, N.Y., and North Bergen and Weehawken, N.J., from Hazelton and Morea, Pa., to points in Bronx County, N.Y., between points in Schuylkill County, Pa., on the one hand, and, on the other, points in Morris, Somerset, Essex, and Middlesex Counties, N.J. Vendee is authorized to operate as a *common carrier* in Pennsylvania, New Jersey, New York, Delaware, Maryland, North Carolina, Virginia, West Virginia, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11654. Authority sought for purchase by McBRIDE TRANSPORTATION, INC., 289 West Main Street, Goshen, NY 10924, of a portion of the operating rights of CHEMICAL LEAMAN TANK LINES, INC., 520 East Lancaster Avenue, Downingtown, PA 19335, and for acquisition by FRANK McBRIDE, SR., also of Goshen, N.Y. 10924, of control of such rights through the purchase. Applicants' attorneys: Raymond A. Richards, 44 North Avenue, Webster, NY 14580, and Thomas J. O'Brien, 520 East Lancaster Avenue, Downingtown, PA 19335. Operating rights sought to be transferred: *Vinegar*, in bulk, in tank vehicles, as a *common carrier* over irregular routes, from New York and Peekskill, N.Y., to points in New Jersey, Delaware, Maryland, and Pennsylvania, from Peekskill, N.Y., to certain specified points in Connecticut, Maine, and Massachusetts, and points in Greenville, N.H., and Westerly, R.I. Vendee is authorized to operate as a *common carrier* in New York, Connecticut, New Jersey, Ohio, Maryland, Vermont, Pennsylvania, Massachusetts, Maine, New Hampshire, Rhode Island, Delaware, Michigan, Virginia, West Virginia, Illinois, Indiana, Kentucky, and the District of Columbia. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11655. Authorities sought for purchase by (A) C & J COMMERCIAL DRIVEAWAY, INC., 1905 West Mt. Hope Avenue, Lansing, MI 48903, to purchase a portion of the operating rights of HOWARD SOBER, INC., 2400 West St. Joseph Street, Lansing, MI 48904, and (AA) HOWARD SOBER, INC., to purchase a portion of the operating rights of DEALERS TRANSIT, INC., 7701 South Lawndale Avenue, Chicago, IL 60652, and for acquisition by NATIONAL CITY LINES, INC., 2598 74th Street, Post Office Box 10127, Lubbock, TX 79408, of control of such rights through the purchase. Applicants' attorney: Walter N. Bieneman, Suite 1700, One Woodward Avenue, Detroit, MI 48226. Operating rights sought to be transferred: (A) *New automobiles, new trucks, new tractors, and new chassis*, in initial movements, in truckaway service, and *new bodies, and parts* of the commodities specified immediately above, as a *common carrier* over irregular routes, from places of manufacture and assembly in Buffalo, N.Y., to Chicago, Ill., South Bend, Ind., and points in New York, Massachusetts, Rhode Island, Connecticut, New Jersey, Pennsylvania, Maryland, West Virginia, Ohio, Michigan, and the District of Columbia, from places of manufacture and assembly in Lansing, Mich., to Boston, Mass., Hartford, Conn., and points in New York, Pennsylvania, Maryland, West Virginia, Kentucky, Ohio, Michigan, Indiana, Illinois, Wisconsin, Missouri, Arkansas, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, that part of Texas north of U.S. Highway 80 and east of U.S. Highway 81, including points on the indicated portions of the highways specified, and the District of Columbia, from places of manufacture and assembly in Wayne County, Mich., and those in that part of Macomb County, Mich., south of 14 Mile Road and west of Gratiot Avenue (except Fraser, East Detroit, and Roseville, Mich.), to points in Michigan, Ohio, Pennsylvania, New York, and that part of West Virginia north of U.S. Highway 60 and west of a line beginning at Charleston, W. Va., and extending along U.S. Highway 119 to junction West Virginia Highway 16, and thence along West Virginia Highway 16 to the Ohio River, including points on the indicated portions of the highways specified; *automobiles, trucks, tractors and chassis*, new, used, unfinished, or wrecked, in secondary movements, in truckaway service, and *bodies*, new, used, unfinished, or wrecked, and *parts* of the commodities specified immediately above, between points named or described under the second commodity description herein, between points in Iowa, New Hampshire, Tennessee, Vermont, and Virginia, between points in Iowa, New Hampshire, Tennessee, Vermont, and Virginia, on the one hand, and, on the other, points in Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, West Virginia, Ohio, Kentucky, Michigan, Indiana, Wisconsin, Illinois, Missouri, Arkansas, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, that part of Texas north of U.S. Highway 80 and east of U.S. Highway 81, and the District of Columbia; *new automobiles* and *automobile chassis*, in initial movements, in truckaway service, and *automobile bodies, and automobile show equipment and paraphernalia*, and *farm and garden tractors*, from Willow Run in Washtenaw County, Mich., to points in Michigan, Ohio, New York, Pennsylvania, and that part of West Virginia north of U.S. Highway 60 and on and west of a line beginning at Charleston, W. Va., and extending along U.S. Highway 119 to junction West Virginia Highway 16, and thence along West Virginia Highway 16 to the Ohio River, including points on the indicated portions of the highways specified; *automobiles, trucks, and chassis*, in initial movements, in truckaway service, from Lansing, Mich., to points in Alabama, Connecticut (except Hartford, Conn.), Delaware, Florida, Georgia, Louisiana, Maine, Massachusetts (except Boston, Mass.), Mississippi, New Hampshire, New Jersey, Rhode Island, Tennessee (except Memphis, Tenn.), Vermont, Virginia, and Texas (except that part of Texas east of U.S. Highway 81 and north of U.S. Highway 80); *trucks, tractors, and chassis*, in initial movements, in truckaway service, *truck and tractor bodies and cabs, and parts of and accessories for the aforementioned commodities* when moving with the vehicles, bodies, or cabs on which they are to be installed, from Lansing, Mich., to points in Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming; *automobiles, trucks, tractors and chassis*, in initial movements, in truckaway service, and *bodies and cabs, and accessories* for and *parts* of such vehicles when moving in connection therewith, from Lansing, Mich., to points in Minnesota; automobiles, in secondary movements, in truckaway service, from Springfield, Mass., to points in Maine, with restriction, from Buffalo, N.Y., to points in Maine; *new* ported for purposes of display, testing *automobiles*, in secondary movements, in truckaway service, from Framingham, Mass., to points in Maine, with restriction; *automobiles and chassis, automobile parts, automobile accessories, and mock-ups and cutaway models* of automobiles, all of which are being transexperiment, or use in special events, and are not for sale, and *automobile show equipment and paraphernalia*, when moving in the same vehicles and at the same time as show automobiles, between points in the United States, except Alaska and Hawaii, with restriction; *motor vehicles* (except automobiles), in secondary movements, in truckaway service, from Sharon, Vt., to points in Maine, with restriction; *automobiles*, in initial movements, in truckaway service, in mixed loads with automobiles and chassis, automobile parts, automobile accessories, and mock-ups and cutaway models of automobiles, which are being transported for purposes of display, testing, experiment, or use in special events and are not for sale (otherwise authorized), from the plant site of Oldsmobile Division of General Motors Corp. at Lansing, Mich., to Memphis, Tenn., and points in Arizona, California, Colorado, Idaho, Iowa, Montana, Nevada, New

Mexico, North Carolina, Oregon, South Carolina, Utah, Washington, and Wyoming; *automobiles, trucks, and buses,* as described in *Descriptions in Motor Carriers Certificates,* 61 M.C.C. 209 and 766, in initial movements, in truckaway service, (1) from the plantsites of the General Motors Corp. at Linden, N.J., and Wilmington, Del., to Lansing, Mich., and (2) from the plantsites of the General Motors Corp. at Linden, N.J., and Wilmington, Del., to points in Illinois, Indiana, Michigan, Ohio, and Wisconsin, restricted in (2) above to the transportation of traffic moving through Lansing, Mich.; and (AA) *new trucks, new tractors, new trailers, new chassis, and new buses,* in initial movements, in driveaway service, and *new cabs,* from Allentown, Pa., to St. Paul, and Minneapolis, Minn., St. Louis, Mo., and Chicago, Ill.; *new trucks, new tractors, new trailers, new chassis, and new commercial automobiles,* in initial movements, in driveaway service, and *new cabs,* from places of manufacture and assembly in Wayne County, and Warren Township, Macomb County, Mich., to points in Rhode Island, Connecticut, New York, Pennsylvania, Maryland, Ohio, Michigan, Indiana, Illinois, Wisconsin, Minnesota, Iowa, Nebraska, Kansas, Missouri, Arkansas, Tennessee, Georgia, North Carolina, and that part of North Dakota on and east of North Dakota Highway 18, from places of manufacture and assembly in Louisville, Ky., to points in West Virginia, Kentucky, Indiana, North Carolina, South Carolina, Georgia, Alabama, Mississippi, Arkansas, Missouri, Kansas, Iowa, Minnesota, South Dakota, and North Dakota, from places of manufacture and assembly in Ft. Wayne, Ind., to points in Ohio, and Illinois. (A) Vendee is authorized to operate as a *common carrier* in Pennsylvania, Ohio, West Virginia, Maryland, Michigan, Kentucky, Tennessee, Illinois, Indiana, Iowa, Missouri, Wisconsin, Minnesota, New Jersey, New York, Arkansas, North Carolina, South Carolina, Alabama, Florida, Georgia, Texas, Utah, Rhode Island, and Virginia. (AA) Vendee is authorized to operate as a *common carrier* in all of the States in the United States (except Alaska and Hawaii). Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11656. Authority sought for control by O'BOYLE TANK LINES INCORPORATED, Post Office Box 30006, Washington, DC 20014, of (1) M & M TANK LINES, INC., and (2) M & M TANK LINES OF VIRGINIA, INC., both of 6864 West Market Street, Greensboro, NC 27049, and for acquisition by FRANK L. GRIMM, SARAH F. CARL, both of Post Office Box 30006, Washington, DC 20014, and CLARE L. GRIMM, 5901 Baltan Road, Sumner, MD 20016, of control of M & M TANK LINES, INC., and M & M TANK LINES OF VIRGINIA, INC., through the acquisition by O'BOYLE TANK LINES, INCORPORATED. Applicants' attorneys: William P. Sullivan, 1819 H Street, NW., Washington, DC 20006, and James E. Wilson, Pennsylvania Building, Washington, D.C. 20004. Operating rights sought to be controlled: (1) *Numerous specified commodities,* as a *common carrier,* over irregular routes, from, to, and between specified points in the States of South Carolina, Virginia, North Carolina, Georgia, Tennessee, New Jersey, Florida, West Virginia, Kentucky, New York, Maryland, Ohio, Pennsylvania, Illinois, Michigan, Missouri, Texas, Indiana, Kansas, Minnesota, Arkansas, Nebraska, Oklahoma, Wisconsin, Iowa, Alabama, Louisiana, Mississippi, Delaware, and South Dakota, with certain restrictions, as more specifically described in Docket No. MC–123067 and Sub numbers thereunder. This notice does not purport to be a complete description of all of the operating rights of the carrier involved. The foregoing summary is believed to be sufficient for purposes of public notice regarding the nature and extent of this carrier's operating rights, without stating, in full, the entirety, thereof; and (2) *liquid petroleum products,* in tank trucks, from Norfolk and Hopewell, Va., and Wilmington, N.C., and points within 10 miles of each, to points in that part of North Carolina, on and east of U.S. Highway 21. O'BOYLE TANK LINES INCORPORATED is authorized to operate as a *common carrier* in Alabama, Arkansas, Connecticut, Maryland, Pennsylvania, New Jersey, Virginia, West Virginia, Delaware, Illinois, Indiana, Michigan, Minnesota, Missouri, Ohio, Wisconsin, Florida, Georgia, Kentucky, Maine, Massachusetts, Mississippi, New Hampshire, New York, North Carolina, Rhode Island, South Carolina, Tennessee, Vermont, Louisiana, and the District of Columbia. Application has been filed for temporary authority under section 210a(b).

No. MC–F–11657. Authority sought for purchase by YELLOW FREIGHT SYSTEM, INC., 92d Street, at State Line Road, Kansas City, MO 64114, of the operating rights of BAY CITIES EXPRESS CO. (CHARLES E. KINGMAN, DISTRICT DIRECTOR, INTERNAL REVENUE SERVICE, ASSIGNEE), 1480 Industrial Avenue, San Jose, CA 95112, and for acquisition by GEORGE E. POWELL, 801 West 64th Terrace, Kansas City, MO 64113, and GEORGE E. POWELL, JR., 1040 West 57th Street, Kansas City, MO 64113, of control of such rights through the purchase. Applicants' attorney: Carl L. Steiner, 39 South La Salle Street, Chicago, IL 60603. Operating rights sought to be transferred: Under a certificate of registration in Docket No. MC–121228 (Sub-No. 1), covering the transportation of general commodities, as a common carrier, in interstate commerce, within the State of California. Vendee is authorized to operate as a *common carrier* in Illinois, Kansas, Oklahoma, Texas, Missouri, Indiana, Kentucky, Michigan, Ohio, Nebraska, Georgia, Arizona, New Mexico, Minnesota, South Carolina, Colorado, California, Tennessee, Wyoming, South Dakota, Utah, Pennsylvania, Maryland, Virginia, Alabama, Delaware, New Jersey, New York, and Massachusetts. Application has been filed for temporary authority under section 210a(b). NOTE: MC–112713 (Sub-No. 146) is a directly related matter.

MOTOR CARRIER OF PASSENGERS

No. MC–F–11652. Authority sought for purchase by WISCONSIN-MICHIGAN COACHES, INC., 725 Smith Street, Green Bay, WI 54302, of the operating rights and property of BAY VIEW BUS LINE, INC., Sister Bay, Wis. 54234, and for acquisition by FRANK E. BUTTS, 476 North Fifth Street, Sturgeon Bay, WI 54235, and THOMAS I. HOLSCHUH, 321 Terraview Drive, Green Bay, WI 54301, of control of such rights and property through the purchase. Applicants' attorney: Rolfe E. Hanson, 121 West Doty Street, Madison, WI 53703. Operating rights sought to be transferred: Passengers and their baggage, and express, mail, and newspapers, in the same vehicle with passengers, as a common carrier over regular routes, between Manitowoc, and Gills Rock, Wis., between junction Wisconsin Highways 42 and 57 northeast of Sturgeon Bay, and Sister Bay, Wis., between Kewaunee, and Green Bay, Wis., serving all intermediate points; passengers and their baggage, restricted to traffic originating in the territory indicated, in round trip or one way charter operations, from points in Door and Kewaunee Counties, Wis., to points in Minnesota and Illinois, and those in the Northern Peninsula of Michigan. Vendee is authorized to operate as a common carrier in Wisconsin, Michigan, Minnesota, and Illinois. Application has been filed for temporary authority under section 210a(b).

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.72–15976 Filed 9–19–72;8:50 am]

[Notice 126]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon

by petitioners must be specified in their petitions with particularity.

No. MC–FC–73327. By order of September 1, 1972, the Motor Carrier Board approved the transfer to Ehrlick Transport, Ltd., Toronto, Ontario, Canada, of the operating rights in certificate No. MC–111053 issued January 8, 1965, to S. E. Ehrlick Horse Transport Limited, Toronto, Ontario, Canada, authorizing the transportation of horses, other than ordinary, and in the same vehicle therewith, stable supplies and equipment used in the care and exhibition of such horses, mascots, and personal effects of their attendants, trainers, and exhibitors, restricted to shipments moving from or to points in Ontario, Canada, between the United States-Canada boundary line at Buffalo, Lewiston, and Niagara Falls, N.Y., and Detroit and Port Huron, Mich., on the one hand, and, on the other, points in Kentucky, Maryland, Massachusetts, Michigan, New Hampshire, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and West Virginia, and also authorizing the transportation of the above-specified commodities, restricted against the use of the ports of entry described below in connection with the carrier's above-described authority, between the United States-Canada boundary line at Buffalo, Niagara Falls, Lewiston, Thousand Island Bridge on Wellesley Island, Rooseveltown, and Rouses Point, N.Y., and Detroit and Port Huron, Mich., on the one hand, and, on the other, points in Illinois, Ohio, New Jersey, New York, and Maine. William J. Hirsch, 35 Court Street, Suite 444, Buffalo, NY 14202, attorney for applicants.

No. MC–FC–73729. By order of September 1, 1972, the Motor Carrier Board approved the transfer to Leelanau Motor Freight, Inc., 900 Woodmere Avenue, Traverse City, MI 49684, of the certificate of registration in No. MC–57622 (Sub-No. 1) issued December 20, 1965, to Joseph Hahnenberg, 1224 Centre Street, Traverse City, MI 49684, evidencing a right to engage in transportation in interstate commerce corresponding in scope to the grant of authority in common carrier certificate No. C–120 issued by the Michigan Public Service Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.72–15977 Filed 9–19–72;8:50 am]

[Ex Parte No. 241; Rule 19, Rev. Exemption 10]

CENTRAL RAILROAD COMPANY OF NEW JERSEY AND DETROIT AND MACKINAC RAILWAY CO.

Exemption from Mandatory Car Service Rules

It appearing, that the railroads named herein own numerous 40-foot plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, ICC R.E.R. No. 384, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation XM, with inside length 44 feet 6 inches or less, and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1(a), 2(a), and 2(b).

The Central Railroad Co. of New Jersey, Robert D. Timpany, trustee, Reporting marks: CNJ.

Detroit and Mackinac Railway Co., Reporting marks: D&M.

Effective September 15, 1972, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., September 13, 1972.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.72–15978 Filed 9–19–72;8:50 am]

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WEDNESDAY, SEPTEMBER 20, 1972
WASHINGTON, D.C.

Volume 37 ■ Number 183

PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN MINNESOTA-NORTH DAKOTA 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 1060, 1061, 1063, 1064, 1065, 1068, 1069, 1070, 1076, 1078, 1079]

[Docket No. AO-360-A6, etc.]

MILK IN THE MINNESOTA-NORTH DAKOTA 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

GROUP III

7 CFR part	Marketing area	Docket No.
1060	Minnesota-North Dakota	AO-360-A6.
1061	Southeastern Minnesota-Northern Iowa.	AO-367-A5.
1063	Quad Cities-Dubuque	AO-105-A35.
1064	Greater Kansas City	AO-23-A42.
1065	Nebraska-Western Iowa	AO-86-A25.
1068	Minneapolis-St. Paul, Minn	AO-178-A28.
1069	Duluth-Superior	AO-153-A19.
1070	Cedar Rapids-Iowa City	AO-229-A26.
1076	Eastern South Dakota	AO-260-A17.
1078	North Central Iowa	AO-272-A20.
1079	Des Moines, Iowa	AO-295-A24.

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in the aforesaid marketing areas.

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by 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 II

Red River Valley	Central West Texas
Oklahoma metropolitan	Austin-Waco, Tex.
	Corpus Christi, Tex.
Lubbock-Plainview, Tex.	Central Arizona
	Texas Panhandle
North Texas	Rio Grande Valley
San Antonio, Tex.	

Because of the length of the recommended decision being issued under this proceeding, and to facilitate its distribution to interested parties, this decision is being published in the FEDERAL REGISTER in the form of three separate documents. Each contains the proposed amendments for the group of 11 orders listed at the beginning of the document and, for the convenience of interested parties, an identical set of findings and conclusions. The three documents constitute, however, a single recommended decision under this proceeding.

The material issues on the record of the hearing relate to:

1. Application of a uniform milk classification plan in the 33 markets;
2. Revision of the present Class I classification;
3. Classification and pricing of milk not needed for Class I use;
4. Miscellaneous classification and accounting changes:
   (a) Other source milk definition;
   (b) Accounting for nonfat milk solids added to milk and milk products;
   (c) Classification of milk transferred or diverted to other plants;
   (d) Classification of end-of-month inventory;
   (e) Classification of shrinkage, milk dumped and milk disposed of for animal feed;
   (f) Allocation of receipts to utilization;
   (g) Obligations relative to other source milk; and
   (h) Reports;
5. Changing the butterfat differentials;
6. Advance announcement of prices for surplus milk;
7. Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders; and
8. A uniform "equivalent price" provision.

General setting of the hearing. This hearing is the second of two regional hearings on the proposed use of a uniform plan for classifying milk for pricing purposes under Federal milk orders. The first hearing, which was held at Clayton, Mo., on July 14–22, 1970, was for seven Midwestern markets. A recommended decision based on the seven-market hearing was issued on June 4, 1971, and exceptions have been filed. A final decision is pending.

Prior to the first hearing, the National Milk Producers Federation, an organization of cooperative associations of dairy farmers and federations of such cooperative association, undertook the development of a uniform milk classification plan for use under milk orders. Guidelines were formulated for use by member organizations in the drafting of specific classification proposals for consideration at public hearings.

Using these guidelines as a basis for their proposals, several cooperative associations petitioned the Department for a hearing on proposals relating to the classification and pricing of milk in seven Midwestern markets. After the hearing and issuance of a recommended decision, these cooperatives, along with other producer groups, requested a similar hearing for an additional 33 markets. The two hearings together involve a group of 40 contiguous markets located throughout the central part of the United States.

As in the case of the seven markets, the main thrust of the cooperatives' proposals for the 33 markets was the proposed use of an identical classification plan under each of the orders. As proposed, the new plan would have three classes of utilization rather than the two classes now provided in most of these orders. The present Class II classification would be redesignated as Class III and a new Class II classification, which would include various milk products now in Class I and Class II, would be established.

Corollary pricing proposals by the cooperatives would provide that the new Class II price under all but the Central Arizona order be the Minnesota-Wisconsin price plus an amount ranging from 10 to 20 cents, depending on the order involved. Prices would increase generally from north to south. For the Central Arizona order, which now has three classes, local producers proposed retention of the Class II price now in effect (a butter-nonfat dry milk formula price plus 25 cents).

Producers took diverse positions concerning the appropriate Class III price for the 33 markets. Two regional cooperatives operating largely in the Upper Midwest proposed that the Class III price under all 33 orders be based on a formula reflecting market prices for butter, nonfat dry milk and cheddar cheese. A regional cooperative operating in the Southeastern United States proposed that the Class III price in five of its local markets be based on the Minnesota-Wisconsin price, with reductions of 5 to 15 cents to be applicable in four of the markets. Another regional cooperative proposed for 15 southwestern markets that the Class III price under each order for the principal surplus products be the lower of the present surplus price now in effect or the Minnesota-Wisconsin price. In the case of still three other markets, local producer groups asked that

their present surplus prices (all based solely or in part on butter-nonfat dry milk formulas) be retained.

Cooperatives also proposed that a single butterfat differential apply to all prices under each order. This differential, which would be identical among the 33 orders, would be based on the Chicago butter price times a factor of 0.115.

A uniform classification plan for the 33 orders was advocated also by the Milk Industry Foundation and the International Association of Ice Cream Manufacturers, national trade associations of fluid milk and ice cream processors whose members operate in each of the 33 subject markets. Without taking a position on whether there should be two or three use classes, these groups offered alternative proposals on the classification of various milk products under either type of classification plan. Individual handlers also made proposals concerning specific aspects of the classification and pricing scheme.

A more detailed description of the proposals by producers and handlers is set forth in the discussion of the material issues.

FINDINGS AND CONCLUSIONS

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Application of a uniform milk classification plan in the 33 markets.* Each of the 33 orders under consideration should provide for the same basic classification plan. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. Likewise, the same basic procedure would be used under each order for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts to his utilization to determine the classification of his producer milk. Each order would use the same Class II and Class III price formulas. Also, all butterfat received from producers would be priced at the same level regardless of use.

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. When each of the 33 subject orders was promulgated, the classification plan adopted reflected the marketing conditions and practices prevailing at the time in the local area concerned. Because local conditions and practices were seldom alike from market to market, the classification plans often varied from one order to another. As long as the markets remained relatively isolated from each other, marketing problems resulting from the differences in the various classification plans were minimal.

In recent years the "local" character of these markets has been disappearing. Intermarket movements of milk have become commonplace as handlers and producers alike seek to find additional outlets for milk. Such milk movements have been encouraged or facilitated by such developments as inspection reciprocity between health jurisdictions, improved highway networks and transportation equipment, conversion from can handling to farm bulk tanks, emergence of regional cooperatives, new processing and packaging techniques, and concentration of processing and packaging operations in large, specialized facilities.

Numerous cases were cited by handlers of products being distributed throughout multi-State regions from centralized processing facilities. Products frequently mentioned include frozen desserts, yogurt, various cream products and cottage cheese. Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these specialty products is relatively limited, it is probably the distribution of these products more than any others that has precipitated such general interest within the industry for uniform classification provisions among Federal orders.

Although the 33 orders have been revised from time to time to reflect the closer intermarket relationships, the classification plans of these orders continue to differ. The differences relate not only to the products included in each respective class, but also to the attendant class prices and butterfat differentials, the rules for classifying milk moved from one plant to another, the procedure for allocating a handler's receipts to his utilization, the method of classifying end-of-month inventories, and the manner of classifying shrinkage.

Such differences in the classification and pricing of milk are often disruptive to the competitive relationships of handlers and to the marketing of producer milk. Many of these differences, though, have little, if any, foundation under today's marketing conditions. It is thus concluded that a generally uniform classification and pricing plan should be incorporated in each of the 33 orders under consideration.

In conjunction with the development of uniform provisions pertaining to the classification and pricing of milk, it is desirable to also develop a single format of order provisions for use in each of these orders. All orders contain essentially the same categories of provisions, such as those relating to the definition of a pool plant or other source milk, those setting forth the class price formulas, or those describing how the uniform price shall be computed. At present, however, many of the orders are structured in such a way that provisions serving essentially the same purpose under all orders do not appear in each order in the same place or under the same section title.

