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PART I

September 11, 1973—Pages 24875–25154

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REMINDERS

NOTE: There were no items published after October 1, 1972, that are eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

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Title 3—The President

PROCLAMATION 4241

National Hispanic Heritage Week, 1973

By the President of the United States of America

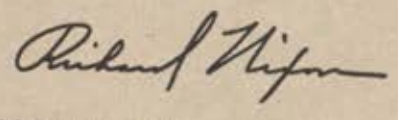
A Proclamation

As America's bicentennial celebration draws near, it is particularly fitting that we pay tribute to the different ethnic groups that have worked together to build our Nation. Americans of Hispanic origin have played an instrumental role in our country's history since the days when America was first opened by European explorers, and the lives of all Americans have been enriched by the lasting and diverse contributions of Hispanic culture.

In the fields as varied as music, architecture, language, education, politics, medicine, literature, industry and religion, Hispanic Americans have contributed wisdom, beauty and spiritual strength. American life today would be infinitely poorer without these contributions. With them, Americans continue to work toward the realization of a dream that is as old as the earliest Spanish explorers—the dream of a new world on a new Continent—a world in which men can reach new heights of freedom and achievement.

NOW, THEREFORE, I, RICHARD NIXON, President of the United States of America, do hereby proclaim the week beginning September 10, 1973, and ending September 16, 1973, as National Hispanic Heritage Week. I call upon all Americans, particularly those in the field of education, to observe that week with appropriate ceremonies and activities, and I urge all Americans to extend a cordial welcome to the recently arrived immigrants and visitors among us who represent the rich heritage of Hispanic lands.

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



[FR Doc.73-19370 Filed 9-7-73;2:39 pm]

EXECUTIVE ORDER 11737

Enlargement of the Upper Mississippi River Basin Commission

The Governors of the member States of the Upper Mississippi River Basin Commission and of the Souris-Red-Rainy River Basins Commission, together with the Water Resources Council, have requested, or concurred in, the enlargement of the Upper Mississippi River Basin Commission to include those portions of the States of Minnesota and North Dakota that are drained by the Souris-Red-Rainy Rivers system. The Souris-Red-Rainy River Basins Commission terminated on June 30, 1973, by operation of Section 7 of Executive Order No. 11359 of June 20, 1967, as amended. I have determined that it would be in the public interest to comply with the above request.

NOW, THEREFORE, by virtue of the authority vested in me by Section 201 of the Water Resources Planning Act (42 U.S.C. 1962b), and as President of the United States, it is ordered as follows:

SECTION 1. Executive Order No. 11659 of March 22, 1972, is hereby amended as follows:

(1) Section 2 is amended to read as follows:

"SEC. 2. *Jurisdiction of the Commission.* It is hereby determined that the jurisdiction of the Upper Mississippi River Basin Commission referred to in Section 1 of this order shall extend to those portions of the States of Illinois, Iowa, Minnesota, Missouri, Wisconsin, and North Dakota that are located within the Upper Mississippi, Souris, Red, or Rainy River drainage basins. The Upper Mississippi River drainage basin is defined as the drainage basin of the Mississippi River above the mouth of the Ohio River, excluding the drainage basin of the Missouri River above a point immediately below the mouth of the Gasconade River."

(2) Section 3(3) is amended to read as follows:

"(3) one member from each of the following States: Illinois, Iowa, Minnesota, Missouri, Wisconsin, and North Dakota,".

(3) Section 5 is amended to read as follows:

"SEC. 5 *Consultation with Adjoining States.* The Commission is expected to provide for procedures for consultation with the States of Indiana, Michigan, South Dakota, and Montana on any matter which might affect the water and related land resources of the headwater drainages of the Mississippi River Basin or the drainages of the Souris, Red, or Rainy River Basins in those States and to give notice to those States of meetings of the Commission."