Coordination of the orders in this respect will be helpful to those in the industry who must work with several orders, a situation that is becoming increasingly common as individual cooperatives and handlers continue to expand their marketing activities into more and more regulated markets. Moreover, the opportunity to effect changes in a relatively large number of orders at the same time makes the adoption of a uniform order format a particularly desirable step at this juncture of the order program.

Each of the 11 orders included in this document is set forth in its entirety at the end of the document. Each order reflects the revised order format as well as the classification and pricing amendments adopted herein. In adapting each order to the new format, no substantive changes have been made in those provisions not under consideration at the hearing. Since the classification and pricing amendments may be less discernable to the reader with the reprinting of the complete order, the sections in each order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the 33 subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and 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 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.

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 ad-

[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.

ministrators have had to make order interpretations in response to this situation variations in interpretation and classification have resulted among the markets. Adoption of the proposed definition, it was contended, would eliminate such problems. Any product meeting the specified composition limits for a fluid milk product would be a fluid milk product regardless of the name under which the product might be marketed.

Proponents recognized, however, that their proposed fluid milk product definition would include some products not intended by them to be in Class I, and, at the same time, would exclude certain products that they wanted in this classification. To overcome this problem, proponents stated that certain products should be listed by name, either as inclusions or exclusions, to assure that the fluid milk product definition would include those products, and only those products, warranting a Class I classification.

Handlers took the position that the fluid milk product definition should continue to list by name those products intended to be included in Class I. They believe that this procedure would result in less confusion within the industry concerning the application of this definition. Also, handlers were concerned that defining a fluid milk product on the basis of product composition would deter the development and marketing of new products. They contended that the proposed composition standards could embrace a new product that was intended by the processor to be marketed in direct competition with products that would be included in Class II or Class III rather than in competition with Class I products.

The primary concern with any fluid milk product definition is that it clearly define the products or types of products that are intended to be included in the definition. The fluid milk product definition adopted herein, which incorporates both the listing of specified products and the use of composition percentages, should meet this requirement. Incorporation of this definition in each of the 33 orders will provide a uniform basis for identifying those products that are to be defined as "fluid milk products."

For simplicity, the fluid milk product definition should continue to list the generic names of those products commonly sold for consumption as beverages. The products listed in the adopted definition encompass most of the forms in which milk for fluid uses is sold. Anyone referring to this fluid milk product definition may easily ascertain in the case of most milk products whether or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any fluid or frozen milk product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids. The 9 percent butterfat standard coincides with the butterfat percentage adopted herein to delineate the mixtures of cream and milk or skim milk to be included in Class II. The total solids and water percentages represent a reasonable measure of the fluidity of those products that normally are consumed as beverages. The 6.5 percent nonfat milk solids standard is used to exclude from the fluid milk product definition those products which contain some milk solids but which are not closely identified with the dairy industry, such as chocolate flavored drinks in "pop" bottles.

These composition standards are chosen so as to conform as closely as possible to the water, solids, and butterfat content of those products specifically listed in the fluid milk product definition, i.e., the traditional milk beverages. It is intended that these standards apply only to milk products, and only to such products that are being marketed for consumption in fluid form. Such standards would not be applied to products such as soups, which are not customarily thought of as milk products, or to products that would be a type of frozen dessert marketed for consumption in frozen form.

In determining whether or not a milk product is embraced by the composition standards of the fluid milk product definition, such standards should be applied to the composition of the product in its finished form. A product may be modified by the addition of nonfat milk solids or concentrated through the removal of water. In these cases, the composition standards should be applied to the composition of the product as it is marketed, not to the composition of the product on a skim equivalent basis. Application of the composition standards on the latter basis could result in defining as a fluid milk product a product clearly not intended as a milk beverage. For all other purposes under the order, however, the product should be accounted for on a skim equivalent basis.

In applying the 6.5-percent nonfat milk solids standard, it is intended that this standard apply to such solids in any form except sodium caseinate. As set forth in the "filled milk" decision applicable to most of the 33 orders, sodium caseinate in any product is treated under the orders as a nonmilk ingredient.[2] 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

[2] Official notice is taken of the Assistant Secretary's decision issued on Oct. 13, 1969 (34 F.R. 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

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 utilization 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 1 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 or-

der 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 five or, at the most, 6 days a week. The needs of bottling plants are highest on Thursdays since sales of packaged milk tend to be higher on Thursday and Friday than on other days of the week.

Because of these circumstances, this cooperative proposed that the Class III prices adopted for the four southeastern markets of Georgia, Mississippi, New Orleans, and Chattanooga, be fixed from 5 to 15 cents under the Minnesota-Wisconsin price. This was proposed to enable the cooperative to absorb the costs of transporting reserve milk supplies to manufacturing plants and of maintaining unused capacity in its manufacturing plants during the seasonally short production months and on peak bottling days.

The principal cooperative in the southwestern markets proposed that the current provisions for pricing market surplus be maintained in the several orders throughout that region since such provisions tend to recognize individual market problems of surplus disposal. The problems mentioned by the witnesses for the cooperative are (1) uneven surplus milk volumes to be disposed of, and (2) costs of transporting milk to plants for manufacturing use. They stated that each market differs as to the volume of day-to-day, weekend, holiday, and seasonal surplus to be processed, which tends to result in variations in supply balancing costs among markets. Also, the surplus in each market is situated at varying distances from available processing plants. In Texas, for example, most of the manufacturing use outlets are situated in the northern part of the State at Muenster, Sulphur Springs, and Rusk. While the cooperative operates a small cheddar cheese plant at San Antonio, Tex., at times the San Antonio surplus cannot be processed there and is transported over 300 miles to Muenster or Sulphur Springs. During the Christmas holiday weekend in 1970, the cooperative moved 75 tank truck loads of surplus milk out of Texas to plants as far north as Iowa for manufacturing.

Two regional cooperatives operating primarily in the Upper Midwest urged that a uniform Class III price formula be used for all 33 markets. They contended that Class III products, such as hard cheese, butter, and nonfat dry milk, compete in a nationwide market and therefore the price of producer milk used to produce such products should be the same under each of the orders.

In support of their proposed butter-nonfat dry milk-cheese product price formula, these cooperatives pointed out that about half of the manufacturing grade milk in Minnesota and Wisconsin is now handled by as few as three cooperative associations. They contended that, because of this, cooperatives are in a position to influence the level of prices paid for such milk and, in turn, influence the level of the order prices based on the Minnesota-Wisconsin price. Any upward swing in prices, they indicated, could be detrimental to the processors of butter and nonfat dry milk.

Proponents also stated that there have been periods of time when the open market cheese prices have increased relative to prices of butter and nonfat dry milk. When this has resulted in higher pay prices at cheese plants, butter-powder plants also have tended to pay higher prices to hold their milk supplies in competition with cheese plants. Proponents argued that such higher pay prices at butter-powder plants should not be reflected in Federal order surplus prices when the market values of butter and powder are not increased also. They contended that the order price should reflect changes in the market value of manufactured products to provide handlers a fixed processing margin on the butter and nonfat dry milk they process.

The national trade associations of fluid milk and ice cream processors did not take a position at the hearing on whether there should be two or three classes of utilization. It is their position that under a three-class system the only products that should be included in Class II are yogurt, eggnog, cottage cheese, cream and any mixtures of cream and milk or skim milk containing 9 percent or more butterfat. While the associations did not endorse a three-class system, they proposed that under such a plan the difference between the Class II and Class III prices be not more than 10 cents.

Certain individual handlers, particularly those operating plants in more than one market, testified that because of intermarket competition each order should provide for the same classification and pricing scheme. One such handler testified further that the Class III price should be the lower of the Minnesota-Wisconsin price or a butter-powder formula price (Chicago butter price times 4.2, plus nonfat dry milk price times 8.2, less 48 cents). Another urged adoption of the dairy price support level as the Class III price. A third handler proposed the use of the announced price support, adjusted to a 3.5 percent butterfat basis by a differential factor of the Chicago butter price multiplied by 0.12, and further adjusted by plus 15 cents during the period September through March.

Proponents of using the dairy price support level as the Class III price urged that such price be adopted to provide a more stable price by avoiding the month to month changes that tend to occur in the Minnesota-Wisconsin price. Proponents pointed out that basing the Class III price on the price support level, which is announced for each marketing year (April–March), would result in handlers knowing the minimum price before the milk is received. The Minnesota-Wisconsin price is announced about 5 days after the end of each month.

Class III. As stated at the outset, two classes of utilization should be provided under each order for milk not needed for Class I use. Before discussing the basis for establishing an intermediate price class, consideration should be given to the Class III price issue since the level of such price bears on what the Class II price should be.

Basically, there are two questions to be resolved concerning the Class III price issue: (1) Should the Class III price be uniform among the 33 markets, and (2) what is the appropriate pricing mechanism for determining the Class III price in each market?

The very purpose of the classification proposals considered at this hearing strongly supports the same Class III price under each order. The essence of the proposals by producers and handlers alike was that a particular product should be classified in each market in the same class. Although the various witnesses were not in agreement on the classification scheme that should be adopted, the common purpose of their proposals was the resolution of the many differences among the 33 orders in the classification of milk. It was the general consensus that with the burgeoning intermarket sales of various milk products over increasingly wider areas, these differences in classification are causing undue competitive inequities among handlers in various markets seeking the same outlets for milk.

Any attempt to resolve these competitive inequities through the adoption of a uniform classification plan cannot be divorced from consideration of the prices that would be applicable to each class. The classification of milk does nothing more than determine what uses of milk will be subject to different levels of price. The equity benefits to handlers of using the same classification plan in all markets can be fully realized only if the price for each class is uniform (except for appropriate location adjustments) in all markets. The use of several different

Class III price formulas in these markets would nullify much of the intended effectiveness of classifying a particular product in the same class in each market.

Certain cooperatives urged that the Class III price of a market reflect the supply "balancing" costs of individual cooperatives. This could lead only to a proliferation of different Class III prices rather than a reduction or elimination of price differences in these markets. In balancing milk supplies for the fluid market, a cooperative incurs various costs. The extent of these costs is dependent on many factors, including the cooperative's share of the market, the location and availability of surplus disposal outlets, whether it operates a manufacturing plant, and policies and practices of the organization and its management. If such costs were to be a main consideration in establishing the Class III price for an individual market, such price would need to vary greatly among markets since the supply balancing situation differs from market to market.

The costs of supply balancing services performed by a cooperative should be reflected as a service charge to the handlers who receive the benefit of the service. A cooperative's cost of supply balancing service varies among handlers according to each handler's procurement practices. A handler that regularly accepts the full production of a given number of producer-members of the cooperative incurs the costs of balancing his own supply. On the other hand, a handler that limits his purchases of milk from a cooperative to 5 days a week, for example, to match his daily bottling schedule shifts the burden of balancing his milk supply to the cooperative. Most supply balancing costs are attributable to the variation between the quantity of milk produced and the demand for milk for Class I use. Since the balancing costs are incurred in serving the Class I market, the incidence of the costs should fall on such use of milk. This connection between these services and the Class I demand is recognized in many of these markets through the assessment by cooperatives of a service charge on their milk delivered to handlers for Class I use.

For these reasons, a uniform Class III price should prevail under each of the 33 orders.

What is the appropriate pricing mechanism for determining the Class III price in each market?

It is the returns from all classes of milk, of course, that provide farmers the incentive to produce the needed milk supplies. Consequently, to the extent that the price for reserve milk in a market contributes less than its full market value to producers' returns, the Class I price must be higher than otherwise necessary to make up the difference. It is therefore in the public interest that the reserve milk supplies be priced at the highest practicable level consistent with orderly disposal of the milk.

In the highly competitive dairy industry, processors of ungraded milk buying in competition purchase milk from farmers at prices commensurate with the ability of the more efficient processors to pay for a supply. As shifts in the relationship between finished product prices take place, one group of processors may be able to pay higher prices than another for raw milk. Other processors must meet, or nearly so, these prices or risk the loss of their milk supplies. If a dairy concern in the unregulated manufactured products market fails to make the necessary adjustments to meet procurement competition, it will, in time, be forced out of business. This is a normal business risk in the unregulated competitive market.

Since excess market supplies normally must be channeled into manufacturing uses, such milk should be priced competitively with manufacturing grade milk. Plants regulated under an order compete not only with other regulated plants but also with unregulated plants for the sale of cheese, butter, and nonfat dry milk. If the Class III price were based primarily upon the market price of certain manufactured products (e.g., butter and nonfat dry milk) minus a specified processing allowance, handlers under the order would be assured, regardless of current values of producer milk competitively procured for the several manufactured product uses in Class III, of a predetermined operating margin. The unregulated processors of manufacturing grade milk, on the other hand, must pay whatever price to dairy farmers is required to maintain milk supplies, which is determined from competition with other processors.

If there is a significant decrease in the price of a particular product, and of that product only, manufacturers of that product, buying in competition with manufacturers of other products, are not necessarily able to effectuate an immediate offsetting adjustment in their pay prices to farmers. When surplus prices under the order are based on product prices, however, handlers have the benefit of an offsetting adjustment automatically reflected in the price they pay for the milk used in these products. They are protected in procurement competition by being able to pay the blended price to producers. This is an advantage not available to manufacturers purchasing unregulated milk. Unless regulated handlers are to have a competitive advantage, or disadvantage, in the manufactured milk product market relative to unregulated plant operators, it is desirable to maintain under the milk orders a close alignment of the Class III prices with the farm prices paid by unregulated plants in the manufacturing milk industry.

The Minnesota-Wisconsin price, as a competitive pay price for about half of the manufacturing grade milk in the United States, reflects the value of milk for those products being disposed of in a national market. It is an average of prices being paid by processors who are meeting the competitive test of the unregulated marketplace. Use of the Minnesota-Wisconsin pay price series not only maintains a reasonably consistent basis of pricing surplus milk among the regulated markets but also achieves price parity between regulated and unregulated plants engaged in a similar enterprise since it provides the regulated manufacturer essentially the same margin for processing as is experienced in the unregulated market. As noted, such price is now the surplus price determinant under 17 of the 33 orders and is the principal basis for determining surplus prices under 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 similiar 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 milk shake 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.

[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.

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 non-

fat milk solids, for example, would be classified in Class I on an 8.7 pounds weight factor as compared to the present basis of an 8.63 pounds weight factor.

The present method of classifying modified fluid milk products increases total Class I sales only to the extent of the volume of the unmodified product that the added nonfat milk solids replaces. In the absence of evidence that the present procedure is inappropriate 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 classification 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 alocation 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 hav-

ing equipment for receiving, cooling, processing and storing milk. However, products being held in trucks parked at that location would not be a part of the handler's closing inventory. Also a storage facility at a distributing point for packaged products in transit to wholesale and retail outlets would not be considered under their proposal as an extension of the premises of a plant. Cooperatives proposed also that ending inventory include any bulk milk that is in transit from a pool plant to another plant at the end of the month. Proponents claimed that defining ending inventory in this manner would facilitate the administration of the order.

The present orders do not specify at what point in a handler's distribution system fluid milk products shall be or shall not be considered for classification purposes as being in a handler's closing inventory. This is a matter that has been left to the accounting guidelines established by market administrators in their administration of the orders. It is recognized that at the close of the monthly accounting period fluid milk products that have been packaged but not yet delivered to the place of sale may be at any one of several places in a handler's distribution system. Depending on the handler's method of operation, such places could include the cold storage room within his processing plant, trucks parked on or near the plant's premises, distributing points, or trucks in transit to distributing points or places of sale. No significant problems concerning the determination of what constitutes closing inventory were brought to light at the hearing. Therefore, the cooperatives' proposal in this regard need not be adopted at this time.

For the first month that the revised classification plan is effective, certain transitional provisions relating to inventory should apply. Such provisions are necessary to assure that all handlers under an order will be subject to the same pricing for milk used in packaged fluid milk products and fluid cream products whether such products enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

As indicated, 22 of the orders under consideration presently classify ending inventories of fluid milk products, including cream items, in the lowest class. Thus, in the last month that the present classification plan is effective, handlers under these orders will have paid the corresponding class price for these products. In the first month under the new plan, such inventories that had been held over in the form of a fluid milk product or a bulk fluid cream product would be allocated to the extent possible to the handler's Class III utilization. Should such inventories be allocated to a higher class, the appropriate reclassification charge would apply.

Under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new amendments, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

Under the remaining 11 orders, which now classify ending inventories of packaged fluid milk products in Class I, a pool credit should apply to such inventories in the first month that the revised classification plan is effective. Under the new plan, beginning inventories of fluid milk products and, for the first month, all fluid cream products would be allocated to the extent possible to Class III. Again, this allocation assumes that such inventories were priced at the lowest class price in the preceding month. Since such inventories in packaged form will have been priced at the preceding month's Class I price, handlers under these 11 orders should receive a credit on such packaged inventories equal to the difference between the preceding month's Class I price and lowest class price. If a higher classification results through the allocation procedure, the appropriate reclassification charge would apply.

(e) *Classification of shrinkage, milk dumped and milk disposed of for animal feed.* Each of the orders should provide for generally uniform provisions for classifying skim milk and butterfat dumped, disposed of for animal feed, or in shrinkage.

In the case of shrinkage, the cooperative associations requested that no change be made in the present order provisions, except to classify shrinkage in Class III insofar as it is now classified in the lowest class of each order.

The shrinkage provisions adopted herein are basically similar to the shrinkage provisions now effective under 28 of the 33 orders. The classification of shrinkage in the lowest use class (subject to certain limitations), as now provided in all the orders, would be continued under the adopted three-class system. Modifications of shrinkage provisions in the individual orders are in the nature of certain refinements now applicable under several of the orders.

The amount of shrinkage that may be classified in the lowest class under the 33 orders is presently limited with respect to receipts of producer milk and certain interplant transfers. In 32 of the orders, 2 percent is the maximum shrinkage allowed in the lowest class in the case of such receipts. One and a 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 carry out the appropriate division of shrinkage whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if he buys the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples. In this case, there is no shrinkage allowance for the cooperative association delivering the milk.

As provided herein, when a plant operator disposes of bulk milk by transfer to another plant, his shrinkage allowance would be reduced at the rate of 1.5 percent of the quantity transferred. This is similar to provisions now applicable under most orders.

In the case of milk diverted from a pool plant to another plant, a shrinkage allowance in Class III of 0.5 percent would be provided the diverting handler if the operator of the plant to which the milk is diverted purchases such milk on the basis of weights and tests determined at the plant. If the milk is purchased at farm weights and tests, no shrinkage allowance would apply for the diverting handler. This is the same procedure applicable to cooperative bulk tank deliveries to pool plants. Similar handling is involved.

This kind of division of the 2 percent shrinkage allowance, both in the case of transfers from cooperatives to plants and for transfers between plants, has been found practical and has been well accepted in the markets where it now applies. Such division of the shrinkage allowance, therefore, should be included also in the Cedar Rapids-Iowa City, North Central Iowa, Des Moines, Fort Smith, and Austin-Waco orders that now treat 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. These 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 utilization rather than allocated first to any Class III utilization they may have.

In establishing a new intermediate price class, it is not intended that this outlet for producer milk necessarily be reserved for local producers. This new use class merely recognizes that some additional value attaches to producer milk used by regulated handlers in the Class II products. Pricing this milk at a level above the Class III price serves also to reduce the burden on the Class I price of attracting a supply of producer milk for the Class I market. It is not intended that producer returns be enhanced for the purpose of also attracting a full supply of producer milk for handlers' Class II uses. Accordingly, no obligation to the pool (commonly known as a compensatory payment) would be imposed under the revised classification plan on any other source milk which regulated handlers may use in Class II or on any Class II products that may be distributed in the market by nonpool plants, either directly on routes or through pool plants.

As long as the Class II price for producer milk remains in proper relationship with the cost of alternative supplies, it is not expected that this direct allocation of nonfluid other source milk to Class II will induce handlers to use other source milk in preference to producer milk for processing Class II products. Under the adopted Class II price, producers would represent in most circumstances the most economical source of milk for Class II use. As indicated previously, this would be so with respect to the alternative use of nonfat dry milk, the type of other source milk most commonly used in the proposed Class II products. Nonfat dry milk has certain advantages for handlers that producer milk cannot provide. It can be added easily to milk or milk products to increase their nonfat milk solids content. Also, its storability permits handlers to have a concentrated form of nonfat milk solids on hand at all times for emergency use. Nevertheless, the higher cost of 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 refused to supply him with milk when, in fact, this was not the case.

Such administrative difficulties could be overcome, of course, through the adoption of provisions that do not down-allocate receipts of outside milk from selected sources, or from any source, for Class I use. This would be a major departure, however, from the allocation procedure now used under the present orders. This procedure which was based on comprehensive hearings for all Federal order markets, resulted from the "compensatory payment" decisions concerning the integration of other source milk into the regulatory plan of an order.[4] Such a change would be much broader in scope than was contemplated under the handler's proposal described above and should not be adopted.

In keeping with the goal of classifying milk uniformly under the 33 orders, certain changes should be made in the orders to effect a uniform application of the allocation provisions to multiple-plant handlers. Presently, the 33 orders differ as to how the allocation procedure shall be carried out for handlers who operate two or more pool plants regulated under the same order.

Each order should provide that for purposes of allocating a multiple-plant handler's receipts to his utilization, the operations at each of his pool plants shall be considered separately. As is the case now, however, those receipts of other source milk from unregulated supply plants and other Federal order plants eligible to share with producer milk in a handler's Class I utilization should be allocated on the basis of the handler's total plant system.

This application of the allocation provisions to a multiple-plant handler is now used under seven of the 33 orders. Two other orders require that allocation be on an individual-plant basis unless there are receipts of other source milk at any one of the handler's pool plants to be allocated pro rata with producer milk to the plant's Class I utilization. In this case, all allocations of the handler's receipts to utilization are done on the basis of the handler's total system. The remaining orders provide that allocation be on a system basis in all cases.

Conditions in the individual markets do not require continuance of the several allocation methods now provided in the orders under consideration. Handlers are often subject at different times to the regulatory provisions of different orders. Applying the allocation 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,

[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.

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 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 submitted by handlers in their monthly reports of receipts and utilization. The reporting provisions of each order must be changed, however, to reflect the new categories of information that each market administrator will need in administering an order. These changes stem largely from the proposed reclassification of cream and the revised accounting methods necessary for implementing a three-class classification scheme.

In revising the reporting provisions of each order, such provisions should be made uniform to the extent possible. Essentially the same information is now required to be reported under each order, basically for the purposes of determining the classification of the milk and its classified value. There is considerable variation among these orders, however, in the manner in which the provisions on reports are expressed.

As proposed herein, the reporting provisions would be stated in some orders in slightly less detail than is now the case. The market administrator would have, nevertheless, no less authority than at present to obtain through handler reports, in the detail and on forms prescribed by the market administrator, any information the latter believes is necessary for administration of the order.

5. *Changing the butterfat differentials.* A single butterfat differential should apply under each order for adjusting prices to the actual butterfat content of the milk being priced. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest one-tenth cent.

All 33 orders provide butterfat differentials for adjusting class prices and uniform prices for butterfat content. With two exceptions, each order bases the class butterfat differentials on the Chicago butter price, which would be continued under the revised orders. The Chicago butter price is the simple average of the wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk butter at Chicago as reported for the month by the U.S. Department of Agriculture. Under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, the Class II butterfat differential is based on the price of Grade AA (93-score) butter at New York City.

The handler butterfat differentials for each class are now computed by multiplying the butter price by a specified factor. In the case of the Class I butterfat differential, the factor is 0.120 under 20 orders and 0.125 under 11 orders. One order uses a factor of 0.130 and another a factor of 0.135.

The factor most commonly used in computing the butterfat differentials applicable to the surplus prices is 0.115, as prescribed by 18 orders. Nine orders use 0.110, while the factors 0.120 and 0.108 are used under two other orders. Four orders use a factor of 0.110 during the heavy production months and 0.115 during the remainder of the year.

The butterfat differential used in adjusting the uniform price to producers under 23 of the orders is the average of the butterfat differentials for each class, weighted by the proportion of producer milk in each class. Under six other orders, the butterfat differential to producers is determined by multiplying the Chicago butter price by 0.120. Two other orders use a factor of 0.110 under a similar computation, while another provides that this differential be computed by adding 4 cents to the Chicago butter price and multiplying the sum by 0.1. under the Memphis order, the producer butterfat differential is determined from a fixed schedule of rates in the order which are related to the Chicago butter price, i.e., for each 5-cent change in the butter price, the butterfat differential changes one-half cent per point of butterfat.

Cooperative associations proposed that all class prices and uniform prices be subject to adjustment by a single butterfat differential based on the Chicago butter price times a factor of 0.115. One handler proposed that the Class II and Class III butterfat differentials be based on the Chicago butter price times 0.110. Handlers in general opposed any change in the present Class I butterfat differentials.

Lowering the Class I butterfat differential factor to 0.115 will accommodate producers' request for a readjustment of the values of skim milk and butterfat in Class I milk at a time of declining use of butterfat in fluid milk products. In 1960, the average butterfat test of fluid milk products (including cream items) in 63 Federal order markets was 3.76 percent. In 1970, the average butterfat test for such products in 58 markets was 3.26 percent.