(4) Section 6 is hereby redesignated as Section 7 and a new Section 6 is hereby inserted immediately after Section 5 as follows:

"SEC. 6 *International Coordination.* The Chairman of the Commission is hereby authorized and directed to refer to the Council any matters under consideration by the Commission which relate to areas of interest or jurisdiction of the International Joint Commission, United

States and Canada. The Council shall consult on these matters as appropriate with the Department of State and the International Joint Commission through its United States Section for the purpose of enhancing international coordination."

SEC. 2. All funds, property, records, employees, assets, and obligations of the Souris-Red-Rainy River Basins Commission are, with the concurrence of Governors of the affected States, transferred to the Upper Mississippi River Basin Commission, effective as of July 1, 1973.

SEC. 3. Executive Order No. 11359 of June 20, 1967, and Executive Order No. 11635 of December 9, 1971, are hereby superseded.

Richard Nixon

THE WHITE HOUSE,
September 7, 1973.

[FR Doc.73-19387 Filed 9-7-73;3:46 pm]

Rules and Regulations

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Treasury Department

Section 213.3305 is amended to show that one position of Staff Assistant to the Secretary and one position of Secretary to the Deputy Under Secretary are excepted under Schedule C.

Effective on September 11, 1973, §§ 213.3305(a) (47) and (48) are added as set out below.

§ 213.3305 Treasury Department.

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

(47) One Staff Assistant to the Secretary.

(48) One Secretary to the Deputy Under Secretary.

* * * * *

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

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

[FR Doc.73-19288 Filed 9-10-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3314 is amended to show that one position of Private Secretary to the Assistant Secretary for Science and Technology is excepted under Schedule C.

Effective on September 11, 1973, § 213.3314(n)(3) is added as set out below.

§ 213.3314 Department of Commerce.

* * * * *

(n) *Office of the Assistant Secretary for Science and Technology.* * * *

(3) One Private Secretary to the Assistant Secretary.

* * * * *

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

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

[FR Doc.73-19285 Filed 9-10-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

Section 213.3316 is amended to show that one position of Commissioner, Youth Development, and one additional position of Special Assistant to the Deputy Assistant Secretary for Congressional Liaison are excepted under Schedule C.

Effective on September 11, 1973, § 213.3316(a)(31) is added and § 213.3316(f)(10) is amended as set out below.

§ 213.3316 Department of Health, Education, and Welfare.

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

(31) Commissioner, Youth Development.

* * * * *

(f) *Office of the Assistant Secretary for Legislation.* * * *

(10) Four Special Assistants to the Deputy Assistant Secretary for Congressional Liaison.

* * * * *

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

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

[FR Doc.73-19284 Filed 9-10-73;8:45 am]

PART 213—EXCEPTED SERVICE

Selective Service System

Section 213.3346 is amended to show that one position of Legislation and Liaison Officer is excepted under Schedule C.

Effective on September 11, 1973, § 213.3346(h) is added as set out below.

§ 213.3346 Selective Service System.

* * * * *

(h) One Legislation and Liaison Officer.

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

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

[FR Doc.73-19286 Filed 9-10-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Transportation

Section 213.3394 is amended to show that one additional position of Special Assistant to the Under Secretary is excepted under Schedule C.

Effective on September 11, 1973, § 213.3394(a)(11) is amended as set out below.

§ 213.3394 Department of Transportation.

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

(11) Three Special Assistants to the Under Secretary.

* * * * *

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

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

[FR Doc.73-19287 Filed 9-10-73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

PART 155—PHASE IV PRICE PROCEDURES

Food Industry

Introduction.—The purpose of this amendment to Part 150 of the Cost of Living Council Regulations is to add Subpart Q (Stage B for food). On August 22, 1973, the Council issued a Notice of Proposed Rulemaking, 38 FR 22797 (August 24, 1973) setting out the proposed regulations for Subpart Q and inviting interested persons to submit written data, views, or arguments.

The Council stated in the Notice of Proposed Rulemaking that all comments received before noon, September 4, 1973, would be considered by the Council before taking action on the proposed regulations. One hundred and forty-six comments were received before noon on September 4, 1973.