Comparable data for the 33 subject markets as they are presently constituted are not available. On the basis of information available for much of the area now regulated by these orders, however, there is every indication that the use of butterfat in Class I in these markets is following the national trend.[5]

The impact of this change on a handler's average cost of producer butterfat for Class I use is dependent, of course, upon the average butterfat test of his Class I products and the butterfat differential now applicable to him. Thus, handlers in the 33 markets will be affected differently from lowering the Class I butterfat differential. An analysis of 1970 data for 31 of the 33 markets will serve to illustrate the general change in handlers' costs under the revised classification plan. Data for the 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 of 3.01 percent, using a factor of 0.115 in these markets would have increased the Class I price at test by 3.4 cents. The price increases would have been slightly greater in the Duluth-Superior and central Arizona markets, where factors of 0.130 and 0.135, respectively, are used. Based on estimated Class I butterfat tests of 2.73 percent and 3.10 percent, the Class I price at test would have been increased 8.0 cents per hundredweight in the Duluth-Superior market and 5.6 cents in the central Arizona market.

Handlers opposed any change in the Class I butterfat differentials on the basis that the relationship of skim milk and butterfat values had already been altered by a change on April 1, 1971, in the purchase prices for dairy products under the Department's price support program. They pointed out that this change, as reflected in order prices, increased handlers' cost of skim milk about 10 cents per hundredweight. Handlers argued that in view of this any further increase in the value of skim milk should be delayed until there has been an opportunity to observe the market response to the effects of the price support change.

There is no evidence to suggest that Class I sales of skim milk and lowfat products were affected adversely by the price support action. Data for 58 Federal order markets indicate that average daily sales of these products in 1971 increased 2.1 million pounds over such sales in 1970. Monthly data show no drop in sales following the support price change in the early part of 1971. Adopting a lower Class I butterfat differential at this time gives recognition to the lower market value now associated with butterfat in Class I products.

Using a single factor of 0.115 for computing Class II and Class III butterfat differentials will result in a uniform adjustment of class prices for butterfat content among the markets under consideration. Continuation of the several butterfat differential factors now in use would offset to some extent the benefits

[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.

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 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 1 billion pounds of milk, or 88 percent of the market's total Class II use, were so disposed of by handlers in the Minneapolis-St. Paul market. In the Minnesota-North Dakota, Southeastern Minnesota-Northern Iowa, Duluth-Superior, Cedar Rapids-Iowa City, Eastern South Dakota, Oklahoma Metropolitan and North Central Iowa markets, over 80 percent of each market's total Class II milk was used that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other markets, only in four markets (Memphis, Fort Smith, Central West Texas and Rio Grande Valley) did such uses represent less than 20 percent of the total Class II use for each market. Thus, handlers in most of the 33 markets have a very definite interest in the relationship of the applicable class price with prices being paid currently for manufacturing grade milk. Accordingly, the prices paid by regulated handlers for Class III milk should correspond very closely with the pay prices during the month of delivery for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products. The influence of the manufacturing milk price level on the competitive relationship of producer milk for Class II uses is similar to that for producer milk used in the proposed Class III products. Therefore, the prices for Class II milk should be announced on the same basis as the price for Class III milk.

In connection with the announcement of surplus prices, a comment should be made concerning the transition from the present pricing provisions to the new ones adopted herein. It is intended that the present surplus prices apply to producer milk delivered to handlers during the last month under the present classification and pricing scheme. Clarification of this point is pertinent since such prices would

be announced following the effective date of the new pricing provisions.

7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.* The Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders should be changed to provide that the skim milk ingredient of "filled milk" shall be classified and priced as Class I milk.

The provisions provided herein are substantially those which were proposed for consideration at the hearing by a cooperative association operating in these markets.

In 1968, proposals to classify and price the skim milk component of filled milk were considered for most orders at a hearing held in Memphis, 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 Minnestota-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 1060—MILK IN MINNESOTA-NORTH DAKOTA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1060.1 General provisions.

DEFINITIONS

1060.2 Minnesota-North Dakota marketing area.
1060.3 Route disposition.
1060.4 Plant.
1060.5 Distributing plant.
1060.6 Supply plant.
1060.7 Pool plant.
1060.8 Nonpool plant.
1060.9 Handler.
1060.10 Producer-handler.
1060.11 [Reserved]
1060.12 Producer.
1060.13 Producer milk.
1060.14 Other source milk.
1060.15 Fluid milk product.
1060.16 Fluid cream product.
1060.17 Filled milk.
1060.18 Cooperative association.

HANDLER REPORTS

1060.30 Reports of receipts and utilization.
1060.31 Payroll reports.
1060.32 Other reports.

CLASSIFICATION OF MILK

1060.40 Classes of utilization.
1060.41 Shrinkage.
1060.42 Classification of transfers and diversions.
1060.43 General classification rules.
1060.44 Classification of producer milk.
1060.45 Market administrator's reports and announcements concerning classification.

CLASS PRICES

1060.50 Class prices.
1060.51 Basic formula price.
1060.52 Plant location adjustments for handlers.
1060.53 Announcement of class prices.
1060.54 Equivalent price.

UNIFORM PRICE

1060.60 Handler's value of milk for computing uniform price.
1060.61 Computation of uniform price.
1060.62 Announcement of uniform price and butterfat differential.

PAYMENTS FOR MILK

1060.70 Producer-settlement fund.
1060.71 Payments to the producer-settlement fund.
1060.72 Payments from the producer-settlement fund.
1060.73 Payments to producers and to cooperative associations.
1060.74 Butterfat differential.
1060.75 Plant location adjustments for producers and on nonpool milk.
1060.76 Payments by handler operating a partially regulated distributing plant.
1060.77 Adjustment of accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1060.85 Assessment for order administration.
1060.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1060 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1060.1 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

§ 1060.2 Minnesota-North Dakota marketing area.

"Minnesota-North Dakota marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties listed below, including territory wholly or partly within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

MINNESOTA

Becker.	Marshall.
Beltrami.	Norman.
Big Stone.	Otter Tail.
Clay.	Pennington.
Clearwater.	Polk.
Douglas.	Red Lake.
Grant.	Roseau.
Hubbard.	Stevens.
Kittson.	Traverse.
Lake of the Woods.	Wadena.
Mahnomen.	Wilkin.

NORTH DAKOTA

Barnes.	Pembina.
Cass.	Ramsey.
Cavalier.	Ransom.
Dickey.	Richland.
Grand Forks.	Sargent.
Griggs.	Steele.
La Moure.	Traill.
Nelson.	Walsh.

SOUTH DAKOTA

Grant.	Roberts.
Marshall.	

§ 1060.3 Route disposition.

"Route disposition" means a delivery to a wholesale or retail outlet either directly or through a distributing facility such as a distribution point, a plant store, or a vendor of any fluid milk product classified as Class I milk, other than a delivery to a pool plant or a nonpool plant.

§ 1060.4 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 or filled milk from one tank truck to another shall not be a plant under this definition. Facilities used only as a distribution point for storing fluid milk products in transit on routes shall not be a plant under this definition.

§ 1060.5 Distributing plant.

"Distributing plant" means a plant that is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which there is route disposition during the month.

§ 1060.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product that is acceptable to the appropriate health authority for distribution in the marketing area as Grade A is moved during the month to a distributing plant.

§ 1060.7 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section except the plant of a handler exempted pursuant to paragraph (c) of this section: *Provided,* That if a portion of a plant is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which during the month there is disposed:

(1) As route disposition, except filled milk, in the marketing area not less than 15 percent of Grade A milk receipts at such plant; and

(2) As route disposition, except filled milk, or by transfer to another plant and classified as Class I pursuant to § 1060.42, not less than the applicable percentage of such plant's receipts of Grade A milk:

(i) March through June, 20 percent;

(ii) July through February, 25 percent: *Provided,* That all distributing plants operated by a handler may be considered as one plant for the purpose of meeting the applicable percentage requirement of this subparagraph if the handler submits a written request to the market administrator prior to the delivery period for which such consideration is requested.

(b) A supply plant from which not less than 25 percent of its producer receipts at such plant during the month is shipped as fluid milk products, except filled milk, to pool plants qualified pursuant to paragraph (a) of this section: *Provided,* That a supply plant which qualified pursuant to this paragraph in each of the immediately preceding months of August through November shall be a pool plant for the months of March through June unless the plant operator requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month follow-

ing such notice and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(c) The term "pool plant" shall not apply to the following plants:

(1) A distributing plant from which the Secretary determines a greater portion of the route disposition, except filled milk, is made in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated by such other order;

(2) A distributing plant which meets the requirements set forth in paragraph (a) of this section which also meets the requirements of another marketing order on the basis of its route disposition in such other marketing area and from which the Secretary determines a greater quantity of route disposition, except filled milk, is made during the month in this marketing area than in such other marketing area but which plant is nevertheless fully regulated under such other marketing order;

(3) A supply plant from which the Secretary determines a greater proportion of its Grade A receipts, except filled milk, is shipped during the month to plants which are regulated by another order pursuant to the Act if such shipments qualify it as a pool plant under such other order;

(4) A producer-handler plant; or

(5) A governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities. Such an institution shall be exempt from all the provisions of this part.

§ 1060.8 Nonpool plant.

"Nonpool plant" means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or a governmentally owned and operated institution described in § 1060.7 (c)(5), 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 shipped during the month to a distributing plant, and is not an other order plant, a producer-handler plant, or a governmentally owned and operated institution described in § 1060.7 (c)(5).

§ 1060.9 Handler.

"Handler" means:

(a) Any person (including any cooperative association) in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account pursuant to § 1060.13;

(c) Any cooperative association with respect to the milk of its member producers which is delivered directly from the farm to the pool plant of another handler in a tank truck owned, operated by, under contract to, or under the control of such cooperative association. The milk for which a cooperative association is a handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person who operates a partially regulated distributing plant. This definition shall not apply to a governmentally owned and operated institution as described in § 1060.7(c)(5);

(e) A producer-handler; and

(f) Any person who operates an other order plant as described in § 1060.7(c)(1), (2), or (3).

§ 1060.10 Producer-handler.

Producer-handler means any person who meets all of the following conditions:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no milk during the month from other dairy farmers or fluid milk products from sources other than pool plants and not more than 3,000 pounds of milk and fluid milk products (including the milk equivalent of milk products other than fluid milk products which are reconstituted into fluid milk products) during the month from any source;

(c) Receives no milk products other than fluid milk products from any source for reconstitution into fluid milk products except that received within the limitations set forth in paragraph (b) of this section; and

(d) Such person must provide proof satisfactory to the market administrator that (1) the care and management of all the dairy animals and other resources necessary to produce the milk are the personal enterprise of and at the personal risk of such person, and (2) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 1060.11 [Reserved]

§ 1060.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, which milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1060.13.

(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 § 1060.44 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.

§ 1060.13 Producer milk.

"Producer milk" means all the skim milk and butterfat contained in Grade A milk of a producer that is:

(a) Received during the month at a pool plant directly from such producer or a handler described in § 1060.9(c);

(b) Received by a handler described in § 1060.9(c) from producers in excess of the quantity delivered to pool plants; or

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant or the plant of a governmentally owned and operated institution by the operator of a pool plant or a handler described in § 1060.9(b), if such movement is specifically reported and the conditions of subparagraphs (1), (2), and (3) of this paragraph have been met. Such milk shall be deemed to have been received by the diverting handler at the location of the nonpool plant to which diverted in applying §§ 1060.52 and 1060.75:

(1) During March through June a cooperative association handler pursuant to § 1060.9(b) may divert for its account without limit the milk of any member producer. During the months of July through February such handler may divert an aggregate quantity not exceeding 50 percent of the milk of all such producers whose milk has been received at a pool plant(s) for at least 3 days during the month.

(2) During March through June a handler in his capacity as the operator of a pool plant may divert for his account without limit the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to subparagraph (1) of this paragraph. During the months of July through February such handler may divert an aggregate quantity not exceeding 50 percent of the milk of all such producers whose milk has been received at his pool plant(s) for at least 3 days during the month.

(3) In the event milk receipts from dairy farmers are diverted in excess of the applicable percentages pursuant to subparagraphs (1) and (2) of this paragraph, the diverting handler shall specify the dairy farmers whose milk was overdiverted. Only the milk of such dairy farmer(s) which is received at a pool plant during the month shall be producer milk for such month.

§ 1060.14 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 § 1060.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1060.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1060.40(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 § 1060.40(b)(1)) for which the handler fails to establish a disposition.

§ 1060.15 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 § 1060.40 (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.

§ 1060.16 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.

§ 1060.17 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).

§ 1060.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;"

(b) Has full authority in the sale of milk of its members and is 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.

HANDLER REPORTS

§ 1060.30 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 § 1060.9(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 § 1060.40(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 § 1060.9 (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.

§ 1060.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1060.9 (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 § 1060.76(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.

§ 1060.32 Other reports.

In addition to the reports required pursuant to §§ 1060.30 and 1060.31, 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

§ 1060.40 Classes of utilization.

Except as provided in § 1060.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1060.30 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 § 1060.41(a) to the receipts specified in § 1060.41(a)(2) and in shrinkage specified in § 1060.41 (b) and (c).

§ 1060.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1060.30, 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 § 1060.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1060.9(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 § 1060.9 (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.

§ 1060.42 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 § 1060.44(a)(12) and the corresponding step of § 1060.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to 1060.44(a)(7) or the corresponding step of § 1060.44(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 § 1060.44(a)(11) or (12) or the corresponding steps of § 1060.44(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 § 1060.40.

(c) *Transfers to producer-handlers and to exempt government institutions.* 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 an exempt government institution defined in § 1060.7(c)(5) 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 its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt government institution defined in § 1060.7(c)(5), 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 § 1060.30 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.

§ 1060.43 General classification rules.

In determining the classification of producer milk pursuant to § 1060.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1060.30 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 § 1060.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1060.40, 1060.41, and 1060.42;

(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 § 1060.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1060.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1060.9(a) for each of his pool plants separately and of each handler described in § 1060.9 (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 § 1060.41(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 § 1060.40(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 § 1060.40(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 § 1060.40(c)(6)), any product specified in § 1060.40(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 § 1060.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt government institution defined in § 1060.7(c)(5);

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1060.40(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 § 1060.45(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 re-

sult 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 § 1060.42(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 § 1060.44(a)(14) and the corresponding step of § 1060.44(b).

§ 1060.45 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 § 1060.44(a)(12) and the corresponding step of § 1060.44(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 another order plant, the class to which such receipts are allocated pursuant to § 1060.44 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 of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler during the immediately preceding month from such cooperative association in its capacity as a handler pursuant to § 1060.9(c) and directly from members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after allocation pursuant to § 1060.44(a)(1) through (13) and the corresponding steps of § 1060.44(b).

Class Prices

§ 1060.50 Class prices.

Subject to the provisions of § 1060.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.30.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 20 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1060.51 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.

§ 1060.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant or diverted to a nonpool plant located outside the base zone 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 § 1060.50(a) shall be adjusted 1.2 cents for each 10 road miles or fraction thereof that such plant is located beyond the perimeter of the base zone.

(b) For the purposes of calculating such adjustments:

(1) All distances shall be by shortest hard-surfaced highways and/or all-weather-roads, as determined by the market administrator;

(2) The adjustment pursuant to this section shall be added to the Class I price if the plant is located in North or South Dakota and shall be subtracted from such price if the plant is located in Minnesota; and

(3) Transfers of fluid milk products between pool plants shall be assigned Class I milk disposition at the receiving plant, in excess of the sum of receipts at such plant from producers (including receipts from a handler described in § 1060.9(c)) and the pounds assigned to Class I milk to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to shipping plants priced at the same price, next to plants having a higher price, and then in sequence to plants having a lower price, beginning with the plant at which the highest price 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.

(d) The "base zone" shall include that portion of the marketing area in the counties of Clay, Marshall, Norman, Pennington, Polk, and Red Lake, all in the State of Minnesota; and the counties of Cass, Grand Forks, and Traill, all in the State of North Dakota.

§ 1060.53 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.

§ 1060.54 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

§ 1060.60 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 § 1060.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1060.44 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 § 1060.44(a)(14) and the corresponding step of § 1060.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1060.74, 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 § 1060.44(a)(9) and the corresponding step of § 1060.44(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 § 1060.44(a)(7) (i) through (iv) and the corresponding step of § 1060.44 (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 § 1060.44(a)(7) (v) and (vi) and the corresponding step of § 1060.44 (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 § 1060.44(a)(11) and the corresponding step of § 1060.44(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 for the preceding month applicable at the location of the pool plant and the Class III price for the current month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1060.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1060.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1060.60 for all handlers who filed the report prescribed in § 1060.30 for the month and who made the payments pursuant to §§ 1060.71 and 1060.73 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1060.75;

(c) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1060.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1060.60(f); and

(f) 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.

§ 1060.62 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

§ 1060.70 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 funds received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section:

(a) Payments made by handlers pursuant to §§ 1060.71, 1060.76, and 1060.77.

(b) Payments due handlers pursuant to §§ 1060.72 and 1060.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1060.71, 1060.76, 1060.77, 1060.85, and 1060.86.

§ 1060.71 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: *Provided*, That payment made by a cooperative association as a handler shall not relieve the transferee-handler of any obligation on any such milk which is due the cooperative association, or otherwise due pursuant to §§ 1060.70 through 1060.75, and §§ 1060.77 through 1060.86:

(1) The sum of:

(i) The total value of milk of the handler for such month as determined pursuant to § 1060.60; and

(ii) In the case of a handler described in § 1060.9(c), the minimum amounts due from other handlers pursuant to § 1060.73 (c)(1) before adjustments for butterfat content.

(2) The sum of:

(i) The amount required to be paid producers (including payments to producers through cooperative associations) pursuant to § 1060.73 before adjustment for butterfat content, deductions authorized by the producer or cooperative association, or deductions for marketing services pursuant to § 1060.86; and

(ii) The value at the uniform price applicable at the location of the plant(s) from which received of other source milk for which a value is computed pursuant to § 1060.60(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.

§ 1060.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay (subject to the proviso of § 1060.70(b)) to each handler the amount if any by which the amount computed pursuant to § 1060.71(a)(2) exceeds the amount computed pursuant to § 1060.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1060.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) To each producer for whom payment is not made pursuant to paragraph (b) or (c) of this section:

(1) A final settlement on or before the 15th day after the end of each month during which producer milk was received, at not less than the uniform price for such milk, adjusted by the butterfat differential computed pursuant to § 1060.74 and subject to the location adjustment to producers pursuant to § 1060.75, and less the following amounts:

(i) The payments made pursuant to subparagraph (2) of this paragraph;

(ii) Deductions for marketing services made pursuant to § 1060.86; and

(iii) Any deductions authorized by the producer: *Provided,* That if by such date such handler has not received full payment for such month pursuant to § 1060.72, he may reduce his total payment to all producers uniformly by not less 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; and

(2) A partial payment on or before the last day of each month with respect to producer milk received during the first 15 days of the month at not less than the Class III price for the preceding month (without deduction for hauling);

(b)(1) On or before the second day prior to the date payments are due individual producers as specified in this section, pay to a cooperative association which so requests and which the market administrator determines is authorized by its members to collect payments for their milk and which promises in writing to reimburse the handler the amount of any actual loss incurred by him because of any member's claim on the part of the cooperative association of the payments pursuant to paragraph (a) 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 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;

(c) To a cooperative association which is a handler pursuant to § 1060.9(a) or (c) for milk which it caused to be delivered to such handler:

(1) A final settlement on or before the 13th day after the end of the month in which the skim milk or butterfat was received, an amount equal to not less than the applicable class prices, as adjusted by the butterfat differential specified in § 1060.74, at the location of the handler's pool plant for all skim milk and butterfat so delivered, less the amount of payment made pursuant to subparagraph (2) of this paragraph; and

(2) A partial payment on or before the 26th day of each month at not less than the Class III price for the preceding month (without deduction for hauling) for all skim milk and butterfat so delivered during the first 15 days of the current month;

(d) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of this section and §§ 1060.74 and 1060.75;

(4) The rate which is used in making payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (c)(2) of this section and § 1060.86, together with a description of the respective deductions; and

(6) The net amount of payment to the producer; and

(e) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to paragraph (b) of this section, shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 20th day of the month, the total pounds of milk received during the first 15 days of the month;

(2) On or before the seventh day after the end of the month:

(i) The pounds per shipment, the total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments to such producer pursuant to § 1060.77.

§ 1060.74 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.

§ 1060.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at a pool plant or diverted to a nonpool plant located outside the base zone, the uniform price shall be adjusted at the rate set forth in § 1060.52.

(b) For purposes of computation pursuant to §§ 1060.71(b)(2) and 1060.72 the uniform price shall be adjusted at the rates set forth in § 1060.52 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted uniform price shall not be than the Class III price.

§ 1060.76 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 §§ 1060.30(b) and 1060.31(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 prices 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 § 1060.60 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 § 1060.60 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 § 1060.60 for such handler shall include, in lieu of the value of other source milk specified in § 1060.60(f) less the value of such other source milk specified in § 1060.71(a)(2)(ii), a value of milk determined pursuant to § 1060.60 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 § 1060.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1060.30(b) and 1060.31(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 § 1060.60 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.

§ 1060.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date for making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

Administrative Assessment and Marketing Service Deduction

§ 1060.85 Assessment for order administration.

As his pro rata share of the expense of the administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of each month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to skim milk and butterfat contained in:

(a) Producer milk (including a handler's own farm production);

(b) Other source milk allocated to Class I pursuant to § 1060.44(a) (7) and (11) and the corresponding steps in § 1060.44(b), except such other source milk that is excluded from the computations pursuant to § 1060.60 (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 § 1060.76(a)(2).

§ 1060.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than to himself pursuant to § 1060.73(a)(1) shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the month, and shall pay such deductions to the market administrator 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 from, and to provide market information to, such producers. 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) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from the payments to be made directly to producers pursuant to § 1060.73(a)(1), 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 (of which such producers are members) rendering such services.

(c) When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and unless otherwise previously provided, the butterfat test.

PART 1061—MILK IN SOUTHEASTERN MINNESOTA-NORTHERN IOWA (DAIRYLAND) MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

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AUTHORITY: The provisions of this Part 1061 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1061.1 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

§ 1061.2 Southeastern Minnesota-Northern Iowa (Dairyland) marketing area.

"Southeastern Minnesota - Northern Iowa (Dairyland) marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the counties listed below, including all territory within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

MINNESOTA COUNTIES

Blue Earth.	Mower.
Brown.	Nicollet.
Cottonwood.	Oldsted.
Dodge.	Redwood.
Faribault.	Rice.
Fillmore.	Steele.
Freeborn.	Wabasha.
Goodhue.	Waseca.
Le Sueur.	Watonwan.
Martin.	Winona.

IOWA COUNTIES

Howard.	Winnebago.
Kossuth.	Winneshiek.
Mitchell (except city of Osage).	Worth.

§ 1061.3 Route disposition.

"Route disposition" means a delivery from a plant (including delivery from a retail store at such plant and delivery through vendors or distribution points) of any fluid milk product classified as Class I to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a vendor or through a distribution point shall be considered a route disposition of the plant at the location of the wholesale or retail outlet to which delivery is made.

§ 1061.4 [Reserved]

§ 1061.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition (either directly or through another plant) in the marketing area during the month of a Grade A fluid milk product that is packaged in such plant.

§ 1061.6 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped during the month to a distributing plant.

§ 1061.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section:

(a) A distributing plant from which there is disposed of during the month not less than the percentages set forth in subparagraphs (1) and (2) of this paragraph of the total Grade A fluid milk products received during the month at such plant, including producer milk diverted under § 1061.13(d)(2), but excluding receipts of packaged fluid milk products from other pool distributing plants and receipts from unregulated supply plants and other order plants which are assigned pursuant to § 1061.44 (a)(8) (i) and (iii) and the corresponding step of § 1061.44(b):

(1) Not less than 10 percent of such receipts is disposed of from such plant as Class I milk in the marketing area as route disposition. Such disposition is to be exclusive of filled milk and receipts of packaged fluid milk products from other pool distributing plants; and

(2) Not less than 30 percent during the months of February–August and 40 percent during the months of September–January of such receipts is disposed of as Class I milk as route disposition. Such disposition is to be exclusive of filled milk and receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant from which not less than 30 percent of its total Grade A milk receipts from dairy farmers during the month is delivered as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section subject to subparagraphs (1) and (2) of this paragraph:

(1) Any plant which qualified pursuant to this paragraph in each of the immediately preceding months of September through November shall be a pool plant for the months of December through August unless written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting the plant be designated a nonpool plant for such month and each subsequent month through August during which it would not otherwise qualify as a pool plant; and

(2) In determining the pool plant qualifications of a cooperative association's plant, member producer milk of such association which is delivered directly to plants described in paragraph (a) of this section shall be considered for purposes of this paragraph as having been first received at the cooperative's plant subject to the following conditions:

(i) Written request is made to the market administrator by the cooperative association prior to or during the month, designating the plant to be a pool plant pursuant to this subparagraph for the month, and for each month thereafter, until such request is withdrawn or terminated pursuant to subdivision (ii) of this subparagraph; and

(ii) Any such plant which in a succeeding month is pooled under the provisions of another order issued pursuant to the Act shall not be pooled under this subparagraph for the ensuing 12 months.

(c) The term "pool plant" shall not apply to the following plants or facilities:

(1) A producer-handler plant or an exempt governmental plant;

(2) A plant qualified as a pool plant pursuant to paragraph (a) or (b) of this section that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act unless a greater volume of fluid milk products is disposed of from such plant as route disposition, except route disposition of filled milk, in this marketing area and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order;

(3) If a portion of a plant is operated separately from the Grade A portion of a plant meeting the conditions of paragraph (a) or (b) of this section and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section; and

(4) Facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a pool plant or part of a pool plant pursuant to this section.