These comments were reviewed by specialists in the Council's Office of Food, the General Counsel's Office and by other staff members. Policy issues raised through these comments were discussed in a series of meetings of the Council's senior staff and, as a result, the final regulations contain a number of changes in the proposed regulations that were published on August 22.

General.—The largest number of comments related to (1) the formula for the gross margin rule applicable to food manufacturers and (2) the requirement of monthly compliance periods under that rule. As a result of the number of questions raised concerning the complexity of that formula, the Council has adopted a simplified formula which should substantially ease the burden on food manufacturing firms in complying with the food regulations.

In addition, the Council has changed the period for compliance with the gross margin rule from the accounting month to the fiscal quarter. These changes are discussed in more detail below in the section of the preamble dealing with food manufacturing.

The Council has made three clarifications and changes which are of general interest to food manufacturers, food service organizations, food wholesalers and food retailers.

First, the effective date of the new Subpart Q regulations has been moved back from 11:59 p.m., e.s.t., September 11, to 11:59 p.m., e.s.t., September 9, 1973. This means that the freeze on beef prices and the Stage A food regulations will end on the weekend rather than during the middle of the week, thereby easing the final transition of the food industry into Phase IV.

Second, the final Stage B regulations state that the profit margin test will be applied to the food industry whether or not prices are raised above the adjusted freeze price, the base price, or other authorized price. In view of the fact that the food industry has essentially remained under Phase II price controls since the beginning of Phase II, and in view of the substantial increase in price levels in the food industry since that time, virtually all food firms have long been subject to the profit margin limitation. The final Subpart Q food regulations therefore eliminate the rule, otherwise applicable, that the profit margin limitation does not apply unless a price is charged above a certain level.

Third, a similar approach has been taken with respect to the gross margin rule, applicable to food manufacturers only. The gross margin pricing rules apply upon the effective date of Subpart Q without regard to whether prices are raised above the adjusted freeze price level or any other level. This will assure that the present high level of food prices will be reduced when and to the extent that current high costs for food raw materials decline.

Food wholesaling and retailing.—Section 150.604, applicable to food wholesaling and retailing, has been changed to permit firms engaged in food retailing to treat as one merchandise category the entire food retailing operation at the price entity level. The single category rule, which was available to food retailers in Phase III, permits cost increases to be spread over a wider base of items thereby softening the potential price impact of cost increases in individual products.

In addition, the rule which permits food retailing firms which derive 75 percent or more of annual sales and revenues from retail food sales to select one of two fiscal years for the pricing base period has been amended to make it clear that the 75 percent rule applies to the pricing entity rather than the entire firm.

Food service activities.—Section 150.605 remains unchanged except with respect to the clarification concerning the profit margin limitation discussed above.

Food manufacturing.—The formula presented in the proposed Subpart Q regulations which determines the total permissible revenues for a product line in the control period was considered by many firms to be unnecessarily complicated and difficult to understand. That formula was stated as follows:

$$R=(B\times V)\ (C+100\%)+M+(P\times V)$$

This formula appears in the final regulation as:

$$R_2=R_1\times\frac{V_2}{V_1}\times(C+100\%)$$

The symbol R_2 stands for total permissible sales revenues in the current fiscal quarter, and R_1 stands for total sales revenues during the base period. Similarly, "V" stands for the volume of food raw material units and the subcharacter "2" indicates the current fiscal quarter and subcharacter "1" indicates the base period. "C" stands for net increase in allowable costs since the base cost period and is the percentage figure taken from line 12 of Schedule C to CLC 22. The "C" in this formula includes increases in both food raw material costs and other costs.

It can be seen from this formula that total sales revenues in the current fiscal quarter may not exceed an amount equal to the revenue in the base period, adjusted by the ratio that the volume in the current fiscal quarter bears to the base period volume, and multiplied by the net increase in total allowable costs since the base cost period. The chief advantages of this formula are that (1) all cost increases are taken from Schedule C of the CLC–22 without adjustment and (2) unfamiliar terms such as conversion costs, operating profit and base period gross margin rates are avoided.