§ 1061.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant or an exempt governmental plant and from which fluid milk products eligible for sale as Grade A in consumer-type packages or dispenser units or filled milk are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant or an exempt governmental plant and from which a Grade A fluid milk product or filled milk is shipped during the month to a pool plant.

(e) "Exempt governmental plant" means a distributing or supply plant operated by a governmental agency.

§ 1061.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant(s);

(b) Any cooperative association with respect to producer milk which it causes to be diverted for its account from a pool plant of another handler pursuant to § 1061.13;

(c) Any cooperative association with respect to milk of its 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;

(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 from which during the month fluid milk products are either disposed of as route disposition in the marketing area or shipped to a pool plant.

§ 1061.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant from which Class I milk of his own production is disposed of as route disposition in the marketing area, and who receives no milk or fluid milk products from the farms of other dairy farmers nor from any other source, except receipts by plant transfer from pool plants and who receives no nonfluid milk products from any source for use in reconstituted fluid milk products: *Provided,* That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk and milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are wholly the personal enterprise and risk of such person.

§ 1061.11 [Reserved]

§ 1061.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received as producer milk at a pool plant, or diverted pursuant to § 1061.13.

(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 § 1061.44 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.

§ 1061.13 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk:

(a) Received at a pool plant directly from a producer;

(b) Received at a pool plant from a handler described in § 1061.9(c);

(c) Received by a handler described in § 1061.9(c) from producers in excess of the quantity delivered to pool plants; or

(d) Moved as diverted milk, subject to the conditions in subparagraphs (1), (2), (3) of this paragraph, from a pool plant to a nonpool plant that is not a producer-handler plant. "Diverted milk" means, for any month, milk produced by a dairy farmer which a pool plant handler or a handler described in § 1061.9(b) caused to be moved from the farm to a nonpool plant that is not a producer-handler plant if such milk is claimed as producer milk and the following conditions have been met:

(1) During the months of February through August a cooperative association handler pursuant to § 1061.9(b), may divert for its account, without limit on the remaining days, the milk of any member who was a producer during the previous month or whose milk is delivered to a pool plant on at least 1 day during the current month. During the months of September through January such handler may divert as producer milk the milk of any member producer whose milk is delivered to a pool plant described in § 1061.7(a) on at least 1 day during the month except that the aggregate quantity of producer milk diverted by such handler shall not exceed the quantity of milk delivered during that month by all its member producers to pool plants described in § 1061.7(a);

(2) During February through August a handler in his capacity as the operator of a pool plant may divert for his account, without limit on the remaining days, the milk of any dairy farmer who was a producer during the previous month or whose milk is received at his pool plant on at least 1 day during the current month. During the months of September through January such handler may divert as producer milk the milk of any producer whose milk is received at his pool plant on at least 1 day during the month except that the aggregate quantity of producer milk diverted by such handler shall not exceed the quantity of milk received during the month at his pool plant from all producers except the member producers of a cooperative which diverted milk during the month pursuant to subparagraph (1) of this paragraph; and

(3) If milk receipts from dairy farmers are diverted in excess of the quantities allowed pursuant to subparagraphs (1) and (2) of this paragraph, the diverting handler shall specify the dairy farmers whose milk was overdiverted. If the diverting handler does not specify the dairy farmers whose milk was overdiverted, only the milk of dairy farmers which is received at a pool plant during the month shall be producer milk for such month.

§ 1061.14 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 § 1061.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1061.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1061.40(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 § 1061.40(b)(1)) for which the handler fails to establish a disposition.

§ 1061.15 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 § 1061.40 (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.

§ 1061.16 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.

§ 1061.17 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).

§ 1061.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(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 full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1061.30 Reports of receipts and utilization.

On or before the eighth 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 § 1061.9(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 § 1061.40(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 § 1061.9 (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.

§ 1061.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1061.9 (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 § 1061.76 (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.

§ 1061.32 Other reports.

In addition to the reports required pursuant to §§ 1061.30 and 1061.31, 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

§ 1061.40 Classes of utilization.

Except as provided in § 1061.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1061.30 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 § 1061.41(a) to the receipts specified in § 1061.41(a)(2) and in shrinkage specified in § 1061.41 (b) and (c).

§ 1061.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1061.30, 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 § 1061.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1061.9(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 § 1061.9 (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.

§ 1061.42 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 an other 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 § 1061.44(a)(12) and the corresponding step of § 1061.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1061.44(a)(7) or the corresponding step of § 1061.44(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 § 1061.44(a) (11) or (12) or the corresponding steps of § 1061.44(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 § 1061.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt governmental plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt governmental 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 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 an exempt governmental plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1061.30 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.

§ 1061.43 General classification rules.

In determining the classification of producer milk pursuant to § 1061.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1061.30 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 § 1061.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1061.40, 1061.41, and 1061.42;

(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 § 1061.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1061.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1061.9(a) for each of his pool plants separately and of each handler described in § 1061.9 (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 § 1061.41 (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 § 1061.40(b) (1) that were received in packaged form from other plans, but not in excess of the pounds of skim milk remaining in Class II;

(5) Except for the first month that 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 § 1061.40(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 § 1061.40(c)(6)), any product specified in § 1061.40(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 § 1061.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt governmental plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (*a*) through (*c*) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount:

(*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 § 1061.40(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;

(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 § 1061.45(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;

(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 § 1061.42(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 § 1061.44(a)(14) and the corresponding step of § 1061.44(b).

§ 1061.45 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 § 1061.44(a)(12) and the corresponding step of § 1061.44(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 § 1061.44 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 20th day of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler during the immediately preceding month from such cooperative association in its capacity as a handler pursuant to § 1061.9(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after allocation pursuant to § 1061.44(a) (1) through (13), and the corresponding steps of § 1061.44(b).

Class Prices

§ 1061.50 Class prices.

The class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.06.

(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.

§ 1061.51 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.

§ 1061.52 [Reserved]

§ 1061.53 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.

§ 1061.54 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

§ 1061.60 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 § 1061.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1061.44 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 § 1061.44(a)(14) and the corresponding step of § 1061.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1061.74;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price 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 § 1061.44(a)(9) and the corresponding step of § 1061.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1061.44(a)(7) and the corresponding step of § 1061.44(b), excluding receipts of bulk fluid cream products from another order plant;

(e) Add the amount obtained from multiplying the Class I price by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1061.44(a)(11) and the corresponding step of § 1061.44(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

(f) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price for the preceding month and the Class III price for the current month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1061.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1061.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1061.60 for all handlers who filed reports pursuant to § 1061.30 for the month and who made payments pursuant to § 1061.71 for the preceding month;

(b) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(c) 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 § 1061.60(e); and

(d) 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.

§ 1061.62 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

§ 1061.70 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 §§ 1061.71, 1061.76, and 1061.77 and out of which he shall make all payments due handlers pursuant to §§ 1061.72 and 1061.77: *Provided*, That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1061.71 Payments to the producer-settlement fund.

(a) On or before the 14th 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 § 1061.60.

(2) The sum of:

(i) The value at the uniform price of such handler's receipts of producer milk; and

(ii) The value at the uniform price of other source milk for which a value is computed pursuant to § 1061.60(e).

(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 and the Class III price.

§ 1061.72 Payments from the producer-settlement fund.

On or before the 16th day after the end of each month, the market administrator shall pay, subject to the proviso of § 1061.70, to each handler the amount if any, by which the amount computed pursuant to § 1061.71(a)(2) exceeds the amount computed pursuant to § 1061.71 (a)(1).

§ 1061.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) To each producer for whom payment is not made pursuant to paragraph (b) and (c) of this section:

(1) On or before the 20th day of the following month not less than the uniform price, adjusted by the butterfat differential computed pursuant to § 1061.74 and less the following amounts:

(i) The payments made pursuant to subparagraph (2) of this paragraph;

(ii) Deductions for marketing services pursuant to § 1061.86; and

(iii) Any proper deductions authorized by the producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1061.72 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; and

(2) A partial payment on or before the fifth day of the following month to each producer who had not discontinued shipping milk to such handler at not less than the Class III price for the preceding month for producer milk received during the first 15 days of the month (without deduction for hauling);

(b) Payments required in paragraph (a) of this section shall be made on or before the second day prior to the dates set forth in paragraph (a) of this section to a cooperative association (except as specified in paragraph (c) of this section) qualified under § 1061.18, or its duly authorized agent, if the cooperative association so requests and the market administrator determines it is authorized by its members to collect payments for their milk. Payments to the cooperative association under this paragraph shall be made subject to the condition that the association has provided the handler with a promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

(c) On or before the 11th day after the end of the month, each handler shall pay a cooperative association which is a handler with respect to all skim milk and butterfat received by him from a pool plant operated by such cooperative association not less than the applicable class prices as adjusted by the butterfat differential specified in § 1061.74; and

(d) In making payment to individual producers as required by § 1061.73, each handler shall furnish each producer from whom he received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to § 1061.73;

(4) The rate used in making the payment if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1061.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1061.74 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.

§ 1061.75 [Reserved]

§ 1061.76 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 §§ 1061.30(b) and 1061.31(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; and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference be-

tween the Class I 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 § 1061.60 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 § 1061.60 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 § 1061.60 for such handler shall include, in lieu of the value of other source milk specified in § 1061.60(e) less the value of such other source milk specified in § 1061.71(a)(2)(ii), a value of milk determined pursuant to § 1061.60 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 § 1061.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1061.30 (b) and 1061.31(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 § 1061.60 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.

§ 1061.77 Adjustment of accounts.

When verification by the market administrator of reports or payment of any handler 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 not later than the date for making payment next following such disclosure.

§ 1061.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1061.71, 1061.76, and 1061.77 shall be increased three-fourths of 1 percent for each month or portion thereof that such obligation is overdue: *Provided*, That,

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and

(b) For the purpose of this section, any obligation that was determined at a date later than 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

§ 1061.85 Assessment for order administration.

As his pro rata share of the expense of administration, each handler shall pay to the market administrator on or before the 14th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk handled during the month as follows:

(a) Each handler (excluding a cooperative association as the operator of a pool plant with respect to milk transferred in bulk to a pool plant of another handler) with respect to his receipts of producer milk (including such handler's own-farm production, and milk received in bulk from a pool plant owned and operated by a cooperative association);

(b) Other source milk allocated to Class I pursuant to § 1061.44(a) (7) and (11) and the corresponding steps of § 1061.44(b), except such other source milk that is excluded from the computations pursuant to § 1061.60 (d) and (e); and

(c) Each handler in his capacity as the operator of a partially regulated distributing plant with respect to his route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1061.76(a)(2).

§ 1061.86 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 § 1061.73 shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 18th day after the end of the month. Such moneys shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of member producers for whom a cooperative association is 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 18th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1063—MILK IN QUAD CITIES-DUBUQUE MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1063.85 Assessment for order administration.
1063.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1063 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1063.1 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

§ 1063.2 Quad Cities-Dubuque marketing area.

"Quad Cities-Dubuque marketing area", hereinafter called the marketing area, means the territory within the boundaries of the counties of Clinton, Dubuque, Jackson, Muscatine, and Scott in the State of Iowa; the counties of Henry, Mercer, and Rock Island, and the city of East Dubuque, in the State of Illinois, including territory within such boundaries that is occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other establishments.

§ 1063.3 [Reserved]

§ 1063.4 [Reserved]

§ 1063.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk from which any fluid milk product is processed or packaged and 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.

§ 1063.6 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 § 1063.7.

§ 1063.7 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: *Provided,* That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which:

(1) The volume of Class I packaged fluid milk products, except filled milk, disposed of during the month either on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets or moved to other plants, less receipts of packaged fluid milk products other than filled milk from other pool distributing plants, is not less than 45 percent of the total Grade A fluid milk products, except filled milk, received at such plant, exclusive of receipts of packaged fluid milk products from other pool distributing plants and receipts from other order plants which are assigned pursuant to § 1063.44(a)(8)(iii) and the corresponding step of § 1063.44(b); and

(2) Not less than 15 percent of such receipts during the month are so disposed of in the marketing area on routes.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided,* That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of December through August, unless written application is filed with the market administrator on or before the 1st day of any of the months of December through August to be designated a nonpool plant for such month and for each subsequent month through August.

(c) A plant operated by a cooperative association from whose members the total pounds of producer milk received at the pool plants of other handlers during the month, or during the 12-month period immediately preceeding such month, are more than the total pounds of Grade A milk received at its plant from dairy farmers during the corresponding period: *Provided,* That if written application is filed with the market administrator on or before the 5th day of any month such plant may be designated a nonpool plant for such month and for any subsequent months.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant otherwise qualified as a pool plant pursuant to paragraph (a), (b), or (c), of this section during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under paragraph (a), (b), or (c), of this section and to retail and wholesale outlets in the Quad Cities-Dubuque marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order except in the following circumstances:

(i) If a distributing plant were qualified pursuant to paragraph (a) of this section during each of the 3 immediately preceding months, it would continue to be subject to all the provisions of this part until after the 3d consecutive month in which it remains so qualified and has a greater proportion of its fluid milk product disposition, except filled milk, made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order; or

(ii) A distributing plant qualified pursuant to paragraph (a) of this section that is fully regulated under another Federal order but which has greater fluid milk product (except filled milk) disposition during the month on routes in the Quad Cities-Dubuque marketing area and to pool plants qualified on the basis of route distribution in the Quad Cities-Dubuque marketing area than in such other Federal order marketing area.

§ 1063.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant, other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1063.9 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 from producers diverted pursuant to § 1063.13 by the cooperative association for the account of such association;

(c) [Reserved]

(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 § 1063.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1063.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from producers or other source milk.

§ 1063.11 [Reserved]

§ 1063.12 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 received as producer milk at a pool plant or diverted pursuant to § 1063.13.

(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 § 1063.44 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.

§ 1063.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk received at a pool plant directly from a producer. Milk normally received from a producer at a pool plant which is diverted from such pool plant by the operator of the plant or a handler described in § 1063.9(b) to a nonpool plant that is not a producer-handler plant shall also be producer milk and shall be deemed to have been received by the diverting handler at the plant from which diverted: *Provided,* That in any of the months of July through January milk diverted from the farm of a producer on more than the number of days that milk was delivered to a pool plant from such farm during the month shall not be deemed to have been received by the diverting handler.

§ 1063.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1063.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1063.40(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 § 1063.40(b)(1)) for which the handler fails to establish a disposition.

§ 1063.15 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 § 1063.40 (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.

§ 1063.16 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.

§ 1063.17 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).

§ 1063.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

HANDLER REPORTS

§ 1063.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1063.40(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 § 1063.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1063.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1063.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1063.76 (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.

§ 1063.32 Other reports.

In addition to the reports required pursuant to §§ 1063.30 and 1063.31, 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

§ 1063.40 Classes of utilization.

Except as provided in § 1063.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1063.30 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 § 1063.41(a) to the receipts specified in § 1063.41(a)(2) and in shrinkage specified in § 1063.41 (b) and (c).

§ 1063.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1063.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant).

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (4), (5), and (6) of this paragraph; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1063.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1063.42 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 § 1063.44(a)(12) and the corresponding step of § 1063.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1063.44(a)(7) or the corresponding step of § 1063.44(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 § 1063.44 (a) (11) or (12) or the corresponding steps of § 1063.44(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 § 1063.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1063.30 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.

§ 1063.43 General classification rules.

In determining the classification of producer milk pursuant to § 1063.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1063.30 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 § 1063.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1063.40, 1063.41, and 1063.42;

(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 § 1063.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1063.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1063.9(a) for each of his pool plants separately and of each handler described in § 1063.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1063.41(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 § 1063.40(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 § 1063.40(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 § 1063.40(c)(6)), any product specified in § 1063.40(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 § 1063.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (7)(v), and (8)(i), of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1063.40(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 § 1063.45(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 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 § 1063.42 (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 § 1063.44(a)(14) and the corresponding step of § 1063.44(b).

§ 1063.45 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 § 1063.44(a)(12) and the corresponding step of § 1063.44(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 § 1063.44 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 milk caused to be delivered by the cooperative association or 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

§ 1063.50 Class prices.

Subject to the provisions of § 1063.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.33.

(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.

§ 1063.51 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.

§ 1063.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1063.50(a) shall be adjusted as follows:

(1) At a plant in Dubuque and Jackson Counties, Iowa, and East Dubuque, Ill., subtract 10 cents;

(2) At a plant located outside the marketing area, north of U.S. Highway No. 80, and, except as provided in subparagraph (3) of this paragraph, 70 miles or more, by the shortest hard-surfaced highway distance as determined

by the market administrator, from the nearer of the City Hall, Rock Island, Ill., or the Post Office, West Liberty, Iowa, subtract 10 cents and subtract an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 80 miles; and

(3) At a plant located in that Iowa territory beyond 70 miles from the nearer of the City Hall, Rock Island, Ill., or the Post Office, West Liberty, Iowa, and south of U.S. Highway No. 80, or within the Des Moines, Iowa, marketing area as specified in Part 1079, add any amount by which the price specified in § 1063.50(a) is exceeded by the applicable Class I price at the same location pursuant to Part 1079 regulating the handling of milk in the Des Moines, Iowa, marketing area.

(b) For purposes of calculating such adjustments, transfers between pool plants shall be assigned Class I disposition at the tranferee-plant, in excess of the sum of receipts at such plant from producers, and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price, and then in sequence to the plants having a lower Class I price beginning with the plant at which the highest Class I price 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.

§ 1063.53 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.

§ 1063.54 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

§ 1063.60 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 § 1063.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1063.44 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 § 1063.44(a)(14) and the corresponding step of § 1063.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1063.74, 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 § 1063.44 (a)(9) and the corresponding step of § 1063.44(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 § 1063.44(a)(7) (i) through (iv) and the corresponding step of § 1063.44 (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 § 1063.44(a)(7) (v) and (vi) and the corresponding step of § 1063.44 (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 § 1063.44 (a)(11) and the corresponding step of § 1063.44(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.

§ 1063.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price for milk of 3.5 percent butterfat content f.o.b. Rock Island, Ill., as follows:

(a) Combine into one total the values computed pursuant to § 1063.60 for all handlers who made the reports prescribed in § 1063.30 for such month, except those in default of payments required pursuant to § 1063.71 for the preceding month;

(b) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1063.75;

(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 § 1063.60(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 known as the uniform price for milk received from producers.

§ 1063.62 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

§ 1063.70 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 §§ 1063.71, 1063.76, and 1063.77 and out of which he shall make all payments to handlers pursuant to §§ 1063.72 and 1063.77.

§ 1063.71 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 § 1063.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1063.75, 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 § 1063.60(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 subpara-

graph (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.

§ 1063.72 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 § 1063.71(a)(2) exceeds the amount computed pursuant to § 1063.71(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. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1063.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1063.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 17th day after the end of each month during which milk was received, to each producer for milk received from him and for which payment is not made pursuant to paragraph (b) of this section, at not less than the uniform price as adjusted pursuant to §§ 1063.74 and 1063.75.

(b) On or before the 15th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

(c) On or before the 10th 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 this part at the respective class prices, as adjusted by the butterfat differential specified in § 1063.74, that are applicable at the location of the receiving handler's pool plant.

§ 1063.74 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.

§ 1063.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1063.61 received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in § 1063.52; and

(b) For purposes of computations pursuant to §§ 1063.71 and 1063.72 the uniform price shall be adjusted at the rates set forth in § 1063.52 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.

§ 1063.76 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 §§ 1063.30(b) and 1063.31(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 § 1063.60 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 § 1063.60 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 § 1063.60 for such handler shall include, in lieu of the value of other source milk specified in § 1063.60(f) less the value of such other source milk specified in § 1063.71(a)(2)(ii), a value of milk determined pursuant to § 1063.60 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 § 1063.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1063.30(b) and 1063.31(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 § 1063.60 for such nonpool sup-

ply 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.

§ 1063.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due; and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1063.85 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 3 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to: (a) Producer milk, (b) other source milk allocated to Class I pursuant to § 1063.44(a) (7) and (11) and the corresponding steps of § 1063.44(b), except such other source milk that is excluded from the computations pursuant to § 1063.60 (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 § 1063.76(a)(2).

§ 1063.86 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 § 1063.73, shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from 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.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make 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 1064—MILK IN THE GREATER KANSAS CITY MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1064 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1064.1 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

§ 1064.2 Greater Kansas City marketing area.

"Greater Kansas City marketing area," hereinafter called "marketing area," means all the territory within the boundaries of the counties listed below, including territory within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

MISSOURI COUNTIES

Andrew.	Henry.
Atchison.	Holt.
Bates.	Jackson.
Buchanan.	Johnson.
Cass.	Lafayette.
Clay.	Nodaway.
Clinton.	Pettis.
Daviess.	Platte.
De Kalb.	St. Clair.
Gentry.	Worth.

KANSAS COUNTIES

Atchison.	Marshall.
Brown.	Miami.
Clay.	Morris.
Cloud.	Nemaha.
Dickinson.	Ottawa.
Doniphan.	Pottawatomie.
Douglas.	Republic.
Geary.	Riley.
Jackson.	Saline.
Jefferson.	Shawnee.
Johnson.	Wabaunsee.
Leavenworth.	Washington.
Lyon.	Wyandotte.

§ 1064.3 Route disposition.

"Route disposition" means a delivery (either direct or through a distributing facility such as a distribution point, a plant store, a vendor, or vending machine), other than a delivery to a pool plant or a nonpool plant, of a fluid milk product classified as Class I milk.

§ 1064.4 [Reserved]

§ 1064.5 Distributing plant.

"Distributing plant" means a plant from which during the month there is route disposition in the marketing area of Grade A fluid milk products that are processed or packaged in such plant.

§ 1064.6 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped during the month to a pool plant.

§ 1064.7 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 or the immediately preceding month there is:

(1) Route disposition, except filled milk, in the marketing area that is not less than 15 percent of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.13 by the handler operating such plant; and

(2) Route disposition, except filled milk, that is not less than the following percentage of the total Grade A fluid milk products, except filled milk, received at such plant, including producer milk diverted to other plants pursuant to § 1064.13 by the handler operating such plant: *Provided*, That the combined receipts and disposition of each handler who operates more than one distributing plant, each of which meets the performance requirements of subparagraph (1) of this paragraph, shall be used in determining the percentages specified in this subparagraph:

(i) April through June, 35 percent;

(ii) September and October, 50 percent; and

(iii) All other months, 45 percent.

(b) A supply plant from which during the month 50 percent or more of the Grade A milk received at such plant from dairy farmers (including receipts from handler described in § 1064.9(c), except receipts of milk diverted pusuant to § 1064.13) is disposed of as fluid milk products (except filled milk) in one or both of the following ways: (1) Shipped to and received at pool distributing plants, or (2) as a route disposition sale in the marketing area. A supply plant which is a pool plant under this paragraph during each month of September through January shall be pooled for the following months of February through August, if the required percentage pursuant to this paragraph is not met, unless the plant operator files written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(c) A supply plant operated by a cooperative association in any month in which the member producer milk of such cooperative association received at pool distributing plants during the current month, or immediately preceding 12-month period ending with the current month, either by transfer from such supply plant or directly from member producers' farms, is 50 percent or more of such cooperative's total member producer milk. Such direct deliveries from member producers' farms shall be considered as having been received first at the plant of such cooperative association for the purpose of determining the qualification of such plant as a pool plant pursuant to this paragraph. If two or more cooperative associations desire to qualify a supply plant operated by one of the associations as a pool plant on the basis of their combined deliveries to pool distributing plants and have filed a written request to this effect with the market administrator on or before the first day of the month the agreement is effective, such a supply plant shall be a pool plant during the month if the above specified percentage of the total member producer milk of such cooperative associations was received at pool distributing plants during the current month, or the immediately preceding 12-month period ending with the current month.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant or supply plant operated by a State educational institution;

(3) A plant from which there is route disposition in the marketing area of less than an average of 600 pounds per day;

(4) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month a greater volume of fluid milk products, except filled milk, was disposed of as route disposition in such other marketing area and to pool plants qualified on the basis of route disposition in such other marketing area than was so disposed of in this marketing area except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its fluid product disposition, except filled milk, is made in the above described manner in such other marketing area, unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(5) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month a greater volume of fluid milk products, except filled milk, was disposed of as route disposition in this marketing area and to pool plants qualified on the basis of route disposition in this marketing area than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order;

(6) A supply plant meeting the pooling requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order, and which has greater direct marketing area route disposition, except filled milk, and qualifying shipments to plants regulated under such other order than are made under this order, unless during any month of February through August automatic pool plant status for such plant is retained under this part for such month; and

(7) A supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant also qualified as a pool plant pursuant to paragraph (c) of this section.

§ 1064.8 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 the plant of a handler pursuant to § 1064.9(h), an other order plant, or 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 which is not an other order plant, a producer-handler plant, or a plant of a handler pursuant to § 1064.9(h) from which a fluid milk product is shipped during the month to a pool plant.

§ 1064.9 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 § 1064.13 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its producers which is received by the cooperative from the farm for delivery to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association, prior to delivery, notifies the market administrator in writing that it will be the handler for the milk. Such milk shall be considered to have been

received at the location of the pool plant to which delivery is made;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant that is either a distributing plant or a supply plant;

(g) Any person who operates an unregulated supply plant; and

(h) A State educational institution which operates either a nonpool distributing plant or supply plant.

§ 1064.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm and a distributing plant at which each of the following conditions is met during the month:

(a) Milk is received from the dairy farm of such person but from no other dairy farm;

(b) The butterfat or skim milk disposed of in the form of a fluid milk product does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm of such person and in the form of a fluid milk product from pool plants of other handlers; and

(c) Such person shall furnish proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for the production of milk in his name and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1064.11 [Reserved]

§ 1064.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is received at a pool plant or diverted pursuant to § 1064.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or a handler pursuant to § 1064.9(h);

(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 § 1064.44 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.