The distinguishing characteristic of the formula is that it provides the means whereby prices are controlled on the basis of total permissible revenues for the product line concerned during a fiscal quarter and not on the basis of authorized prices for individual items. While this characteristic was present in the formula set forth in the proposed regulations, that formula made a fundamental distinction between food raw material costs in the base period and the gross margin (revenues less costs) in the base period. This distinction is not employed in the final formula.

The period for application of the "gross margin" rule has been changed from the current month to the current fiscal quarter. However, monthly reports are still required and the Council may take action to prohibit price increases or to reduce prices if the monthly reports indicate that revenues are at a rate which, when projected for the fiscal quarter, indicate that the firm will realize revenues in excess of those permitted. A further change permits the Council to take into account temporary unforeseen changes in product mix in determining whether a firm is in violation of the pricing rules. However, the regulations do not permit a firm to "make up" the revenue overage in the next quarter.

In order to permit effective operation of the new formula, the closest ending date of the base period for food manufacturing activities other than meat manufacturing has been moved back from September 12 to May 11, 1973 (coterminous with the closest ending date for the base period for meat manufacturers). The base period with respect to food manufacturing activities other than meat manufacturing remains any four consecutive fiscal quarters of the eight fiscal quarters permitted. A provision has been added to make it clear that only one base period may be used for food manufacturing activities other than meat manufacturing.

Miscellaneous. — Several technical changes have been made in various parts of the preexisting Phase IV regulations in order to accommodate the inclusion of Subpart Q. Among these changes are (1) an amendment to § 150.201(e) which makes it clear that the loss and low profit rules are available to food firms, and (2) the addition of several food merchandise categories to the Appendix to Subpart K.

In consideration of the foregoing, Title 6, Code of Federal Regulations is amended as set forth below.

(Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14; 38 FR 1489.)

Issued in Washington, D.C., on September 7, 1973.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

A. Part 150 of Title 6 of the Code of Federal Regulations is amended as follows:

1. A new Subpart Q is added as follows:

Subpart Q—Food Industry

Sec.

AUTHORITY.—Economic Stabilization Act of 1970, as amended, Pub. L. 92-210, 85 Stat. 743; Pub. L. 93-28, 87 Stat. 27; E.O. 11695, 38 FR 1473; E.O. 11730, 38 FR 19345; Cost of Living Council Order No. 14; 38 FR 1489.

Subpart Q—Food Industry

§ 150.601 Purpose and scope.

This subpart provides the "Stage B" price rules whereby the food industry completes the transition from Phase III to Phase IV of the Economic Stabilization Program. This subpart supersedes Subparts F and M of Part 130 and Subpart I of Part 140 of this title effective 11:59 p.m., e.s.t., September 9, 1973.

§ 150.602 Applicability.

This subpart applies to all firms engaged in food manufacturing, food service activities, food wholesaling and food retailing.

§ 150.603 Definitions.

For purposes of this subpart—

"Base period" means:

(a) with respect to the slaughtering and processing of livestock or the manufacturing of meat products, any four consecutive fiscal quarters, at the option of the firm concerned, which began after May 25, 1970, and which ended prior to May 11, 1973; and

(b) with respect to all other food manufacturing activities, any four consecutive fiscal quarters, at the option of the firm concerned, of the eight fiscal quarters which ended prior to May 11, 1973. Only one base period may be selected with respect to these activities.

"Effective date of this subpart" means 11:59 p.m., e.s.t., September 9, 1973.

"Food" means (a) items which are produced or manufactured for human or animal ingestion except alcoholic beverages, tobacco products, or drugs, and

(b) other items which are required pursuant to § 150.606(b) to be treated as food for purposes of this subpart.

"Food manufacturing" means the trade or business of preparing, processing, making or fabricating a food item by manual labor or machinery for sale and includes the slaughtering and processing of livestock. It does not include the preparing, processing, making or fabricating of food items when those activities (a) are undertaken by a firm engaged in food wholesaling or food retailing, or both, and (b) are within the scope of or are incidental to that firm's food wholesaling or food retailing activities subject to Subpart K of this part.

"Food raw material" means, in the form in which they are received, raw, semi-processed or processed agricultural and marine products, including crops, livestock, poultry and catch from fresh water and the sea, and other edible products such as flavorings, preservatives and additives, which are incorporated into the food item concerned.

"Food raw material costs" means the dollar amount, calculated in accordance with the customary accounting practice of the firm with respect to the product line concerned, derived from adding the total cost of inventory of food raw material on the first day of the period concerned and the total cost of food raw material purchase, grown or caught during that period, and subtracting from that sum the total cost of food raw material remaining in inventory on the first day after the period concerned. Total cost of food raw material in inventory includes the cost of food raw material in semi-processed goods and finished goods in inventory on the day concerned.

"Food or food raw material units" means, at the option of the firm concerned and calculated in accordance with its customary accounting practices, either:

(a) the total units of food raw material in inventory on the first day of the period concerned, plus the total units of food raw material purchased during the period concerned, less the total units of food raw material remaining in inventory on the first day after the period concerned (input basis); or

(b) the total units of food sold during the period concerned (output basis).

"Meat" means meat as defined in § 130.123 of this title.

"Total sales revenues" means the aggregate revenue from the sale of food.

§ 150.604 Food wholesaling and retailing.

(a) *General rule.*—Except as provided in paragraph (b) of this section, Subpart K of this part applies to the wholesaling and retailing activities of firms subject to this subpart.

(b) Subpart K Modifications—

(1) A pricing entity of a firm engaged in food retailing, which derives 75 percent or more of its annual sales or revenues from retail food sales may, at its option, use as a pricing base period either one of the last two fiscal years which ended prior to February 5, 1973, or the most recent four consecutive fiscal quarters ending before February 5, 1973, and may apply the pricing base period chosen to both its food and nonfood retail activities.

(2) A firm engaged in food retailing may treat as one merchandise category the entire food retailing operation at the pricing entity level.

(3) The general price control rules set forth in § 150.304 including the profit margin limitation, apply to firms engaged in food wholesaling or food retailing, or both, upon the effective date of this subpart without regard to whether that firm increases the price of any item above the adjusted freeze price of that item. No price may be increased until the merchandise pricing plan required by §§ 150.306(a) or 150.310 has been submitted or completed, as the case may be.

§ 150.605 Food service activities.

(a) *General Rule.*—Except as provided in paragraph (b) of this section, Subpart E of this part applies to the food service activities of firms subject to this subpart.

(b) *Subpart E Modifications.*—The price rules applicable to food service activities, including the profit margin limitation, apply upon the effective date of this subpart to a firm engaged in food service activities without regard to whether that firm increases the price of any item above the adjusted freeze price of that item, the base price of that item or any other price authorized under this title.

(c) *Prenotification.*—Section 150.151 does not apply with respect to the food service activities of firms subject to this subpart.

§ 150.606 Food manufacturing: Price rules.

(a) *Purpose and Scope.*—The purpose of this section is to apply to food manufacturing activities, on a product line basis, a gross margin rule similar to that previously applicable only to firms engaged in the slaughtering and processing of livestock or the manufacturing of meat items. Except as provided in paragraph (b) of this section, the gross margin rule is applicable with respect to all food manufacturing activities. Under the gross margin rule, prices are controlled on the basis of total permissible revenues for the product line concerned during a fiscal quarter and not on the basis of authorized prices for individual items. Increases and decreases in food raw material costs (costs which generally fluctuate significantly) can be passed through on a dollar-for-dollar basis without prenotification and without "volatile" pricing authorization. Increases and decreases in costs other than food raw material costs may also be passed through on a dollar-for-dollar basis (subject to prenotification) in accordance with Subparts E, F, G and H of this part as modified by § 150.607.