§ 1064.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer or a handler described in § 1064.9(c);

(b) Received by a handler described in § 1064.9(c) from producers in excess of the quantity delivered to pool plants; or

(c) Diverted, subject to the following conditions, from a pool plant to a pool supply plant or to a nonpool plant that is not a producer-handler plant. "Diverted milk" is milk normally received at a pool distributing plant but which is moved directly from a dairy farm to a nonpool plant as specified in this paragraph or to a pool supply plant for the account of a handler operating a pool distributing plant or a handler described in § 1064.9(b). Such milk shall be deemed to have been received by the diverting handler at the location of the pool plant from which diverted except that milk diverted to a plant located more than 125 miles by the shortest highway distance as determined by the market administrator from the nearest of the City Halls of Kansas City, Mo., or Topeka, Kans., shall be deemed to have been received at the location of the plant to which diverted in applying §§ 1064.52 and 1064.75:

(1) A handler described in § 1064.9(b) may divert for its account the milk of any member producer whose milk is received at a pool distributing plant for at least 1 day's delivery during the month, without limit during the other days of the month. The total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of its member producer milk received at all pool distributing plants during the current month, or

(ii) The average daily quantity of its member producer milk received at pool distributing plants during the previous month, multiplied by the number of days in the current month.

(2) A handler operating a pool distributing 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 subparagraph (1) of this paragraph, whose milk is received at his pool distributing plant for at least 1 day's delivery during the month, without limit during the other days of the month. However, the total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of milk received at such plant during the current month from producers who are not members of a cooperative association that has diverted milk pursuant to subparagraph (1) of this paragraph; or

(ii) The average daily quantity of milk received at such plant during the previous month from producers who are not members of a cooperative association that has diverted milk in the current month pursuant to subparagraph (1) of this paragraph, multiplied by the number of days in the current month.

(3) Diversions in excess of the applicable percentages pursuant to subparagraphs (1) and (2) of this paragraph shall first be assigned to diversions to nonpool plants and any excess quantity assigned to nonpool plants shall not be producer milk and shall not be deemed to have been received by the diverting handler. The diverting handler shall specify the dairy farmers whose milk shall not be included as producer milk pursuant to this subparagraph. Excess diversions to a pool supply plant shall be producer milk at the supply plant in applying §§ 1064.7, 1064.52, and 1064.75.

§ 1064.14 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 § 1064.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1064.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1064.40(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 § 1064.40(b)(1)) for which the handler fails to establish a disposition.

§ 1064.15 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 § 1064.40 (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.

§ 1064.16 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.

§ 1064.17 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).

§ 1064.18 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 is engaged in making collective sales of or marketing milk or milk products for its members.

HANDLER REPORTS

§ 1064.30 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 § 1064.9(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 § 1064.40(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 § 1064.9(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.

§ 1064.31 Payroll reports.

(a) On or before the 23d day after the end of each month, each handler described in § 1064.9 (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 § 1064.76(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.

§ 1064.32 Other reports.

In addition to the reports required pursuant to §§ 1064.30 and 1064.31, the following shall be reported to the market administrator:

(a) On or before the seventh day after the end of each month with respect to receipts at each plant of milk from each producer, each handler described in § 1064.9 (a) and (b) shall report the average butterfat test, the pounds of butterfat contained therein, the number of days on which milk was received from such producer and for each of the months of February through July, the pounds of base and excess milk received from each producer;

(b) On or before the seventh day after the end of each month of February through July, each handler described in § 1064.9(c) shall report the quantities of skim milk and butterfat in producer milk for which it is the handler that is base milk and excess milk; and

(c) 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

§ 1064.40 Classes of utilization.

Except as provided in § 1064.42, all skim milk and butterfat required to be reported by an handler pursuant to § 1064.30 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 § 1064.41(a) to the receipts specified in § 1064.41(a)(2) and in shrinkage specified in § 1064.41 (b) and (c).

§ 1064.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1064.30, 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 § 1064.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1064.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (2), (4), (5), and (6), of this paragraph; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1064.9 (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.

§ 1064.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant (to a pool supply plant, in the case of diversion) 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 or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1064.44 (a) (12) and the corresponding step of § 1064.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1064.44(a)(7) or the corresponding step of § 1064.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1064.44(a) (11) or (12) or the corresponding steps of § 1064.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(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 § 1064.40.

(c) *Transfers to producer-handlers and transfers and diversions to a State educational institution plant.* Skim milk or butterfat in the following form that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted

from a pool plant to a plant of a handler described in § 1064.9(h) shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product, except that if a handler described in § 1064.9(h) certifies that the fluid milk product is acquired for use in Class II or Class III products for research or educational purposes, such fluid milk product shall be classified in the applicable lower class; 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 plant of a handler pursuant to § 1064.9(h) 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 § 1064.30 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 package 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.

§ 1064.43 General classification rules.

In determining the classification of producer milk pursuant to § 1064.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1064.30 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 § 1064.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1064.40, 1064.41, and 1064.42;

(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 § 1064.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1064.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1064.9(a) for each of his pool plants separately and of each handler described in § 1064.9 (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 § 1064.41(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 pound 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 § 1064.40(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 § 1064.40(b)(1) that were in in-

ventory 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 § 1064.40(c)(6)), any product specified in § 1064.40(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 § 1064.40(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 handler described in § 1064.9(h);

(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 § 1064.40(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 § 1064.45(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 § 1064.42(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 § 1064.44(a)(14) and the corresponding step of § 1064.44(b).

§ 1064.45 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 § 1064.44(a)(12) and the corresponding step of § 1064.44(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 § 1064.44 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 14th 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 such cooperative association in its capacity as a handler described in § 1064.9(c) and directly from members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in proportion to the utilization by such handler in each class remaining after the allocation pursuant to § 1064.44(a)(1) through (13) and the corresponding steps of § 1064.44(b).

CLASS PRICES

§ 1064.50 Class prices.

Subject to the provisions of § 1064.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.74.

(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.

§ 1064.51 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.

§ 1064.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside the marketing area and more than 50 miles but not more than 70 miles by shortest highway distance as measured by the market administrator, from the nearer of the City Halls in Kansas City, Mo., or Topeka, Kans., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1064.50(a) shall be reduced by 10 cents, and by an additional 1.5 cents for each 10 miles or fraction thereof that such plant is more than 70 miles from such City Hall.

(b) For purposes of calculating such adjustment, bulk transfers between pool plants shall be assigned to the Class I disposition at the transferee-plant prorated with the sum of receipts at such plant of producer milk and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants.

(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.

§ 1064.53 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.

§ 1064.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1064.60 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 § 1064.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1064.44 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 § 1064.44(a)(14) and the corresponding step of § 1064.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1064.74, 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 § 1064.44(a)(9) and the corresponding step of § 1064.44(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 § 1064.44(a)(7) (i) through (iv) and the corresponding step of § 1064.44(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 § 1064.44(a)(7) (v) and (vi)

and the corresponding step of § 1064.44 (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 § 1064.44 (a) (11) and the corresponding step of § 1064.44(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.

§ 1064.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) For each month the market administrator shall compute the "uniform price" per hundredweight of milk of 3.5 percent butterfat content received from producers (or "weighted average price") as follows:

(1) Combine into one total the values computed pursuant to § 1064.60 for all handlers who filed the reports prescribed by § 1064.30 for the month and who made the payments pursuant to §§ 1064.71 and 1064.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1064.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1064.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price" and for the months of August through January shall be the "uniform price" for milk received from producers.

(b) For each month of February through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a) (1) through (3) of this section an amount computed by multiplying the weighted average price times the hundredweight of milk specified in paragraph (a) (4) (ii) of this section;

(2) Determine the value of excess milk by multiplying the hundredweight of producer milk determined to be excess milk in series beginning with Class III by the respective class prices and adding together the resulting amounts;

(3) Divide the total value of excess milk obtained in subparagraph (2) of this paragraph by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract the value of excess milk obtained in subparagraph (2) of this paragraph from the aggregate value of milk obtained in subparagraph (1) of this paragraph and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent;

(5) Divide the amount obtained in subparagraph (4) of this paragraph by the total hundredweight of producer milk determined to be base milk; and

(6) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to subparagraph (5) of this paragraph. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content received from producers.

§ 1064.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform prices for such month.

Payments for Milk

§ 1064.70 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 funds received pursuant to paragraph (a) of this section and out of which he shall make all payments required pursuant to paragraph (b) of this section.

(a) Payments made by handlers pursuant to §§ 1064.71, 1064.76, and 1064.77.

(b) Payments due handlers pursuant to §§ 1064.72 and 1064.77: *Provided*, That payments due any handler shall be offset by payments due from such handler pursuant to §§ 1064.71, 1064.76, 1064.77, 1064.85, and 1064.86.

§ 1064.71 Payments to the producer-settlement fund.

(a) On or before the 14th 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 § 1064.60.

(2) The sum of:

(i) The amount required to be paid producers (including payments to producers through cooperative associations) pursuant to § 1064.73 before adjustment for butterfat content and before deductions authorized by the producer or cooperative association or for marketing services pursuant to § 1064.86; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1064.60(f).

(b) During each month of February through July each handler pursuant to § 1064.9(c), on or before the 14th day after the end of the month, 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 such association's member producer milk at the applicable weighted average price computed pursuant to § 1064.61; and

(2) The total value of such association's member producer base and excess milk at the applicable uniform base and excess prices computed pursuant to § 1064.61.

(c) 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.

§ 1064.72 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 § 1064.71 (a) (2) or (b) (2) exceeds the amount computed pursuant to § 1064.71 (a) (1) or (b) (1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payment and shall complete such payments as soon as the necessary funds are available.

§ 1064.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the applicable uniform

price(s) pursuant to § 1064.61, adjusted by the butterfat differential computed pursuant to § 1064.74 and the location adjustment to producers pursuant to § 1064.75, and less the following amounts: (1) the payments made pursuant to paragraph (b) of this section, (2) marketing service deductions pursuant to § 1064.86, and (3) any deductions authorized by the producer: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 1064.72 he may reduce his total payment to all producers uniformly by not less than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month to each producer (1) for whom payment is not received from the handler by a cooperative association pursuant to paragraphs (c) and (d) of this section; and (2) who had not discontinued shipping milk to such handler before the 18th day of the month, a partial payment with respect to milk received from such producer during the first 15 days of the month at the approximate value of such milk, not to be less than the Class III price for the preceding month, without deduction for hauling.

(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 20th day of the month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section less any deductions authorized in writing by such cooperative association; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association.

(d) To a cooperative association with respect to milk for which such association is acting in the capacity of a handler pursuant to § 1064.9(c):

(1) On or before the 20th day of the month an amount equal to the rate specified in paragraph (b) times the volume received during the first 15 days of the month; and

(2) On or before the 14th day after the end of each month an amount equal to not less than the value of such milk at the applicable weighted average or uniform price pursuant to § 1064.61(a)(5), as adjusted pursuant to §§ 1064.74 and 1064.75, less payment made pursuant to paragraph (d)(1) of this section.

(e) In making payments to producers pursuant to paragraph (a) of this section, each handler shall furnish each producer with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of §§ 1064.73, 1064.74, and 1064.75;

(4) The rate which is used in making payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1064.86 together with a description of the respective deductions; and

(6) The net amount of payment to the producer.

(f) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to paragraph (c) of this section, shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 23d day of the month, the total pounds of milk received during the first 15 days of the month; and

(2) On or before the seventh day after the end of the month:

(i) The pounds per shipment, the total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments due such producer pursuant to § 1064.77.

§ 1064.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1064.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price pursuant to § 1064.61(a) and the uniform price for base milk pursuant to § 1064.61(b) for producer milk received at a pool plant or diverted from a pool plant shall be reduced according to the location of the pool plant at the rate set forth in § 1064.52, subject to § 1064.13(c).

(b) For purposes of computations pursuant to §§ 1064.71 and 1064.72 the weighted average price shall be adjusted at the rates set forth in § 1064.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1064.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant, except a plant described in § 1064.7(d)(3), 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 §§ 1064.30(b) and 1064.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1064.60 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 § 1064.60 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 § 1064.60 for such handler shall include, in lieu of the value of other source milk specified in § 1064.60(f) less the value of such other source milk specified in § 1064.71(a)(2)(ii), a value of milk determined pursuant to § 1064.60 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 § 1064.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1064.30(b) and 1064.31(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 § 1064.60 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.

§ 1064.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due the market administrator or any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of the amount due and payment therefor shall be made within 5 days if such amount is due the market administrator, or on or before the next date for making payments to producers or a cooperative association, if such amount is due them. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made within 5 days.

§ 1064.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1064.71, 1064.73, 1064.77, 1064.85, and 1064.86 shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1064.85 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 12th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, of:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1064.44(a) (7) and (11) and the corresponding steps of § 1064.44(b), except such other source milk that is excluded from the computations pursuant to § 1064.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant (except from a plant described in § 1064.7(d)(3)) as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1064.76(a)(2).

§ 1064.86 Deduction for marketing services.

(a) *Deductions.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself pursuant to § 1064.73(a), shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the month, and shall pay such deductions to the market administrator on or before the 12th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from and to provide market information to such producers.

(b) *Deductions with respect to members of a cooperative association.* 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, in lieu of the deductions specified in paragraph (a) of this section, make such deductions from the payments to be made directly to producers pursuant to § 1064.73(a), as are authorized by such producers, and on or before the 12th day after the end of each month, pay over such deductions to the association of which such producers are members, accompanied by a statement showing the amount of the deduction and the quantity of milk for which it was computed for each such producer.

Base-Excess Plan

§ 1064.90 Base milk and excess milk.

(a) "Base milk" means that producer milk received by a handler from a producer in each month of February through July that is not in excess of such producer's daily base computed pursuant to § 1064.91 multiplied by the number of days of production in the month that such milk was received by the handler.

(b) "Excess milk" means that producer milk received by a handler from a producer in each month of February through July that is in excess of base milk received from such producer in such month and shall include all milk received from a producer for whom no daily base can be computed pursuant to § 1064.91.

§ 1064.91 Computation of daily base for each producer.

The daily base for each producer applicable during each month of February through July, inclusive, shall be determined by the market administrator as follows: Divide the total pounds of milk received by a handler at a pool plant from such producer during the immediately preceding months of September through December by the number of days during such period on which milk was received from such producer or by 90 whichever is greater. In the case of producers delivering milk to a plant which first became a pool plant during or after the end of the base-forming period, the daily average base for each

producer at such plant shall be that which would have been calculated for such producers for the entire base-forming period if the handler's plant had been a pool plant during such period.

§ 1064.92 Daily base rules.

(a) Except as provided in paragraph (b) of this section, a daily base shall apply only to milk produced by the producer in whose name such milk was delivered to the handler(s) during the base-forming period.

(b) A producer may transfer his daily base during the period of February through July by notifying the market administrator in writing before the last day of any delivery period that such base is to be transferred to the person named in such notice but under the following conditions only:

(1) In the event of the death or entry into military service of a producer, the entire daily base may be transferred to a member of such producer's immediate family who carries on the dairy operation on the same farm; and

(2) If a base is held jointly and such joint holding is terminated on the basis of written notice to the market administrator from the joint holders the entire daily base may be transferred to one of the joint holders, or divided in accordance with such notice between the former joint holders if they continue dairy operations.

§ 1064.93 Announcement of bases.

On or before February 1 of each year the market administrator shall notify in writing each producer who made deliveries of milk during the previous September through December and the handler receiving milk from such producer of the daily base established by such producer.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

Subpart—Order Regulating Handling

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1065.85 Assessment for order administration.
1065.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1065 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1065.1 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

§ 1065.2 Nebraska-Western Iowa marketing area.

The "Nebraska-Western Iowa marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties and townships listed below, including such territory as is now occupied and as may be occupied in the future by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments. Where such establishment is partly within and partly without the designated boundaries, the marketing area shall include the entire area encompassed by such establishment.

(a) *Zone 1.*

IOWA COUNTIES

Fremont.
Harrison.
Mills.
Monona.
Pottawattamie (only the townships of Boomer, Crescent, Garner, Hardin, Hazel Dell, Kane, Keg Creek, Lake, Lewis, Minden, Neola, Norwalk, Rockford, Silver Creek, Washington, and York.)
Woodbury.

NEBRASKA COUNTIES

Antelope.
Boone.
Burt.
Butler.
Cass.
Cedar.
Clay.
Colfax.
Cuming.
Dakota.
Dixon.
Dodge.
Douglas.
Fillmore.
Gage.
Hamilton.
Jefferson.
Johnson.
Knox.
Lancaster.
Madison.
Merrick.
Nance.
Nemaha.
Nuckolls.
Otoe.
Pierce.
Platte.
Polk.
Saline.
Sarpy.
Saunders.
Seward.
Stanton.
Thayer.
Thurston.
Washington.
Wayne.
York.

SOUTH DAKOTA

That portion of Union County comprising Jefferson Township, North Sioux City, and the unorganized territory adjacent thereto, as defined and mapped in the United States 1960 Census of Population.

(b) *Zone 2.*

IOWA COUNTIES

Cass.
Cherokee.
Crawford.
Ida.
Montgomery.
O'Brien.
Page.
Plymouth.
Sac.
Shelby.
Sioux.
Pottawattamie (that portion not otherwise included in Zone 1).

(c) *Zone 3.*

NEBRASKA COUNTIES

Adams.
Banner.
Box Butte.
Buffalo.
Cheyenne.
Custer.
Dawes.
Dawson.
Deuel.
Franklin.
Frontier.
Furnas.
Garden.
Gosper.
Greeley.
Hall.
Harlan.
Howard.
Kearney.
Keith.
Kimball.
Lincoln.
Morrill.
Phelps.
Red Willow.
Scotts Bluff.
Sheridan.
Sherman.
Sioux.
Valley.
Webster.

§ 1065.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or through a distribution point, or sale from a plant store) of a fluid milk product classified as Class I to retail or wholesale outlets other than a delivery in bulk to a milk plant.

§ 1065.4 [Reserved]

§ 1065.5 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 there is route disposition of any fluid milk product during the month in the marketing area.

§ 1065.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable to an 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 § 1065.7.

§ 1065.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant described in paragraph (a), (b), or (c) 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 authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area equal to not less than 15 percent of the Grade A milk received at such plant from dairy farmers, supply plants (exclusive of plants qualifying as pool plants pursuant to this paragraph), and handlers described in § 1065.9(c); and

(2) Total route disposition, except filled milk, equal to not less than 35 percent of the Grade A milk received at the plant from the sources specified in subparagraph (1) of this paragraph.

(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 handlers described in § 1065.9(c) during such month. A supply plant that qualifies as a pool plant in each of the immediately preceding months of August through December shall be a pool plant for the succeeding months of January through July, unless the plant operator requests the market administrator, in writing, that such plant not be a pool plant, such nonpool plant status to be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments.

(c) A supply plant operated by a cooperative association if, during the month, 51 percent or more of the producer milk of members of the association is received at a pool distributing plant(s) of another handler(s), or is transferred to such plant(s) from the association's supply plant.

(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 from which a lesser volume of fluid milk products (not including filled milk) is disposed of in the Nebraska-Western Iowa marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period of January through July, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1065.8 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 that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1065.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant. In case a corporation with recognized divisions which are operated as separate business units operates two or more pool plants, each such division shall be the handler with respect to the pool plant(s) it operates;

(b) Any cooperative association with respect to milk of its member producers which is diverted pursuant to § 1065.13 for the account of such association;

(c) A cooperative association with respect to 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. The milk shall be deemed to have been received from producers by the cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1065.7(d).

§ 1065.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and fluid milk products from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products for reconstituting into fluid milk products; and

(c) The maintenance, care, and management of the dairy animals and other resources necessary to produce the milk, and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1065.11 [Reserved]

§ 1065.12 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 received at a pool plant or by a handler described in § 1065.9 (b) or (c) or is diverted as producer milk pursuant to § 1065.13.

(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 § 1065.44 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.

§ 1065.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat contained in milk from producers that is:

(a) Received from producers at a pool plant;

(b) Received from producers by a cooperative association handler described in § 1065.9(c);

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant pursuant to subparagraph (1) or (2) of this paragraph, subject to the conditions set forth in subparagraphs (3) and (4) of this paragraph;

(1) A cooperative association handler described in § 1065.9(b) may divert for its account the milk of any member-producer if at least 2 days' production of such producer is received at a pool plant(s) during the month. The total quantity of milk so diverted by the cooperative association handler shall not exceed, in each of the months of January, February, March, September, October, and November, 30 percent, and in any other month 40 percent, of the larger of:

(i) The total quantity of milk of member-producers received at all pool plants during the current month; or

(ii) The average daily quantity of milk of member-producers received at all pool plants during the immediately preceding month, multiplied by the number of days in the current month;

(2) A handler, other than a cooperative association, in his capacity as the

operator of a pool plant, may divert for his account the milk of any producer other than a member of a cooperative association, if at least 2 days' production of such producer is received at the handler's pool plant(s) during the month. The total quantity of milk so diverted by the handler shall not exceed, in each of the months of January, February, March, September, October, and November, 30 percent, and in any other month 40 percent, of the larger of:

(i) The total quantity of milk of producers received at his pool plant(s) during the current month exclusive of milk received from producers who are members of a cooperative association; or

(ii) The average daily quantity of milk of producers received at his pool plant(s) during the immediately preceding month, exclusive of milk received from producers who are members of a cooperative association, multiplied by the number of days in the current month;

(3) In the event the quantity of milk diverted is in excess of the applicable quantity specified in subparagraphs (1) and (2) of this paragraph, the diverting handler shall designate the dairy farmers whose milk was overdiverted. If the handler fails to make such designation, no milk diverted by him shall be produced milk for such month; and

(4) For the purposes of location adjustments pursuant to §§ 1065.52 and 1065.75, milk so diverted shall be priced at the location of the plant to which diverted.

§ 1065.14 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 § 1065.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1065.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1065.40(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 § 1065.40(b)(1)) for which the handler fails to establish a disposition.

§ 1065.15 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, low-fat 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 § 1065.40(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.

§ 1065.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a multured mixture) of cream and milk or skim milk containing 9 percent or more butterfat.

§ 1065.17 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).

§ 1065.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application of the association:

(a) Is qualified under the provisions of the Act of Congres of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has full authority in the sale of milk of its members and is 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.

Handler Reports

§ 1065.30 Reports of receipts and utilization.

On or before the seventh day, excluding holidays, 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 § 1065.9(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 § 1065.40(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 § 1065.9(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.

§ 1065.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1065.9 (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 § 1065.76(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.

§ 1065.32 Other reports.

In addition to the reports required pursuant to §§ 1065.30 and 1065.31, 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

§ 1065.40 Classes of utilization.

Except as provided in § 1065.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1065.30 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 § 1065.41(a) to the receipts specified in § 1065.41(a)(2) and in shrinkage specified in § 1065.41 (b) and (c).

§ 1065.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1065.30, 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 § 1065.9(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 § 1065.9 (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.

§ 1065.42 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 § 1065.9(c) to another handler's pool plant shall be classified as follows:

(1) Such transfers from a 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:

(i) 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 § 1065.44(a)(12) and the corresponding step of § 1065.44(b);

(ii) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1065.44(a)(7) or the corresponding step of § 1065.44(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

(iii) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1065.44(a) (11) or (12) or the corresponding steps of § 1065.44(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

(2) Such transfers by a handler described in § 1065.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class after the computations pursuant to § 1065.44(a) (13) (i) and the corresponding step of § 1065.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1065.40.

(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 market administrator, if

(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 therefrom of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1065.30 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.

§ 1065.43 General classification rules.

In determining the classification of producer milk pursuant to § 1065.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1065.30 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 § 1065.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1065.40, 1065.41, and 1065.42;

(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 § 1065.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1065.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1065.9(a) for each of his pool plants separately and of each handler described in § 1065.9 (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 § 1065.41 (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 Clas II the pounds of skim milk in products specified in § 1065.40(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 § 1065.40(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 § 1065.40(c) (6)), any product specified in § 1065.40(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 § 1065.40(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 § 1065.9(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 § 1065.40(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 § 1065.45(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 according to the classification of such products pursuant to § 1065.42(a)(1); and

(ii) A handler described in § 1065.9(c) according to the classification of such products pursuant to § 1065.42(a)(2); 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 § 1065.44(a)(14) and the corresponding step of § 1065.44(b).

§ 1065.45 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 § 1065.44(a)(12) and the corresponding step of § 1065.44(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 § 1065.44 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 the 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.

§ 1065.50 Class prices.

Subject to the provisions of § 1065.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.60 for pool plants located in Zone 1, plus $1.50 in Zone 2, and plus $1.75 in Zone 3.

(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.

§ 1065.51 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.

§ 1065.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant (or diverted to a nonpool plant) located outside the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section the Class I price shall be that effective pursuant to § 1065.50(a) at the nearest of the pricing zones as set forth in § 1065.2, subject to a reduction of 1.5 cents for each 10 road miles or fraction thereof that such plant is located more than 100 miles from the nearest of the city halls in Chadron, Grand Island, Lincoln, Norfolk, North Platte, Omaha, and Scottsbluff, all in the State of Nebraska, and Sioux City, Iowa.

(b) For the purpose of calculating such adjustments:

(1) All distances shall be by shortest hard-surfaced highways and/or all-weather roads, as determined by the market administrator; and

(2) 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 § 1065.9 (c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least 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.

§ 1065.53 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.