(b) *Applicability.*—This section applies to the food manufacturing activities of all firms, except that a firm which both derives less than 20 percent of its annual sales or revenues from food manufacturing and less than $50 million of annual sales or revenues from food manufacturing may elect to price with respect to its food manufacturing activities in accordance with this section or in accordance with Subpart E of this part. A firm engaged in food manufacturing which also produces byproducts, coproducts, products, joint products, or waste products of food raw materials which are produced for industrial use or in alcoholic beverages, tobacco products or drugs (such as leather, tallow, industrial oils or malt) shall treat those byproducts as food items for purposes of this section. This section applies on the effective date of this subpart whether or not a firm subject to this section charges a price for any item in excess of the adjusted freeze price for that item.

(c) *Price Rules.*—(1) Except as provided in paragraph (c)(2) of this section and in paragraph (e)(2) of this section, any price may be charged with respect to any item in a product line as long as total sales revenues for that product line for any fiscal quarter ending after the effective date of this section do not exceed the amount derived by (i) multiplying the total sales revenues in the base period for that product line by the ratio that the volume of food or food raw material units for that products line in the fiscal quarter concerned bears to the volume of food or food raw material units for that product line in the base period, and (ii) multiplying the product in paragraph (c)(1)(i) by the net increases in allowable costs since the base cost period

plus 100 percent. This computation is illustrated by the following equation:

$$R_2 = R_1 \times \frac{V_2}{V_1} \times (C + 100\%)$$

Where:

R_2 = Total sales revenues for the fiscal quarter concerned.
R_1 = Total sales revenues during the base period.
V_2 = Volume of food or food raw material units during the fiscal quarter concerned.
V_1 = Volume of food or food raw material units during the base period.
C = Net increases in allowable costs since the base cost period.

(2) (i) Sales revenues for any fiscal quarter may exceed the total sales revenues calculated in accordance with paragraph (c) (1) of this section only if the firm concerned demonstrates, to the satisfaction of the Council, that the excess is justified on the basis of seasonal patterns or is attributable to revenues derived from the sale of exempt items or from allowable prices pursuant to § 150.76. In determining whether a firm is in violation of this paragraph (c), the Council may take into account temporary unforeseen changes in product mix.

(ii) The requirements for prenotification provided in § 150.151 apply with respect to any price increase supported by net allowable increases in costs other than food raw material costs.

(3) A firm subject to this section may not exceed its base period profit margin as defined in § 150.31 whether or not that firm increases the price of any item above the adjusted freeze price of that item, the base price of that item or any other price authorized under this title.

(4) (i) Food raw material purchased and resold without change in form may be excluded in computing the total sales revenue during the base period. Food raw material purchased and resold without change in form shall be excluded in computing food or food raw material units and food raw material costs for any fiscal quarter ending after the effective date of this section.

(ii) The cost of freight and insurance in connection with the purchase of food raw material ("freight-in") may either be included in or excluded from food raw material costs during the base cost period as defined in § 150.607 but the treatment of "freight-in" shall be consistent as between the base cost period and each fiscal quarter ending after the effective date of this section. The cost of freight and insurance in connection with food sales ("freight-out") may either be included in or excluded from total sales revenues during the base period as defined in § 150.603 but the treatment of "freight-out" shall be consistent as between the base period and each fiscal quarter ending after the effective date of this section.

(iii) A firm which uses the futures markets in a nonspeculative manner to hedge against price risks may include as a food raw material cost during the base cost period (as defined in § 150.607) any net loss as a result of nonspeculative hedging activities with respect to the food raw material concerned during the base cost period, and may include as an offset to food raw material costs any net gain as a result of nonspeculative hedging activities with respect to the food raw material concerned during the base cost period. Similarly, any net hedging losses by that firm with respect to food markets during the base period (as defined in § 150.603) may be included as an offset to total sales revenues during the base period and any net hedging gains by that firm with respect to food markets during the base period may be included in total sales revenues during the base period. However, a firm which includes any net loss pursuant to the preceding two sentences shall include as an offset any net gain as a result of nonspeculative hedging activities in accordance with the preceding two sentences. Any net hedging losses with respect to the food raw material concerned during the fiscal quarter concerned may be included as a food raw material cost for the fiscal quarter concerned and any net hedging gains with respect to the food raw material concerned during the fiscal quarter concerned shall be included as an offset to food raw material costs for the fiscal quarter concerned. Any net hedging losses with respect to the food market concerned during the fiscal quarter concerned may be included as a food raw material cost for the fiscal quarter concerned and any net hedging gains with respect to the food market concerned during the fiscal quarter concerned shall be included as an offset to food raw material costs for the fiscal quarter concerned.

(5) For purposes of paragraph (c) of this section, the base period with respect to a new product line shall be the fiscal quarter in which the first sale occurs. The price rules of this section apply with respect to that new product line beginning with the first day after the base period. However, if a firm acquires another firm, the total sales revenues during the base period established by the acquired firm with respect to each of its product lines shall be the total sales revenues during the base period for the acquiring firm for each of those product lines and the rules of paragraph (c) of this section apply with respect to each of those product lines immediately upon acquisition.

(d) *Options and business practices.*—(1) The exercise of the options with regard to § 150.606(b), the determination of the base period, the exclusion of certain food raw materials in the computation of total sales revenues during the base period, and the method of calculating food or food raw material units shall be made as follows:

(i) in the case of a price category I or II firm, the option selected in each case shall be set forth in the initial report submitted to the Council pursuant to paragraph (e) of this section; and

(ii) in the case of a price category III firm, the option selected in each case shall be recorded in a document placed among the firm's records.

No change in the exercise of any of these options may be made without the prior written approval of the Council or the Internal Revenue Service.

(2) Any calculations made pursuant to this section must be reconciled with any change in customary business practices adopted and implemented by the firm.

(e) *Reporting and recordkeeping.*—(1) *Monthly report.*—Each price category I and II firm to which this section applies shall submit monthly reports with information on costs and sales in accordance with forms and instructions issued by the Council. A monthly report shall be submitted within 30 days after the close of each accounting month except the month which concludes a fiscal quarter. The initial report submitted shall include the following information:

(i) A description of the product lines of the firm and related four-digit SIC codes;

(ii) The four consecutive fiscal quarters selected for the base period;

(iii) A statement as to whether certain food raw materials were excluded from the computation of total sales revenue during the base period pursuant to § 150.606(c) (4) (i).

(2) *Action by the Council on monthly report.*—If it appears to the Council, upon examination of a monthly report submitted pursuant to this section, that a firm's revenues with respect to a product line are at a rate that would, when projected for the fiscal quarter, exceed the revenues permitted by this section and the firm fails to demonstrate, to the satisfaction of the Council, that it will not exceed the revenues permitted by this section for that quarter or that any excess will be justified on the basis of seasonal patterns or will be attributable to revenues derived from the sale of exempt items the Council may suspend authority to implement price increases and order price reductions if necessary to assure compliance with the provisions of paragraph (c) of this section. In determining whether a firm is in violation pursuant to paragraph (e) of this section, the Council may take into account temporary unforeseen changes in product mix.

(3) *Quarterly and annual reports.*—Each price category I and II firm to which this section applies shall submit reports with information on costs, sales and profits in accordance with forms and instructions issued by the Council within 45 days after the end of each fiscal quarter or within 90 days after the end of each fiscal year.

(4) *Recordkeeping.*—Each price category III firm to which this section applies shall prepare and maintain at its principal place of business sufficient records to determine compliance with this section.

§ 150.607 Food manufacturing: Other price rules.

(a) *General Rule.*—Except as provided in paragraphs (b) and (c) of this section and in § 150.606, Subparts E, F, G and H of this part apply to the manufacturing activities of firms subject to this section.

(b) *Modifications to Subparts E, F, G, and H for Firms Using § 150.606.*—(1) Prenotification is not required with respect to increases in food raw material costs. Food raw materials may not be used as allowable costs for purposes of prenotification.