§ 1065.54 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

§ 1065.60 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 § 1065.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1065.44 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 § 1065.44(a)(14) and the corresponding step of § 1065.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1065.74, 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 § 1065.44(a)(9) and the corresponding step of § 1065.44(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 § 1065.44(a)(9) and the corresponding step of § 1065.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1065.44(a)(12) and the corresponding step of § 1065.44(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 § 1065.44(a)(7) (i) through (iv) and the corresponding step of § 1065.44(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 § 1065.44(a)(7) (v) and (vi) and the corresponding step of § 1065.44 (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 § 1065.44(a)(11) and the corresponding step of § 1065.44(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.

§ 1065.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1065.60 for all handlers who filed the reports prescribed by § 1065.30 for the month and who made the payments pursuant to §§ 1065.71 and 1065.73 for the preceding month;

(b) Subtract an amount equal to the total value of the plus location adjustments computed pursuant to § 1065.75;

(c) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1065.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1065.60(f);

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) Subtract during each of the months of April, May, and June, an amount equal to 8 percent of the remainder;

(i) Add during each of the months of September, October, and November, one-third of the total amount subtracted pursuant to paragraph (h) of this section;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(k) 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.

§ 1065.62 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

§ 1065.70 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 §§ 1065.71, 1065.76, and 1065.77, and out of which he shall make all payments pursuant to §§ 1065.72 and 1065.77.

§ 1065.71 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 § 1065.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1065.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1065.60(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.

§ 1065.72 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 § 1065.71(a)(2) exceeds the amount computed pursuant to § 1065.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler.

§ 1065.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) or (d) of this section, at not less than the applicable uniform price pursuant to § 1065.61, as adjusted pursuant to §§ 1065.74 and 1065.75, and less the following amounts:

(1) The payments made pursuant to paragraph (b) of this section;

(2) Deductions for marketing services pursuant to § 1065.86; and

(3) Any proper deductions authorized by the producer: *Provided*, That, if by such date such handler has not received full payment for such month pursuant to § 1065.72, he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator;

(b) On or before the 27th day of each month to each producer:

(1) For whom payment is not received from the handler by a cooperative association pursuant to paragraph (c) or (d) of this section; and

(2) Who had not discontinued shipping milk to such handler, an advance payment with respect to milk received from such producer during the first 15 days of the month an amount per hundredweight not to be less than the uniform price for the preceding month;

(c) To a cooperative association which has filed a written request for such payment with such handler and with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment as follows:

(1) On or before the 26th day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (b) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 14th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a) of this section, less proper deductions authorized in writing by such cooperative association;

(d) To a cooperative association with respect to receipts of milk for which such cooperative association is the handler pursuant to § 1065.9 (b) or (c) as follows:

(1) On or before the 26th day of the month, for milk received during the first 15 days of the month an amount per hundredweight equal to not less than the weighted average price for the preceding month; and

(2) On or before the 14th day after the end of each month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1065.74, that are applicable at the location of the receiving handler's pool plant, less payment made pursuant to subparagraph (1) of this paragraph;

(e) In making payments to producers pursuant to paragraphs (a) and (c) of this section, each handler shall furnish each producer or cooperative association with a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;

(3) The minimum rate or rates at which payment to the producer is required under the provisions of §§ 1065.61, 1065.74, and 1065.75;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed under paragraph (b) of this section and § 1065.86 together with a description of the respective deductions; and

(6) The net amount of payment to the producer; and

(f) Nothing in this section shall abrogate the right of a cooperative association to make payments to its member producers in accordance with the payment plan of such cooperative association.

§ 1065.74 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.

§ 1065.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price computed pursuant to § 1065.61 shall be decreased 10 cents per hundredweight for producer milk received at a pool plant located in Zone 2, and shall be increased 15 cents per hundredweight at pool plants located in Zone 3.

(b) For producer milk received at a pool plant or diverted to a nonpool plant located outside the marketing area the uniform price shall be that effective at the nearest of the pricing zone as set forth in § 1065.2, subject to a reduction at the rates set forth in § 1065.52.

(c) For purposes of computations pursuant to §§ 1065.71 and 1065.72 the weighted average price shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1065.76 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 §§ 1065.30(b) and 1065.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk

products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in subparagraph (3) of this paragraph by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1065.60 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 § 1065.60 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 § 1065.60 for such handler shall include, in lieu of the value of other source milk specified in § 1065.60(f) less the value of such other source milk specified in § 1065.71(a)(2)(ii), a value of milk determined pursuant to § 1065.60 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 § 1065.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1065.30(b) and 1065.31(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 § 1065.60 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.

§ 1065.77 Adjustment of accounts.

Adjustments of accounts shall be made as follows:

(a) Whenever verification by the market administrator of reports or payments of any handler discloses errors made in payments to or from the producer-settlement fund pursuant to §§ 1065.71 and 1065.72, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days, make payment to the market administrator of the account so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make such payment to such handler; and

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association, discloses payments of less than is required by § 1065.73, the handler shall make up such payment to the producer or cooperative association not later than the time of making payments next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1065.85 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 14th day after the end of the month 3 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that classified pursuant to § 1065.44(a)(2)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1065.44(a) (7) and (11) and the corresponding steps of § 1065.44(b), except such other source milk that is excluded from the computation pursuant to § 1065.60 (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 § 1065.76(a)(2).

§ 1065.86 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 § 1065.73 shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to producer milk received by such handler (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 producer milk and to provide producers with market information. Such service shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him; and

(b) In the case of producers for whom a cooperative association is 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 1068—MILK IN MINNEAPOLIS-ST. PAUL, MINN., MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

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1068.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1068 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1068.1 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

§ 1068.2 Minneapolis-St. Paul, Minn., marketing area.

"Minneapolis-St. Paul, Minn., marketing area" (referred to in this part as the "marketing area") means all the territory within the boundaries of the townships and counties listed below. The marketing area shall include all territory that is now, or in the future, occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishment if any part of such territory is within the designated geographical limits of the marketing area.

MINNESOTA COUNTIES

Anoka.	Mille Lacs.
Benton.	Pine.
Carver.	Ramsey.
Chisago.	Renville.
Dakota.	Scott.
Hennepin.	Sherburne.
Isanti.	Sibley.
Kanabec.	Stearns.
Kandiyohi.	Washington.
McLeod.	Wright.
Meeker.	

WISCONSIN COUNTIES

In Pierce County, the townships of:

Clifton.	River Falls.

In St. Croix County, the townships of:

Hudson.	Stanton.
Kinnickinnic.	Star Prairie.
Richmond.	Troy.
St. Joseph.	Warren.
Somerset.	

§ 1068.3 Route disposition.

"Route disposition" means any delivery either inside or outside the marketing area (including disposition by a vendor or from a plant store or from vending machines) of any fluid milk product classified as Class I milk to a wholesale or retail shop, including any governmentally operated institution, but excluding any disposition of skim milk or butterfat not eligible for sale in fluid form as Grade A milk in the marketing area from a nonpool plant to any other plant or to a commercial processor of foods.

§ 1068.4 Plant.

"Plant" means the entire land, buildings, surroundings, facilities and equipment, whether owned or operated by one or more persons, maintained and operated at the same location primarily for the receiving, processing or other handling of milk or milk products (including filled milk). Under this definition any separate portion of a premises or facilities qualified under § 1068.7(b) used to receive, process, or otherwise handle milk shall be deemed to be a separate plant. This definition shall not include any building, premises, facilities, or equipment used primarily (a) to hold or store bottled milk or milk products (including filled milk) in finished form in transit for wholesale or retail distribution on a route(s), or (b) to transfer milk from one conveyance to another in transit from farm to plant of first receipt.

§ 1068.5 [Reserved]

§ 1068.6 [Reserved]

§ 1068.7 Pool plant.

"Pool plant" means any plant meeting the conditions of paragraph (a) or (b) of this section, but not any plant withdrawn pursuant to paragraph (c) of this section, or any plant exempt pursuant to paragraph (d) of this section.

(a) A plant in which milk is processed or packaged and from which not less than 15 percent of its total disposition of Class I milk (except filled milk) during the month either by the operator of such plant or by another person is route disposition within the marketing area: *Provided,* That the total quantity of Class I milk (except filled milk) disposed of from such plant during the month either inside or outside the marketing area, is equal to 30 percent or more of such plant's total receipts of skim milk and butterfat eligible for sale in fluid form as Grade A milk within the marketing area in any of the months of January through June, or to 50 percent or more of such total receipts in any of the months of July through December.

(b) Any plant from which during any month 30 percent or more of such plant's total receipts for such month from farms of skim milk or butterfat eligible for sale in fluid form as Grade A milk within the marketing area is delivered (except as filled milk) to (1) a plant(s) which has qualified pursuant to paragraph (a) of this section, (2) any other plants located within the marketing area from which route disposition is made within the marketing area, or (3) a governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities: *Provided,* That if during each of the months of September, October, and November, 30 percent or more of such plant's receipts of skim milk or butterfat for such month as described above is delivered as provided in this paragraph, it shall be a pool plant through the following August: *And provided further,* That any deliveries of milk by a cooperative association during the months of September, October, and November directly from a farm(s) of its producer member(s) to a plant(s) described in paragraph (a) of this section may be considered, for purposes of this paragraph, as having been received first at a plant of such cooperative association.

(c) Upon written request by the handler to the market administrator, received or postmarked on or before the last day of any month, any plant qualified as a pool plant pursuant to paragraph (b) of this section may be withdrawn from pool plant status beginning with the next month. Any such plant withdrawn from automatic pool plant status may not regain such status prior to the next September 1 and then only by meeting the requirements set forth in the first proviso of paragraph (b) of this section in the same manner as a plant qualifying for pool plant status for the first time.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant withdrawn pursuant to paragraph (c) of this section; or

(3) A plant qualified as a pool plant pursuant to paragraph (a) or (b) of this section if the conditions of subdivisions (i) and (ii) of this subparagraph are met. Such plant shall be exempt from the provisions of this part except for reports that may be required pursuant to § 1068.30(d) and verification of such reports by the market administrator in accordance with § 1000.5 of this chapter:

(i) The Secretary determines that a greater quantity of milk in fluid form is disposed of from such plant to a regulated marketing area as defined in another order issued pursuant to the Act either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition than is disposed of from such plant in the Minneapolis-St. Paul marketing area either as route disposition, excluding filled milk, or to pool plants qualified on the basis of route disposition.

(ii) Such milk would be subject to the class price and producer payment provisions of the other marketing agreement or order upon being made exempt from this part.

§ 1068.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which fluid milk products eligible for sale as Grade A in consumer-type packages or dispenser units or filled milk are disposed of as route disposition in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which a Grade A fluid milk product or filled milk is shipped during the month to a pool plant.

§ 1068.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant(s);

(b) Any cooperative association with respect to milk of its members diverted for its account pursuant to § 1068.13;

(c) Any cooperative association qualifying as a handler pursuant to paragraph (a) of this section shall be, for the purposes of making payments pursuant to § 1068.71, the handler also with respect to producer milk caused to be delivered for the account of such association from the farms of producers to the pool plant(s) of an other handler(s);

(d) Any person in his capacity as the operator of a partially regulated distributing plant. This definition shall not apply to a governmentally owned and operated institution which disposes of Class I milk solely for use on its own premises or to its own facilities;

(e) A producer-handler;

(f) Any person in his capacity as the operator of an other order plant from which during the month there is route disposition in the marketing area or fluid milk products are shipped to a pool plant; or

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1068.10 Producer-handler.

(a) "Producer-handler" means any person who meets all of the following conditions:

(1) Operates a dairy farm and a distribution plant at which Grade A milk of his own production is processed and packaged, and from which there is route disposition in the marketing area;

(2) Receives no milk or fluid milk products from the farms of other dairy farmers nor from any other source, except receipts of not more than 50,000 pounds of milk (3.5 percent milk equivalent of butterfat) during the month by transfer from pool plants of other handlers;

(3) Receives no nonfluid milk products from any source for use in reconstituting fluid milk products;

(4) Has route disposition consisting only of skim milk and butterfat obtained from his own farm production except that received pursuant to the exception set forth in subparagraph (2) of this paragraph; and

(5) The maintenance, care and management of the dairy animals and other resources necessary to produce such milk and the processing, packaging, or distribution of such milk are the personal enterprise, and the personal risk, of such person.

(b) Any handler claiming producer-handler status shall furnish to the market administrator, for verification, evidence of his qualifications as a producer-handler pursuant to this section and shall furnish evidence of subsequent changes made in the manner of producing securing, or distributing milk that affect such qualifications as a producer-handler. Such verification by the market administrator shall be made within 15 days of receipt of the evidence and shall be effective as of the first day of the month during which verification is made.

§ 1068.11 [Reserved]

§ 1068.12 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 received at a pool plant as producer milk directly from the farm or diverted pursuant to § 1068.13.

(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 § 1068.44 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.

§ 1068.13 Producer milk.

"Producer milk" means the skim milk and butterfat in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be priced at the location of the nonpool plant to which diverted;

(2) In any month that less than 6 days' production of a producer is delivered to pool plants the quantity of milk of the producer diverted during the month that exceeds that delivered to pool plants shall not be producer milk;

(3) During the months of September through November, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(4) During the months of December through August, a cooperative association handler may divert for his account the milk of any member producer. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received from member producers at pool plants during the month shall not be producer milk;

(5) During the months of September through November, the operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 10 percent of the milk received at such pool plant during the month from producers who are not members of a cooperative association shall not be producer milk;

(6) During the months of December through August, the operator of a pool plant, other than a cooperative association may divert for his account the milk of any producer other than a member of a cooperative association. The total quantity of producer milk diverted by such handler in excess of 25 percent of the milk received at such pool plant dur-

ing the month from producers who are not members of a cooperative association shall not be producer milk; and

(7) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to subparagraphs (3), (4), (5), and (6) of this paragraph. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1068.14 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 § 1068.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1068.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1068.40(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 § 1068.40(b)(1)) for which the handler fails to establish a disposition.

§ 1068.15 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 § 1068.40 (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.

§ 1068.16 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.

§ 1068.17 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).

§ 1068.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act;"

(b) Has full authority in the sale of milk of its members and is 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.

HANDLER REPORTS

§ 1068.30 Reports of receipts and utilization.

On or before the 10th 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 § 1068.9(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 § 1068.40(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 § 1068.9 (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.

§ 1068.31 Payroll reports.

(a) On or before the last day of each month, each handler described in § 1068.9 (a), (b), and (c) shall report to the market administrator his producer payroll for the preceding 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 § 1068.76(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.

§ 1068.32 Other reports.

In addition to the reports required pursuant to §§ 1068.30 and 1068.31, the following shall be reported to the market administrator:

(a) Each handler specified in § 1068.9 (g) who operates an unregulated supply plant shall report as required in § 1068.30, except that the receipts of skim milk and butterfat in Grade A milk shall be reported in lieu of those in producer milk.

(b) 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

§ 1068.40 Classes of utilization.

Except as provided in § 1068.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1068.30 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 § 1068.41(a) to the receipts specified in § 1068.41(a)(2) and in shrinkage specified in § 1068.41 (b) and (c).

§ 1068.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1068.30, 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 § 1068.9(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 § 1068.9 (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.

§ 1068.42 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 § 1068.44(a)(12) and the corresponding step of § 1068.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1068.44(a)(7) or the corresponding step of § 1068.44(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 § 1068.44(a)(11) or (12) or the corresponding steps of § 1068.44(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 § 1068.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1068.30 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.

§ 1068.43 General classification rules.

In determining the classification of producer milk pursuant to § 1068.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1068.30 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 § 1068.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1068.40, 1068.41, and 1068.42;

(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;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1068.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association; and

(d) For classification purposes, pursuant to §§ 1068.40 through 1068.45, butterfat in skim milk either disposed of to others or used in the manufacture of milk products shall be accounted for at a butterfat content of 0.065 percent, unless the handler has adequate records of the actual butterfat content of such skim milk.

§ 1068.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1068.9(a) for each of his pool plants separately and of each handler described in § 1068.9 (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 § 1068.41 (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 § 1068.40(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 § 1068.40(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 § 1068.40(c)(6)), any product specified in § 1068.40(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 § 1068.40(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 § 1068.9(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 § 1068.40(b)(1) in inventory at the begining 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 § 1068.45(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 § 1068.42(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 § 1068.44(a)(14) and the corresponding step of § 1068.44(b).

§ 1068.45 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 § 1068.44(a)(12) and the corresponding step of § 1068.44(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 § 1068.44 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.

Class Prices

§ 1068.50 Class prices.

Subject to the provisions of § 1068.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.06.

(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.

§ 1068.51 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.

§ 1068.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk received at a plant located at least 35 miles (as determined by the market administrator) from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., shall be reduced by an amount indicated below:

Plant location (miles)	*Amount of deduction (cents)*
Less than 35	0
35 but less than 45	6

For distances of 45 miles or more, an additional 1.5 cents for each 10 miles or fraction thereof beyond 45 miles.

(b) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1068.53 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.

§ 1068.54 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

§ 1068.60 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 § 1068.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1068.44 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 § 1068.44(a)(14) and the corresponding step of § 1068.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1068.74, 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 § 1068.44(a)(9) and the corresponding step of § 1068.44(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 § 1068.44(a)(7) (i) through (iv) and the corresponding step of § 1068.44 (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 § 1068.44(a)(7) (v) and (vi) and the corresponding step of § 1068.44(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 § 1068.44(a)(11) and the corresponding step of § 1068.44(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 § 1068.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1068.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1068.60 for all handlers who filed reports pursuant to § 1068.30 for the month and who made the payments pursuant to § 1068.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1068.75;

(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 § 1068.60(f); and

(f) 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.

§ 1068.62 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 15th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1068.70 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 §§ 1068.71, 1068.76, and 1068.77 and out of which he shall make all payments due handlers pursuant to §§ 1068.72 and 1068.77: *Provided*, That the market administrator shall offset any payments due any handler against payments due from such handler.

§ 1068.71 Payments to the producer-settlement fund.

(a) On or before the 18th 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: *Provided*, That payment made by a cooperative association as a handler pursuant to this paragraph with respect to milk transferred to another handler from the pool plant of such cooperative association or caused to be delivered to such handler from the farms of producers for the account of such cooperative association shall not relieve the transferee-handler of any obligation on any such milk which is due the cooperative association, or otherwise due pursuant to §§ 1068.70 through 1068.75, §§ 1068.77 and 1068.78, and §§ 1068.85 and 1068.86:

(1) The total value of milk of the handler for such month as determined pursuant to § 1068.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1068.75, 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 § 1068.60(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 other 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.

§ 1068.72 Payments from the producer-settlement fund.

On or before the 19th day after the end of each month, the market administrator shall pay, subject to the proviso of § 1068.70, to each handler the amount, if any, by which the amount computed pursuant to § 1068.71(a)(2) exceeds the amount computed pursuant to § 1068.71(a)(1).

§ 1068.73 Payments to producers and to cooperative associations.

Each handler shall make payment for milk received from producers or cooperative associations as follows:

(a) On or before the 11th day after the end of the month in which the skim milk or butterfat was received, to a cooperative association which is a handler, for all skim milk and butterfat received from a pool plant(s) operated by such cooperative association or caused by it to be delivered to such handler from producers' farms, at not less than the class prices, as adjusted by the butterfat differential specified in § 1068.74, that are applicable at the location of the receiving handler's pool plant, less the amount of payment made pursuant to paragraph (c) of this section.

(b) On or before the 21st day after the end of the month during which the milk was received, to each producer for milk not caused to be delivered to such handler by a cooperative association which is a handler, as follows: *Provided*, That such payment shall be made, upon request, to a cooperative association which is not a handler, or to its duly authorized agent, with respect to milk received from each producer who has given such association authorization by contract or by other written instrument to collect the proceeds from the sale of his milk, and any payment made pursuant to this proviso shall be made on or before the 20th day after the end of such month:

(1) At not less than the uniform price computed pursuant to § 1068.61, subject to the butterfat and location differentials set forth in §§ 1068.74 and 1068.75, and less the amount of payment made pursuant to paragraph (c) of this section.

(c) Handlers (other than cooperative associations) shall make partial payments to producers and cooperative associations pursuant to subparagraphs (1) and (2) of this paragraph: *Provided*, That in the event any producer discontinues shipping to such handler during the month, such partial payment shall not be made and full payment for all milk received from such producer during such month shall be made pursuant to paragraphs (a) and (b) of this section.

(1) On or before the 25th day of each month, each handler shall make payment, except as set forth in subparagraph (2) of this paragraph, to each producer, at not less than the applicable uniform price computed pursuant to § 1068.61 for the preceding month, for the milk of such producer received by such handler during the first 15 days of the current month;

(2) On or before the 20th day of each month, each handler shall make payment to a cooperative association which is not a handler for milk of producers from whom such association has received written authorization to collect payment, at not less than such uniform price for the preceding month, for all such milk received by such handler during the first 15 days of the current month; and

(3) On or before the 20th day of each month, each handler shall make payment to a cooperative association which is a handler, at not less than the Class I price for the current month pursuant to § 1068.50 for all skim and butterfat received from a pool plant(s) operated by such cooperative association, or caused by such association to be delivered from the producer's farms to such handler, during the first 15 days of the current month.

(4) All payments made pursuant to this paragraph shall be subject to the butterfat differential specified in § 1068.74 and location adjustments specified in § 1068.75 applicable at the location of the plant of the handler making the payment.

(d) In making payment to individual producers as required by this section, each handler shall furnish each producer from whom he received milk a supporting statement, in such form that it may be retained by the producer, which shall show:

(1) The month involved, and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of the milk received from the producer;

(3) The minimum rate at which payment to the producer is required pursuant to this section;

(4) The rate used in making the payment if such rate is other than the applicable minimum;

(5) The amount (or rate) per hundredweight of each deduction claimed by the handler, including any deduction claimed under § 1068.86, together with a description of the respective deductions; and

(6) The net amount of the payment to the producer.

§ 1068.74 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.

§ 1068.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1068.73 (b) and (c) for milk received at a pool plant located 35 miles or more from the Minnesota Transfer Viaduct at University Avenue in St. Paul, Minn., each handler shall deduct from the applicable price payable to such producers an amount in accordance with the location of the plant based on the rates set forth in § 1068.52; and

(b) For the purpose of computations pursuant to §§ 1068.71 and 1068.72, the uniform price shall be adjusted at the rates set forth in § 1068.52 applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1068.76 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 §§ 1068.30(b) and 1068.31(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 § 1068.60 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 § 1068.60 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 § 1068.60 for such handler shall include, in lieu of the value of other source milk

specified in § 1068.60(f) less the value of such other source milk specified in § 1068.71(a)(2)(ii), a value of milk determined pursuant to § 1068.60 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 § 1068.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1068.30 (b) and 1068.31(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 § 1068.60 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.

§ 1068.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments by any handler discloses errors in payments to the producer-settlement fund pursuant to §1068.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 5 days, make payment to such handler.

(b) Whenever verification by the market administrator of the payments by a handler to any producer or cooperative association discloses payment of less than is required by §1068.73, the handler shall pay the balance due such producer or cooperative association not later than the time for making payments next following such disclosure.

§ 1068.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§1068.71, 1068.76, and 1068.77(a), for which remittance has not been made by the close of business on the next day following the date specified for such payment shall be increased three-fourths of 1 percent for each month and any remaining amount due shall be increased at a similar rate on the corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid charges previously made pursuant to this section; and for the purpose of this section any obligation that was determined at a date later than 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

§ 1068.85 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 3 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 § 1068.44(a) (7) and (11) and the corresponding steps of § 1068.44(b), except such other source milk that is excluded from the computations pursuant to § 1068.60 (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 § 1068.76(a)(2).

§ 1068.86 Deduction for marketing services.

(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1068.73, shall make a deduction of 6 cents per hundredweight, or such lesser deduction as the Secretary from time to time may prescribe, with respect to all milk received from producers' farms during the month, and shall pay such deductions to the market administrator on or before the 18th day after the end of such month. Such moneys shall be expended by the market administrator for market information to, and for the verification of weights, sampling, and testing of milk received from, said producers.

(b) *Producers' cooperative associations.* In the case of producers for whom a cooperative association which the Secretary determines to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, no such deduction shall be made.

PART 1069—MILK IN DULUTH-SUPERIOR MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

Sec.
1069.85 Assessment for order administration.
1069.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1069 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1069.1 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

§ 1069.2 Duluth-Superior marketing area.

"Duluth-Superior marketing area", hereinafter called the "marketing area", means all of the territory within Carlton County and the city of Duluth, in the State of Minnesota; and all of the territories within the counties of Ashland, Bayfield, and Douglas, in the State of Wisconsin.

§ 1069.3 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 product classified as Class I milk, other than a delivery in bulk form to a pool plant or nonpool plant.

§ 1069.4 [Reserved]

§ 1069.5 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is pasteurized or packaged and from which there is route disposition during the month in the marketing area.

§ 1069.6 Supply plant.

"Supply plant" means a plant from which Grade A milk is shipped during the month to a pool plant.

§ 1069.7 Pool plant.

A "pool plant" shall be any plant meeting the conditions of paragraph (a), (b), or (c), of this section except as provided in paragraph (d) 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 during the month, except filled milk, equal to 50 percent or more of total receipts of Grade A milk at such plant from dairy farmers, from other plants, and from cooperative associations in their capacity as handlers and from which there is route disposition, except filled milk, in the marketing area equal to 10 percent or more of such total receipts: *Provided*, That such route disposition (not including filled milk) in the marketing area averages at least 500 pounds per day.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the month 50 percent or more of its supply of Grade A milk from dairy farmers is moved to a distributing pool plant(s): *Provided*, That any supply plant which has qualified as a pool plant in each of the months of September, October, and November, shall be a pool plant for each of the following months of December through August unless written request for nonpool status is furnished in advance to the market administrator.

(c) A plant(s) (1) which is approved by a duly constituted health authority for the handling of Grade A milk, (2) which is operated by a cooperative association, and (3) from which the quantity of milk transferred by the association to plants specified in paragraph (a) of this section or delivered directly from the farm to such plants is equal to at least the following percentages, in the months indicated, of the quantity of Grade A milk delivered by all producers who are members of such association:

Month	*Minimum percentage*
September, October, November	40
April, May, June	20
All other months	30

The association shall furnish written notice to the market administrator specifying the plant(s) to be qualified pursuant to this paragraph (c) and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 7th day following the month to which such notice applies.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless:

(i) Such plant is qualified as a pool plant pursuant to paragraph (a), (b), or (c) of this section and a greater volume of Class I milk, except filled milk, is disposed of from such plant in the Duluth-Superior marketing area than in the marketing area regulated pursuant to such other order, or

(ii) The Secretary determines that the applicable order should more appropriately be determined on some other basis.

§ 1069.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant and from which 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 that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

§ 1069.9 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 producers which is diverted pursuant to § 1069.12 for the account of such cooperative association.

(c) Any cooperative association which chooses to report as a handler with respect to the milk of its member producers which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association for the account of such cooperative association. Such milk shall be considered as having been received by such cooperative association at the plant to which it is delivered.

(d) Any person who operates a partially regulated distributing plant.

(e) A producer-handler.

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1069.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which each of the following conditions are met during the month:

(a) Milk is received from the dairy farm(s) of such person but from no other dairy farm;

(b) There is route disposition in the marketing area; and

(c) The butterfat or skim milk disposed of in the form of fluid milk products does not exceed the butterfat or skim milk, respectively, received in the form of milk from the dairy farm(s) of such person and in the form of fluid milk products in bulk or in packaged form from pool plants of other handlers: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such person in his capacity as a handler.

§ 1069.11 [Reserved]

§ 1069.12 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, or acceptable to, a duly constituted health authority, and whose milk is:

(1) Received at a pool plant; or

(2) Diverted from a pool plant to a nonpool plant by a handler or cooperative association for the account of such handler or cooperative association. Milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it is diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated purusant to § 1069.44 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.

§ 1069.13 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 pursuant to § 1069.12.

§ 1069.14 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 § 1069.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1069.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1069.40(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 §1069.40(b)(1)) for which the handler fails to establish a disposition.

§ 1069.15 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 § 1069.40 (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.

§ 1069.16 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.

§ 1069.17 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).

§ 1069.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association, 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

§ 1069.30 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 § 1069.9(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 § 1069.40 (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 § 1069.9 (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.

§ 1069.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1069.9 (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 § 1069.76(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.

§ 1069.32 Other reports.

In addition to the reports required pursuant to §§ 1069.30 and 1069.31, 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

§ 1069.40 Classes of utilization.

Except as provided in § 1069.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1069.30 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 § 1069.41(a) to the receipts specified in § 1069.41(a)(2) and in shrinkage specified in § 1069.41 (b) and (c).

§ 1069.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1069.30, 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 § 1069.9(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 § 1069.9 (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.

§ 1069.42 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 § 1069.44(a)(12) and the corresponding step of § 1069.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1069.44(a)(7) or the corresponding step of § 1069.44(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 § 1069.44(a) (11) or (12) or the corresponding steps of § 1069.44(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 § 1069.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted 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 or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other 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 § 1069.30 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.

§ 1069.43 General classification rules.

In determining the classification of producer milk pursuant to § 1069.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1069.30 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 § 1069.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1069.40, 1069.41, and 1069.42;

(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 § 1069.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1069.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1069.9(a) for each of his pool plants separately and of each handler described in § 1069.9 (b) and (c) by al-

locating 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 § 1069.41 (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 § 1069.40(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 § 1069.40(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 § 1069.40(c) (6)), any product specified in § 1069.40(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 § 1069.40(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 § 1069.9(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 § 1069.40(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 § 1069.45(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 § 1069.42 (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 § 1069.44(a)(14) and the corresponding step of § 1069.44(b).

§ 1069.45 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 § 1069.44(a)(12) and the corresponding step of § 1069.44(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 § 1069.44 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.

Class Prices

§ 1069.50 Class prices.

Subject to the provisions of § 1069.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.10.

(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.

§ 1069.51 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.

§ 1069.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a plant located more than 55 miles by the shortest highway distance, as determined by the market administrator, from the Courthouse at Duluth, Minn., or Ashland, Wis., whichever is closer, and which is classified as Class I milk, the price specified in § 1069.50(a) shall be reduced by 8 cents if such plant is located more than 55 miles but not more than 65 miles from such courthouse and by an additional 1.3 cents for each 10 miles or fraction thereof that such distance exceeds 65 miles.

(b) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to 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.

§ 1069.53 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.

§ 1069.54 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

§ 1069.60 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 § 1069.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1069.44 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 § 1069.44(a)(14) and the corresponding step of § 1069.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1069.74, 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 § 1069.-

44(a)(9) and the corresponding step of § 1069.44(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 § 1069.44(a)(7) (i) through (iv) and the corresponding step of § 1069.44 (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 § 1069.44(a)(7) (v) and (vi) and the corresponding step of § 1069.44(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 § 1069.44(a)(11) and the corresponding step of § 1069.44(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.

§ 1069.61 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 § 1069.60 for all handlers who filed the reports prescribed by § 1069.30 for the month and who made the payments pursuant to §§ 1069.71 and 1069.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1069.75;

(c) Add an amount equal to one-half 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 § 1069.60 (f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price".

§ 1069.62 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

§ 1069.70 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 §§ 1069.71, 1069.76, and 1069.77, and out of which he shall make payments to handlers pursuant to §§ 1069.72 and 1069.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1069.71 Payments to the producer-settlement fund.

(a) On or before the 15th 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 § 1069.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1069.75, 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 § 1069.60(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 his 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.

§ 1069.72 Payments from the producer-settlement fund.

On or before the 17th 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 § 1069.71(a)(2) exceeds the amount computed pursuant to § 1069.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments required by this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1069.73 Payments to producers and to cooperative associations.

On or before the 20th day after the end of each month, each handler shall make payments as follows:

(a) To each producer from whom milk was received during the month at not less than the uniform price per hundredweight computed pursuant to § 1069.61 subject to the butterfat differential computed pursuant to § 1069.74 and the location adjustment computed pursuant to § 1069.75 and less (1) deductions for marketing services pursuant to § 1069.86, and (2) other proper deductions: *Provided*, That with respect to each deduction for hauling, or for any other purpose, made from such payment, the burden shall rest upon the handler making the deduction to prove that each deduction is authorized, and properly chargeable to the producer: *And provided further*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1069.72, he may reduce pro rata his payment to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payment pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) A handler who has not received on the 20th day after the end of each month the balance of the payments due him from the market administrator shall not be deemed to be in violation of paragraph (a) of this section if he reduced his payments to producers by not more than the amount of the reduction payment from the producer-settlement fund. The handler shall, however, complete such payments not later than the date for making such payments next following receipt of the balance from the market administrator; and

(c) On or before the 15th day after the end of each month, to each cooperative association with respect to receipts of milk for which such cooperative association is defined as the handler not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1069.74, that are applicable at the location of the receiving handler's pool plant.

§ 1069.74 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.

§ 1069.75 Plant location adjustments for producers and on nonpool milk.

(a) For milk which is received at a pool plant located more than 55 miles but not more than 65 miles by shortest highway distance, as determined by the market administrator, from the courthouse at Duluth, Minn., or at Ashland, Wis., whichever is closer, there should be deducted 8 cents per hundredweight and an additional 1.3 cents should be deducted for each 10 miles or fraction thereof that such distance exceeds 65 miles; and

(b) For purposes of computations pursuant to §§ 1069.71 and 1069.72 the uniform price shall be adjusted at the rates set forth in § 1069.52 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.

§ 1069.76 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 §§ 1069.30(b) and 1069.31(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 § 1069.60 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 § 1069.60 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 § 1069.60 for such handler shall include, in lieu of the value of other source milk specified in § 1069.60(f) less the value of such other source milk specified in § 1069.71(a)(2)(ii), a value of milk determined pursuant to § 1069.60 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 § 1069.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1069.30(b) and 1069.31(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 § 1069.60 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.

§ 1069.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount 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.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1069.85 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 § 1069.44(a)(7) and (11) and the corresponding steps of § 1069.44(b), except such other source milk that is excluded from the computations pursuant to § 1069.60(d) and (f); and

(c) Class I milk disposed of in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1069.76(a)(2).

§ 1069.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1069.73, with respect to all milk received from each producer at a plant not operated by a cooperative association qualified under paragraph (b) of this section of which such producer is a member, shall deduct an amount not exceeding 3 cents per hundredweight (the exact amount to be determined by the market administrator subject to review by the Secretary) from the payments made direct to such producers and such handler shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to provide market information and to verify the accuracy of weights, sampling and testing of milk received from such producers.

(b) In the case of milk of producers who are members of a cooperative association which is actually performing the services described in paragraph (a) of this section, which is received at a plant not operated by such cooperative association, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made direct to such producers pursuant to § 1069.73, as are authorized by such producers and, on or before the 15th day after the end of such month, pay such deductions to such cooperative association.

PART 1070—MILK IN THE CEDAR RAPIDS-IOWA CITY MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1070 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1070.1 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

§ 1070.2 Cedar Rapids-Iowa City marketing area.

"Cedar Rapids-Iowa City marketing area", called the "marketing area" in this part, means all the territory within the corporate limits of the cities of Cedar Rapids and Iowa City, both in the State of Iowa.

§ 1070.3 [Reserved]

§ 1070.4 [Reserved]

§ 1070.5 Distributing plant.

"Distributing plant" means a plant in which any Grade A fluid milk product is processed or packaged and 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.

§ 1070.6 Supply plant.

"Supply plant" means a plant from which Grade A milk or skim milk is shipped during the month to a pool plant qualified pursuant to § 1070.7.

§ 1070.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section or a cooperative association specified in paragraph (d) of this section.

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) and not less than 15 percent of such receipts are so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided*, That if such shipments are not less than 50 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) A plant (1) which is approved by a duly constituted health authority for the handling of Grade A milk; (2) which is operated by a cooperative association; and (3) from which the milk transferred by the association to plants of other handlers specified in paragraph (a) of this section plus that delivered by such association pursuant to paragraph (d) of this section and that delivered directly from the farms of members of such association to such plants is Grade A milk delivered by producers who are members of the association. If written application is filed with the market administrator on or before the 5th day of any month, such plant may be designated a nonpool plant for such month and for any subsequent months, except as provided in paragraph (e) of this section.

(d) A cooperative association with respect to Grade A milk received from dairy farmers at their farms in a tank truck owned or operated by such cooperative association and delivered in such tank truck to a pool plant: *Provided*, That such milk shall be deemed to have been received by the cooperative association at the location of the pool plant to which it is delivered by the tank truck and such location shall be deemed to be the location of such cooperative association in its capacity as the operator of a pool plant.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant specified in paragraph (a), (b), (c), or (d) of this section during any month in which such plant would be subject to the classification and pricing pro-

visions of another order issued pursuant to the act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified under this section and to retail and wholesale outlets in the Cedar Rapids-Iowa City marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order.

§ 1070.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1070.9 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 producer milk diverted by the association for its account pursuant to § 1070.13;

(c) [Reserved]

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1070.7(e).

§ 1070.10 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 or from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.7(d) and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk products received from a pool plant.

§ 1070.11 [Reserved]

§ 1070.12 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 received at a pool plant.

(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 § 1070.44 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.

§ 1070.13 Producer milk.

"Producer milk" means all skim milk and butterfat produced by producers which is:

(a) Received at a pool plant directly from producers; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of a pool plant or a cooperative association, subject to the following:

(1) Such diversions may be without limit during the months of April through August, but not be for more than 25 days' production of any producer during any other month and milk diverted in excess of this limit shall not be producer milk;

(2) Milk so diverted for the account of the operator of a pool plant shall be deemed to have been received at the plant from which diverted; and

(3) Milk so diverted from the plant of another handler for the account of a cooperative association shall be priced at the location of the plant from which diverted.

§ 1070.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1070.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1070.40(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 § 1070.40(b)(1)) for which the handler fails to establish a disposition.

§ 1070.15 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 § 1070.40 (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.

§ 1070.16 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.

§ 1070.17 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).

§ 1070.18 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

§ 1070.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1070.40(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 § 1070.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1070.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1070.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1070.76(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.

§ 1070.32 Other reports.

In addition to the reports required pursuant to §§ 1070.30 and 1070.31, 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

§ 1070.40 Classes of utilization.

Except as provided in § 1070.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1070.30 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 § 1070.41(a) to the receipts specified in § 1070.41(a)(2) and in shrinkage specified in § 1070.41 (b) and (c).

§ 1070.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1070.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (4), (5), and (6) of this paragraph; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1070.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1070.42 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 § 1070.44(a)(12) and the corresponding step of § 1070.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1070.44(a)(7) or the corresponding step of § 1070.44(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 § 1070.44(a)(11) or (12) or the corresponding steps of § 1070.44(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 that would be the case if the other source milk had been received at the transferee-plant.

(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 § 1070.40.

(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 § 1070.30 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 possbile 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 plants' 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.

§ 1070.43 General classification rules.

In determining the classification of producer milk pursuant to § 1070.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1070.30 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 § 1070.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1070.40, 1070.41, and 1070.42;

(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 § 1070.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1070.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1070.9(a) for each of his pool plants separately and of each handler described in § 1070.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1070.41(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 § 1070.40(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 § 1070.40(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 § 1070.40(c)(6)), any product specified in §1070.40(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 § 1070.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6), of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (7)(v), and (8)(i), of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and

bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1070.40(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 § 1070.45(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 § 1070.42(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 § 1070.44(a)(14) and the corresponding step of § 1070.44(b).

§ 1070.45 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 § 1070.44(a)(12) and the corresponding step of § 1070.44(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 § 1070.44 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 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

§ 1070.50 Class prices.

Subject to the provisions of § 1070.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.33.

(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.

§ 1070.51 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.

§ 1070.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located 50 miles or more by shortest hard-surfaced highway distance as measured by the market administrator, from the nearer of the City Halls in Cedar Rapids and Iowa City, Iowa, and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1070.50(a) shall be reduced by 10 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 65 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I utilization remaining at the transferee-plant after computations pursuant to § 1070.44 (a)(12) and the corresponding step of § 1070.44(b) which is in excess of 95 percent of receipts at such plant from producers, 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.

§ 1070.53 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.

§ 1070.54 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

§ 1070.60 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 § 1070.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1070.44 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 § 1070.44(a)(14) and the corresponding step of § 1070.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1070.74, 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 § 1070.44 (a)(9) and the corresponding step of § 1070.44(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 § 1070.44(a)(7) (i) through (iv) and the corresponding step of § 1070.44 (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 § 1070.44(a)(7) (v) and (vi) and the corresponding step of § 1070.44 (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 § 1070.44(a)(11) and the corresponding step of § 1070.44(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.

§ 1070.61 Computation of uniform price.

For each month the market administrator shall compute a uniform price for producer milk of 3.5 percent butterfat content f.o.b. pool plants located within 50 miles of the city hall of Cedar Rapids or Iowa City, Iowa, as follows:

(a) Combine into one total the values computed pursuant to § 1070.60 for all handlers who filed the reports prescribed by § 1070.30 for the month and who made the payments pursuant to § 1070.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1070.75;

(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 § 1070.60(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.

§ 1070.62 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

§ 1070.70 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 §§ 1070.71, 1070.76, and 1070.77, and out of which he shall make all payments to handlers pursuant to §§ 1070.72 and 1070.77.

§ 1070.71 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 § 1070.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1070.75, 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 § 1070.60(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 pro-

rated 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.

§ 1070.72 Payments from the producer-settlement fund.

On or before the 12th 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 § 1070.71(a)(2) exceeds the amount computed pursuant to § 1070.71(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. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1070.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1070.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of each month during which the milk was received, to each producer for milk received from him and for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, at not less than the uniform price computed in accordance with § 1070.61, subject to the butterfat differential computed pursuant to § 1070.74 and less location adjustments pursuant to § 1070.75.

(b) On or before the 12th day after the end of each month during which the milk was received, to a cooperative association for milk which it caused to be delivered to such handler from producers, if such cooperative association is authorized to collect such payments for its member producers and exercises such authority, an amount equal to the sum of the individual payments otherwise payable to such producers.

(c) On or before the 11th day after the end of each month during which milk was received at a pool plant from a cooperative association in its capacity as the operator of a pool plant pursuant to § 1070.7(d), at not less than the class prices for such milk, as adjusted by the butterfat differential specified in § 1070.74, that are applicable at the location of the receiving handler's pool plant, plus an amount equal to that payable on the same quantity of producer milk pursuant to § 1070.85.

§ 1070.74 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.

§ 1070.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1070.52; and

(b) For purposes of computations pursuant to §§ 1070.71 and 1070.72 the uniform price shall be adjusted at the rates set forth in § 1070.52 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.

§ 1070.76 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 §§ 1070.30(b) and 1070.31(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 § 1070.60 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 pant. 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 § 1070.60 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 § 1070.60 for such handler shall include, in lieu of the value of other source milk specified in § 1070.60(f) less the value of such other source milk specified in § 1070.71(a)(2)(ii), a value of milk determined pursuant to § 1070.60 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 § 1070.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1070.30(b)

and 1070.31(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 § 1070.60 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.

§ 1070.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due (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

§ 1070.85 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 12th 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;

(b) Other source milk allocated to Class I pursuant to § 1070.44(a) (7) and (11) and the corresponding steps of § 1070.44(b), except such other source milk that is excluded from the computations pursuant to § 1070.60 (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 § 1070.76(a)(2).

§ 1070.86 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 § 1070.73 shall deduct 5 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 not later than the 12th 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.

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall, in lieu of the deductions specified in paragraph (a) of this section, make such deductions as are authorized by such producers and, on or before, the 12th day after the end of each month, pay over such deductions to the association rendering such services.

PART 1076—MILK IN EASTERN SOUTH DAKOTA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1076 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1076.1 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

§ 1076.2 Eastern South Dakota marketing area.

"Eastern South Dakota marketing area," hereinafter called the "marketing area," means all of the territory within the counties listed below, including all territory within such counties which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments:

IOWA COUNTY

Lyon.

MINNESOTA COUNTY

Rock.

SOUTH DAKOTA COUNTIES

Aurora.
Beadle.
Bon Homme.
Brown.
Clark.
Clay.
Codington.
Davison.
Day.
Douglas.
Edmunds.
Hamlin.
Hanson.
Hutchinson.
Jerauld.
Kingsbury.
Lake.
Lincoln.
McCook.
McPherson.
Miner.
Minnehaha.
Moody.
Sanborn.
Spink.
Turner.
Union (except Jefferson Township and the city of North Sioux City and the unorganized territory adjacent thereto).
Walworth.
Yankton.

§ 1076.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or a sale from a plant store, or distribution center) of any fluid milk product classified as Class I milk to retail or wholesale outlets, except a delivery in bulk form to a milk (including filled milk) processing plant. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing plant.

§ 1076.4 [Reserved]

§ 1076.5 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 there is route disposition during the month in the marketing area.

§ 1076.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable to an 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 § 1076.7(a).

§ 1076.7 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. If a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which route disposition, except filled milk, equals not less than 35 percent of the Grade A milk received at such plant from dairy farmers, handlers described in § 1076.9(c), and supply plants and not less than 15 percent of such receipts is disposed of as route disposition, except filled milk, in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 35 percent of the Grade A milk received at such plant from dairy farmers and handlers described in § 1076.9(c) during such month. If such shipments are not less than 50 percent of such receipts during each of the immediately preceding months of September through November, such plant shall be a pool plant for the months of March through June, unless the operator of such plant requests the market administrator in writing that such plant not be a pool plant, such nonpool status to be effective the first month following such notice and such plant shall thereafter be a nonpool plant until it again qualifies as a pool plant on the basis of the shipping requirements set forth in this paragraph.

(c) A plant, other than a distributing plant, operated by a cooperative association if more than 50 percent of the total milk supply of producer members of such cooperative association is shipped to pool distributing plants of other handlers during the month, either directly from the farm or by transfer from the plant of the cooperative association: *Provided*, That if a portion of such association's plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(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 from which a lesser volume of fluid milk products, except filled milk, is disposed of in the eastern South Dakota marketing area than in the marketing area of another marketing agreement or order issued pursuant to the Act and which is fully subject to the classification and pricing provisions of such other agreement or order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period of March through June, inclusive, that producer milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1076.8 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 that is neither an other order plant nor a producer-handler plant, and from which fluid milk products are shipped during the month to a pool plant.

§ 1076.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers diverted by the association for the account of such association pursuant to § 1076.13;

(c) A cooperative association with respect to 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 prior to the first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case, the milk is received from producers by the cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1076.7(d).

§ 1076.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets all of the following conditions:

(a) Receipts of fluid milk products at his plant are solely milk of his own production and from pool plants of other handlers;

(b) Receives no milk products other than fluid milk products from any source for use in reconstituting fluid milk products; and

(c) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging, and distribution of the milk (including filled milk) are the personal enterprise and the personal risk of such person.

§ 1076.11 [Reserved]

§ 1076.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted as producer milk pursuant to § 1076.13.

(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 § 1076.44 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.

§ 1076.13 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 op-

erator of the pool plant, subject to the limitations and conditions of paragraph (c) of this section;

(b) With respect to receipts of a cooperative association:

(1) Diverted 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 as described in § 1076.9(c); and

(c) With respect to diversions to nonpool plants pursuant to paragraphs (a) (2) and (b) (1) of this section:

(1) A cooperative handler may divert for its account the milk of any member producer, whose milk is delivered to a distributing pool plant on at least 3 days during the month without limit during the other days of such month. The total quantity of milk so diverted may be without limit during the months of March, April, May, and June, but shall not exceed 35 percent of its member producer milk received at all pool plants during any other month of the year. Diversions in excess of such percentage shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. If the cooperative association fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to a nonpool plant by such cooperative association;

(2) 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 subparagraph (1) of this paragraph, whose milk is received at a pool plant on at least 3 days during the month, without limit during the other days of such month. The total quantity of milk so diverted may be without limit during the months of March, April, May, and June, but during any other month of the year shall not exceed 35 percent of the milk received from producers who are not members of a cooperative association which has diverted milk pursuant to subparagraph (1) of this paragraph. Diversions in excess of such percentage shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to a nonpool plant by such handler; and

(3) For the purpose of location adjustments pursuant to §§ 1076.52 and 1076.75, milk so diverted shall be priced at the location of the plant from which diverted.

§ 1076.14 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 § 1076.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1076.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1076.40(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 § 1076.40(b)(1)) for which the handler fails to establish a disposition.

§ 1076.15 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 § 1076.40 (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.

§ 1076.16 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.

§ 1076.17 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).

§ 1076.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) Has 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.

Handler Reports

§ 1076.30 Reports of receipts and utilization.

On or before the 7th day (excluding holidays) 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 § 1076.9(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 § 1076.40(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 § 1076.9 (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.

§ 1076.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1076.9 (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 § 1076.76(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.

§ 1076.32 Other reports.

In addition to the reports required pursuant to §§ 1076.30 and 1076.31, 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

§ 1076.40 Classes of utilization.

Except as provided in § 1076.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1076.30 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 § 1076.41(a) to the receipts specified in § 1076.41(a)(2) and in shrinkage specified in § 1076.41 (b) and (c).

§ 1076.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1076.30, 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 § 1076.9(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 from other order plants, excluding milk received by diversion and 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 § 1076.9 (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.

§ 1076.42 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 § 1076.9(c) to another handler's pool plant shall be classified as follows:

(1) Such transfers from a 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:

(i) 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 § 1076.44(a)(12) and the corresponding step of § 1076.44(b);

(ii) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1076.44(a)(7) or the corresponding step of § 1076.44(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

(iii) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1076.44(a)(11) or (12) or the corresponding steps of § 1076.44(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

(2) Such transfers by a handler described in § 1076.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class after the computations pursuant to § 1076.44(a)(13)(i) and the corresponding step of § 1076.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in subparagraph (1), (2), or (3) of this paragraph:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in subparagraph (3) of this paragraph);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1076.40.

(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 § 1076.30 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.

§ 1076.43 General classification rules.

In determining the classification of producer milk pursuant to § 1076.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1076.30 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 § 1076.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1076.40, 1076.41, and 1076.42;

(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 § 1076.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1076.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1076.9(a) for each of his pool plants separately and of each handler described in § 1076.9 (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 § 1076.41(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 § 1076.40(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 § 1076.40(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 § 1076.40(c)(6)), any product specified in § 1076.40(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 § 1076.40(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 § 1076.9(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 § 1076.40(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 in 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 § 1076.45(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 according to the classification of such products pursuant to § 1076.42(a)(1); and

(ii) A handler described in § 1076.9(c) according to the classification of such products pursuant to § 1076.42(a)(2); 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 § 1076.44(a)(14) and the corresponding step of § 1076.44(b).

§ 1076.45 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 § 1076.44(a)(12) and the corresponding step of § 1076.44(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 § 1076.44 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 the milk caused to be delivered by the cooperative association or 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

§ 1076.50 Class prices.

Subject to the provisions of § 1076.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.50.

(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.

§ 1076.51 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.

§ 1076.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located 100 miles or more by shortest hard-surfaced highway distance as measured by the market administrator, from the nearest of the Post Offices of Aberdeen, Huron, Mitchell, Sioux Falls, and Watertown, S. Dak., and disposed of as Class I milk, the price

computed pursuant to § 1076.50(a) shall be reduced 15 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition remaining at the transferee-plant after computations pursuant to § 1076.44(a)(12) and the corresponding step of § 1076.44(b) in excess of 95 percent of receipts at such plant of milk from producers and handlers described in § 1076.9(c), 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.

§ 1076.53 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.

§ 1076.54 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

§ 1076.60 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 § 1076.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1076.44 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 § 1076.44(a)(14) and the corresponding step of § 1076.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1076.74, 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 § 1076.44(a)(9) and the corresponding step of § 1076.44(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 § 1076.44(a)(7) (i) through (iv) and the corresponding step of § 1076.44 (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 § 1076.44(a)(7) (v) and (vi) and the corresponding step of § 1076.44 (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 § 1076.44(a)(11) and the corresponding step of § 1076.44(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.

§ 1076.61 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 which is received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1076.60 for all handlers who filed the reports prescribed in § 1076.30 for such month, except those in default of payments required pursuant to § 1076.71 and 1076.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1076.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the aggregate value computed pursuant to paragraphs (a), (b), and (c) of this section 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 § 1076.60 (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 milk received from producers.

§ 1076.62 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

§ 1076.70 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 §§ 1076.71, 1076.76, and 1076.77 and out of which he shall make all payments to handlers pursuant to §§ 1076.72 and 1076.77: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from each handler.

§ 1076.71 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 § 1076.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1076.75, 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 § 1076.60(f).

(b) On or before the 25th day after the end of the month each handler who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more 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.

§ 1076.72 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 § 1076.71(a)(2)

exceeds the amount computed pursuant to § 1076.71(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. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1076.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1076.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) or (c) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 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, as adjusted pursuant to §§ 1076.74 and 1076.75, plus or minus adjustments for errors made in previous payments to such producer; and less

(i) Payment made pursuant to subparagraph (1) of this paragraph;

(ii) Location adjustment deductions pursuant to § 1076.75; and

(iii) Proper deductions authorized by such producer;

(b) Except as provided in paragraph (c) of this section each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for is members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section; and

(2) On or before the 13th day after the end of each month, an amount equal to not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section;

(c) To a cooperative association with respect to receipts of milk for which such cooperative association is the handler as described in § 1076.9(c) as follows:

(1) On or before the 26th day of the month, for milk received during the first 15 days of the month an amount per hundredweight equal to not less than the uniform price for the preceding month; and

(2) On or before the 13th day after the end of each month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1076.74, that are applicable at the location of the receiving handler's pool plant, and less payment made pursuant to subparagraph (1) of this paragraph; and

(d) In making the payments for producer milk pursuant to 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 recipient, that shall show:

(1) The month and identity of the handler and of the producer;

(2) The pounds per shipment, the total pounds and the average butterfat content of milk received from the producer;

(3) The minimum rate or rates at which payment to the producer or is required pursuant to the order;

(4) The rate that 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.

§ 1076.74 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.

§ 1076.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price computed pursuant to § 1076.61 for producer milk received at a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1076.52; and

(b) For purposes of computations pursuant to §§ 1076.71 and 1076.72 the uniform price shall be adjusted at the rates set forth in § 1076.52 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.

§ 1076.76 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 §§ 1076.30(b) and 1076.31(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 § 1070.60 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 § 1076.60 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 § 1076.60 for such handler shall include, in lieu of the value of other source milk specified in § 1076.60(f) less the value of each other source milk specified in § 1076.71(a)(2)(ii), a value of milk determined pursuant to § 1076.60 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 § 1076.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1076.30 (b) and 1076.31(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 § 1076.60 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.

§ 1076.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports of payments of any handler discloses errors made in payments to or from the producer-settlement fund, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days of such billing make payments to the market administrator of the amount so billed and whenever verification discloses that payment is due from the market administrator to any handler, the market administrator shall, within 15 days make such payment to such handler.

(b) Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association discloses payment of less than is required by § 1076.73, the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

§ 1076.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1076.71(a) shall be increased by one-half of 1 percent for each month or portion thereof that such payment is overdue.

ADMINISTRATIVE ASSESSMENT

§ 1076.85 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 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 § 1076.44(a) (7) and (11) and the corresponding steps of § 1076.44(b), except such other source milk that is excluded from the computations pursuant to § 1076.60 (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 § 1076.76(a)(2).

PART 1078—MILK IN NORTH CENTRAL IOWA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1078 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1078.1 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

§ 1078.2 North Central Iowa marketing area.

"North Central Iowa marketing area" (hereinafter called the "marketing area") means all the territory within the boundaries of the city of Osage and the counties of Black Hawk, Bremer, Buchanan, Butler, Cerro Gordo, Chickasaw, Fayette, Floyd, Franklin, Grundy, Hamilton, Hancock, Hardin, Humboldt, Marshall, Tama, Webster, and Wright, all in the State of Iowa, including territory within such boundaries which is occupied by government (Municipal, State, or Federal) reservations, installations, institutions or other establishments.

§ 1078.3 [Reserved]

§ 1078.4 [Reserved]

§ 1078.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate

health authority for the processing or packaging of Grade A milk 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 other plants) located in the marketing area.

§ 1078.6 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 § 1078.7.

§ 1078.7 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 a volume of Class I milk, except filled milk, equal to more than an average of 1,000 pounds per day or not less than 15 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except other plants) in the marketing area.

(b) A supply plant for the month in which shipments of milk or skim milk are made to distributing plants which are pool plants on not less than 10 days in any of the months of September, October, and November and on not less than 5 days in other months: *Provided,* That a supply plant which was not a pool plant for each of the immediately preceding months of September, October, and November shall not be a pool plant for any month during which none of the milk or skim milk from such plant would be allocated to Class I milk pursuant to the procedure specified in § 1078.44(a)(13), and the corresponding step of § 1078.44(b) at a distributing plant which is a pool plant.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant to retail or wholesale outlets and to pool plants in the North Central Iowa marketing area than in the marketing area regulated pursuant to such other order.

§ 1078.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1078.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more distributing or supply plants.

(b) [Reserved]

(c) A cooperative association with respect to Grade A milk received from dairy farmers in a tank truck, the operation of which is under the control of such cooperative association, and delivered in such tank truck to a pool plant: *Provided,* That such milk shall be deemed to have been received directly from producers at the location of the pool plant by the operator of the pool plant to which it is delivered by the tank truck.

§ 1078.10 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.

§ 1078.11 [Reserved]

§ 1078.12 Producer.

Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant (i) any day during the months of April through June, and (ii) on not more than one-half the days on which milk was delivered from a farm during any of the months of July through March.

(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 § 1078.44 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.

§ 1078.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk of producers that is (a) received at a pool plant directly from producers, or (b) diverted from a pool plant to a nonpool plant in accordance with the conditions set forth in § 1078.12.

§ 1078.14 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 § 1078.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1078.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1078.40(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 § 1078.40(b)(1)) for which the handler fails to establish a disposition.

§ 1078.15 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 § 1078.40 (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.

§ 1078.16 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.

§ 1078.17 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).

§ 1078.18 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

§ 1078.30 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 § 1078.9(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 § 1078.40(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 § 1078.9(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.

§ 1078.31 Payroll reports.

On or before the 20th day after the end of each month, each handler described in § 1078.9 (a) 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:

(a) His name and address;

(b) The total pounds of milk received from such producer;

(c) The average butterfat content of such milk; and

(d) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

§ 1078.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in the 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 milk; 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 §§ 1078.30 and 1078.31 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

§ 1078.40 Classes of utilization.

Except as provided in § 1078.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1078.30 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 § 1078.41(a) to the receipts specified in § 1078.41(a)(2) and in shrinkage specified in § 1078.41 (b) and (c).

§ 1078.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to §1078.30, 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 § 1078.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1078.9(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 § 1078.9(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.

§ 1078.42 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 § 1078.44(a)(12) and the corresponding step of § 1078.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1078.44(a)(7) or the corresponding step of § 1078.44(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 § 1078.44(a)(11) or (12) of the corresponding steps of 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 § 1078.40.

(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 § 1078.30 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 folowing 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 plaint's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1078.43 General classification rules.

In determining the classification of producer milk pursuant to § 1078.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1078.30 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 § 1078.9(c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1078.40, 1078.41, and 1078.42;

(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 § 1078.9(c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1078.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1078.9(a) for each of his pool plants separately and of each handler described in § 1078.9(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 § 1078.41 (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 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 § 1078.40(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 § 1078.40(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 § 1078.40(c)(6)), any product specified in § 1078.40(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 § 1078.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order; and

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class

III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other 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; 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, 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 § 1078.40(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) 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 bulk 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 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 § 1078.42(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 § 1078.44(a)(14) and the corresponding step of § 1078.44(b).

§ 1078.45 Market administrator's reports concerning classification.

The market administration 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 § 1078.44 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 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:

Class Prices

§ 1078.50 Class prices.

Subject to the provisions of § 1078.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.25.

(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.

§ 1078.51 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.

§ 1078.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Zone 1" means all the territory in the Iowa counties of Humboldt, Wright, Franklin, Butler, Bremer, Web-

ster, Hamilton, Hardin, Grundy, Black Hawk, and Buchanan.

(2) "Zone 2" means all the territory in the Iowa counties of Marshall, Tama, Linn, and Johnson.

(3) "Zone 3" means all the territory in the Iowa counties of Hancock, Cerro Gordo, Floyd, and Chickasaw and the city of Osage, Iowa.

(4) "Zone 4" means all the territory in Fayette County, Iowa, and the Minnesota counties of Freeborn and Mower.

(b) For milk received from producers at a pool plant located in Zone 2, 3, or 4 and classified as Class I milk, the price specified in § 1078.50(a) shall be adjusted by the following amount:

(1) Zone 2—plus 8 cents.

(2) Zone 3—minus 5 cents.

(3) Zone 4—minus 10 cents.

(c) For milk received from producers at a pool plant located outside Zones 1, 2, 3, and 4 and classified as Class I milk, the price specified in § 1078.50(a) shall be reduced 10 cents and, if the plant is located 65 miles or more by the shortest hard-surfaced highway distance as determined by the market administrator from the city halls of each of the cities of Fort Dodge, Marshalltown, Mason City, and Waterloo, Iowa, shall be reduced an additional 1.5 cents for each 10 miles or fraction thereof in excess of 65 miles that such plant is from the nearest of such city halls.

(d) For purposes of calculating the location adjustment applicable pursuant to this section, fluid milk products which are transferred between pool plants shall be assigned to the Class I milk remaining in the transferee-plant after calculations pursuant to § 1078.44(a)(12) and the corresponding step of § 1078.44(b) that is in excess of receipts at such plant from producers and handlers described in § 1078.9(c), such assignment to transferor-plants to be made first to plants at which a plus location adjustment is applicable, next at which no location adjustment is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1078.53 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.

§ 1078.54 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

§ 1078.60 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 § 1078.44 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 § 1078.44(a)(14) and the corresponding step of § 1078.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1078.74, 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 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 § 1078.44(a)(9) and the corresponding step of § 1078.44(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 § 1078.44(a)(9) and the corresponding step of § 1078.44(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 § 1078.44(a)(11) and the corresponding step of § 1078.44(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 his receipts and utilization of skim milk and butterfat for previous months.

§ 1078.61 Computation of uniform price for each handler.

For each month the market administrator shall compute a uniform price for the producer milk received by each handler as follows:

(a) Add to and subtract from the amount computed pursuant to § 1078.60, the totals of the location adjustments to be made pursuant to § 1078.75;

(b) Add if a deduction was made, or subtract if an addition was made, in computing the uniform price for such handler to the nearest cent for the preceding month the amount of such adjustment; and

(c) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The quotient, adjusted to the nearest cent, shall be the uniform price for such handler for producer milk of 3.5 percent butterfat content received at plants in Zone 1. Uniform prices at plants outside Zone 1 shall be adjusted pursuant to § 1078.75.

§ 1078.62 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 10th day after the end of each month the uniform price for each handler for such month.

PAYMENTS FOR MILK

§ 1078.73 Payments to producers and to cooperative associations.

Each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 14th 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 § 1078.61, as adjusted pursuant to § 1078.74, plus or minus adjustments for errors made in previous payments to such producer; and less (1) location adjustments pursuant to § 1078.75, (2) deductions for marketing services pursuant to § 1078.86, and (3) proper deductions authorized by such producer: *Provided*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk the handler shall, if requested by the cooperative association, pay such cooperative association on or before the 12th day after the end of each month an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph;

(b) In making the payments to producers pursuant to paragraph (a) 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 for each month:

(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 such 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.

§ 1078.74 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.

§ 1078.75 Plant location adjustments for producers.

The uniform prices for milk received from producers at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1078.52.

§ 1078.76 [Reserved]

§ 1078.77 Adjustment of accounts.

Whenever verification by the market administrator of payment by a handler discloses errors resulting in money due a producer, a cooperative association, 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

§ 1078.85 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, (b) other source milk allocated to Class I pursuant to § 1078.44 (a) (7) and (11) and the corresponding steps of § 1078.44(b), and (c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the hundredweight of Class I milk received during the month at such plant from pool plants and other order plants.

§ 1078.86 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 § 1078.73, shall deduct 5 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 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) 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 1079—MILK IN DES MOINES, IOWA, MARKETING AREA

Subpart—Order Regulating Handling

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1079.85 Assessment for order administration.
1079.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1079 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1079.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and make a part of this order.

§ 1079.2 Des Moines, Iowa, marketing area.

"Des Moines, Iowa, marketing area" (hereinafter called the "marketing area"), means all the territory within the boundaries of the city of Grinnell and the counties of Adair, Appanoose, Bonne, Clarke, Dallas, Decatur, Greene, Guthrie, Jasper, Lucas, Madison, Mahaska, Marion, Monroe, Polk, Story, Union, Warren, Wappello, and Wayne, all in the State of Iowa, including territory within such boundaries which is occupied by government (municipal, State or Federal) reservations, installations, institutions, or other establishments.

§ 1079.3 [Reserved]

§ 1079.4 [Reserved]

§ 1079.5 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.

§ 1079.6 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 §1079.7.

§ 1079.7 Pool plant.

"Pool plant" means a plant described in paragraph (a) or (b) of this section except as provided in paragraph (c) of this section: *Provided,* That if a portion of a plant is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered as part of a pool plant pursuant to this section.

(a) A distributing plant from which a volume of Class I milk, except filled milk, equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers and from other plants is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool

plants) and not less than 15 percent of such receipts or an average of not less than 7,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is equal to not less than 35 percent of the Grade A milk received at such plant from dairy farmers during such month: *Provided,* That if such shipments are not less than 50 percent of the receipts of Grade A milk directly from dairy farmers at such plant during the immediately preceding period of September through November, such plant shall be a pool plant for the months of March through June, unless written application is filed with the market administrator on or before the 15th day of any of the months of March, April, May, or June to be designated a nonpool plant for such month and for each subsequent month through June of the same year.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A distributing plant or a supply plant during any month in which such plant would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless the disposition of fluid milk products, except filled milk, from such plant to pool plants qualified pursuant to this section and to retail and wholesale outlets in the Des Moines, Iowa, marketing area exceeds such disposition to retail and wholesale outlets in such other marketing area and to pool plants regulated by such other order except in the following circumstances:

(i) If a distributing plant were qualified pursuant to paragraph (a) of this section during each of the 3 immediately preceding months, it would continue to be subject to all the provisions of this part until after the third consecutive month in which it remains so qualified and has a greater proportion of its fluid milk product disposition, except filled milk, made in the above-described manner in such other marketing area, unless, notwithstanding the provisions of this paragraph, it is regulated under such other order; or

(ii) A distributing plant qualified pursuant to paragraph (a) of this section that is fully regulated under another Federal order but which has greater fluid milk product (except filled milk) disposition during the month on routes in the Des Moines marketing area and to pool plants qualified on the basis of route distribution in the Des Moines marketing area than in such other Federal order marketing area.

§ 1079.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped during the month to a pool plant.

§ 1079.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to the milk of producers diverted pursuant to § 1079.13 by the association for the account of such association;

(c) [Reserved]

(d) Any person as the operator of a partially regulated distributing plant.

§ 1079.10 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 or from sources other than pool plants and whose disposition of fluid milk products does not exceed that (a) received from a pool plant, (b) processed from milk of his own production, or (c) processed from fluid milk received from a pool plant.

§ 1079.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received by a handler as producer milk.

(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 § 1079.44 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.

§ 1079.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk received at a pool plant directly from a producer: *Provided,* That milk diverted under the conditions set forth in paragraphs (a), (b), and (c) of this section from a pool distributing plant to a nonpool plant that is not a producer-handler plant for the account of either the operator of the pool distributing plant or a cooperative association shall also be producer milk and shall be deemed to have been received by the diverting handler at the plant to which diverted.

(a) A handler described in § 1079.9(b) may divert for its account without limit during the other days of the month the milk of any member producer whose milk is received at a pool distributing plant for at least one delivery during the month. The total quantity of milk so diverted may not exceed 50 percent in September through March and 100 percent in April through August of the larger of the following amounts: (1) The total quantity of its member milk received at all pool distributing plants during the current month, or (2) the average daily quantity of its member milk received at all pool distributing plants during the previous month multiplied by the number of days in the current month.

(b) A handler in his capacity as the operator of a pool distributing 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 paragraph (a) of this section whose milk is received at his pool distributing plant for at least one delivery during the month without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 50 percent in September through March and 100 percent in April through August of the larger of the following amounts: (1) The total quantity of producer milk received at such plant during the current month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a) of this section, or (2) the average daily quantity of producer milk received at such plant during the previous month multiplied by the number of days in the current month from producers who are not members of a cooperative association which has diverted milk in the current month pursuant to paragraph (a) of this section.

(c) Any milk so diverted by the operator of a pool plant or by a handler described in § 1079.9(b) in excess of the limits prescribed pursuant to paragraphs (a) and (b) of this section shall not be producer milk and if the diverting handler fails to designate the dairy farmers whose milk is not producer milk, then no milk diverted by such handler during the month shall be producer milk.

§ 1079.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1079.40(b)(1);

(c) Products (other than fluid milk products and products specified in § 1079.40(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 § 1079.40(b)(1)) for which the handler fails to establish a disposition.

§ 1079.15 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 § 1079.40 (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.

§ 1079.16 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 90 percent or more butterfat.

§ 1079.17 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).

§ 1079.18 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 is engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1079.30 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) [Reserved]

(3) Receipts of fluid milk products and fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1079.40(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 § 1079.9 (b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1079.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1079.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1079.76 (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.

§ 1079.32 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 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 §§ 1079.30 and 1079.31 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

§ 1079.40 Classes of utilization.

Except as provided in § 1079.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1079.30 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 § 1079.41(a) to the receipts specified in § 1079.41(a)(2) and in shrinkage specified in § 1079.41 (b) and (c).

§ 1079.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1079.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in subparagraph (1) of such paragraph that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) [Reserved]

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in subparagraphs (1), (4), (5), and (6) of this paragraph; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1079.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1079.42 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 § 1079.44(a)(12) and the corresponding step of § 1079.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1079.44(a)(7) or the corresponding step of § 1079.44(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 § 1079.44(a)(11) or (12) or the corresponding steps of § 1079.44(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 § 1079.40

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in subdivisions (*a*) and (*b*) of this subdivision are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization to its receipts as set forth in subdivisions (ii) through (viii) of this subparagraph:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1079.30 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 transfereeplant, 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 utlization, 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.

§ 1079.43 General classification rules.

In determining the classification of producer milk pursuant to to § 1079.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1079.30 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 § 1079.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1079.40, 1079.41, and 1079.42;

(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 § 1079.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1079.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk for each handler described in § 1079.9(a) for each of his pool plants separately and of each handler described in § 1079.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1079.41(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 § 1079.40(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 § 1079.40(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 § 1079.40(c)(6)), any product specified in § 1079.40(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 § 1079.40(b)(1) that were not subtracted pursuant to subparagraphs (4), (5), and (6) of this paragraph;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to subparagraph (2) of this paragraph; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant;

(8) Subtract in the order specified below from the pounds of skim milk remaining in Class II and Class III, in sequence beginning with Class III:

(i) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2) and (7)(v) of this paragraph for which the handler requests a classification other than Class I, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(ii) The pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to subparagraphs (2), (7)(v), and (8)(i) of this paragraph which are in excess of the pounds of skim milk determined pursuant to subdivisions (a) through (c) of this subdivision. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to subparagraph (7)(vi) of this paragraph, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1079.40(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 § 1079.45(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 § 1079.42(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 § 1079.44(a)(14) and the corresponding step of § 1079.44(b).

§ 1079.45 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 § 1079.44(a)(12) and the corresponding step of § 1079.44(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 another order plant, the class to which such receipts are allocated pursuant to § 1079.44 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 of each handler during the month that was utilized in each class. For the purpose of this report the milk so delivered shall be allocated to each class in the same ratio as all producer milk received at such plant during the month.

Class Prices

§ 1079.50 Class prices.

Subject to the provisions of § 1079.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.40.

(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.

§ 1079.51 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.

§ 1079.52 Location adjustments for handlers.

(a) For producer milk received at a plant located outside the marketing area, and 60 miles or more by the shortest hard-surfaced highway distance, as measured by the market administrator from the main post offices of Des Moines and Ottumwa, Iowa, which is classified as Class I or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1079.50(a) shall be reduced 10 cents, and shall be reduced an additional 1.5 cents for each 10 miles or fraction thereof in excess of 75 miles from the designated post offices.

(b) For pursposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition remaining at the transferee-plant after computations pursuant to § 1079.44(a)(12) and the corresponding step of § 1079.44(b) in excess of 95 percent of receipts of producer milk at such plant, 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.

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class price for the following month and the Class II and Class III prices for the preceding month.

§ 1079.54 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

§ 1079.60 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 § 1079.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1079.44 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 § 1079.44(a)(14) and the corresponding step of § 1079.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1079.74, 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 § 1079.44(a)(9) and the corresponding step of § 1079.44(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 § 1079.44(a)(7) (i) through (iv) and the corresponding step of § 1079.44(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 § 1079.44 (a) (7) (v) and (vi) and the corresponding step of § 1079.44 (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 § 1079.44(a)(11) and the corresponding step of § 1079.44(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.

§ 1079.61 Computation of uniform price.

For each month the market administrator shall compute an aggregate value from which to determine the uniform price per hundredweight for producer milk of 3.5 percent butterfat content, f.o.b. plants located within the marketing area, as follows:

(a) Combine into one total the values computed pursuant to § 1079.60 for all pool plants for which the reports prescribed in § 1079.30 for such month were made, except those in default of payments required pursuant to § 1079.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustment deductions to be made pursuant to § 1079.75;

(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 § 1079.60(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 known as the uniform price for milk received from producers.

§ 1079.62 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

§ 1079.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made to such fund pursuant to §§ 1079.71, 1079.76, and 1079.77, and out of which he shall make all payments from such fund pursuant to §§ 1079.72 and 1079.77: *Provided,* That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1079.71 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 § 1079.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1079.75, 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 § 1079.60(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. It 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.

§ 1079.72 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 § 1079.71(a)(2) exceeds the amount computed pursuant to § 1079.71(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. A handler who has not received the balance of such payments from the market administrator shall not be considered in violation of § 1079.73 if he reduces his payments to producers by not more than the amount of the reduction in payment from the producer-settlement fund.

§ 1079.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 15th day after the end of each month, for producer milk received during such month, an amount computed at not less than the uniform price pursuant to § 1079.61 adjusted pursuant to §§ 1079.74, 1079.75, and 1079.86, and less the payment made pursuant to subparagraph (1) of this paragraph.

(b) Each handler shall make payment to a cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 13th day after the end of each month for milk received during such month.

(c) In making the payments for producer milk pursuant to 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 recipient, 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 producer milk;

(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.

§ 1079.74 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.

§ 1079.75 Location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk pursuant to § 1079.61 received at a pool plant or diverted from a pool plant shall be reduced according to the location of the plant of actual receipt at the rates set forth in § 1079.52.

(b) For purposes of computations pursuant to §§ 1079.71 and 1079.72 the uniform price shall be adjusted at the rates set forth in § 1079.52 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.

§ 1079.76 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 §§ 1079.30(b) and 1079.31(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 § 1079.60 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 § 1079.60 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 § 1079.60 for such handler shall include, in lieu of the value of other source milk specified in § 1079.60(f) less the value of such other source milk specified in § 1079.71(a)(2)(ii), a value of milk determined pursuant to § 1079.60 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 § 1079.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1079.30(b) and 1079.31(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 § 1079.60 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.

§ 1079.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors in payments to or from the producer-settlement fund pursuant to §§ 1079.71 and 1079.72, the market administrator shall promptly bill such handler for any unpaid amounts and such handler shall, within 15 days of such billing, make payments to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, 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 to a cooperative association discloses payment of an amount less than is required by § 1079.73 the handler shall make up such payment to the producer or cooperative association not later than the time of making payment next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1079.85 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 less amount as the Secretary may prescribe, with respect to:

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1079.44(a) (7) and (11) and the corresponding steps of § 1079.44(b), except such other source milk that is excluded from the computations pursuant to § 1079.60 (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 § 1079.76(a)(2).

§ 1079.86 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 § 1079.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (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 producer milk and to provide 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) In the case of producers for whom a cooperative association is 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.

Signed at Washington, D.C., on August 28, 1972.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

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