(2) The base cost period is the next succeeding fiscal quarter following the base period as defined in § 150.603 in which costs were incurred with respect to the product line concerned. The base cost period with respect to a new product is the fiscal quarter in which the new product concerned was first sold in arms-length trading between unrelated persons.

(3) The rules for determining maximum prices for items in a product line do not apply. The price of an item shall be determined solely in accordance with § 150.606(c).

(4) The price of an item which qualities as a "new product" pursuant to § 150.103, or as a "cusfom product" pursuant to § 150.104, shall be determined solely in accordance with § 150.606(c)

(5) Section 150.76 is inapplicable to the food manufacturing activities of firms subject to this subpart.

(c) *Subpart E Modifications for other firms.*—Subpart E of this Part applies with respect to the food manufacturing activities of firms which elect pursuant to § 150.606(b) to price in accordance with that subpart, except that "adjusted freeze price" means:

(1) With respect to food subject to Subpart I of Part 140,

(i) The highest price lawfully charged for that item prior to the effective date of this subpart, except that temporary special sales, deals and allowances in effect during the freeze base period may be excluded in the computation; and

(ii) In the case of a seasonal item priced in accordance with § 140.13(d)(2) of this chapter, the highest price lawfully charged for that item before the effective date of this subpart, except that when that price is reduced to the nonseasonal price as required by § 140.13(e) of this chapter that reduced price becomes the adjusted freeze price for that item; or

(2) With respect to meat subject to Subpart M of Part 130,

(i) The ceiling price as defined in § 130.123 of this chapter;

(ii) In the case of an imported meat item priced in accordance with § 130.121 (b) of this title, the highest price lawfully charged for that item before the effective date of this subpart;

(iii) In the case of a meat item priced in accordance with § 130.127 or § 130.128 of this chapter, the highest price lawfully charged for that item before the effective date of this subpart; and

(iv) In the case of a meat item priced in accordance with an exception granted pursuant to the provisions of Part 130 of this chapter, the highest price lawfully charged for that item before the effective date of this subpart.

§ 150.608 Regulated milk and milk products.

(a) *Definitions.*—For purposes of this section:

"Regulated milk and milk products" means milk and milk products with respect to which the minimum price is established or the minimum and maximum prices are established by a regulatory agency.

"Regulatory agency" means any commission, board, or other legal body established in any State or the District of Columbia, which has jurisdiction to order increases, or reductions, or both, in the prices charged for fluid milk and milk products.

"Milk and milk products" includes fluid milk (other than raw milk), low-fat milk, nonfat (skim) milk, buttermilk, cream, half-and-half, chocolate milk, and cottage cheese.

"Regulated seller of milk and milk products" means any seller of milk and milk products whose minimum selling prices are fixed by a regulatory agency and includes a firm engaged in processing, distributing, wholesaling, or retailing.

(b) *General rule.*—Notwithstanding any other provision of this part, but subject to paragraph (c) of this section, a regulated seller of milk and milk products may charge any price with respect to any item if that price has been approved as a minimum price by a regulatory agency. A regulated seller of fluid milk and milk products which is a prenotification firm, whose minimum prices for such products to its customers are established by that regulatory agency, may sell milk and milk products at the minimums so established without prenotifying.

(c) *Report by regulatory agency.*—A regulatory agency which establishes minimum prices for sellers of milk and milk products must furnish to the Council at least 15 days before the proposed increases are to be effective—

(1) A statement of the types of price increases subject to its jurisdiction and generally describing the method used for establishing prices;

(2) A certification as to each price increase it approves (in the order granting the increase or in a separate document) of the following:

(i) The former price, the date it was established, the new price, the percentage increase, and the proposed effective date of the new price;

(ii) That the increase is the minimum required to assure a continued, adequate supply of pure and wholesome milk and milk products; and

(iii) That the increases established by the regulatory agency will not result in total sales revenues which exceed the amount permitted under § 150.606(c).

(d) *Industry averages.*—If a price increase by the regulatory agency is premised on cost or other data compiled on the basis of industry averages or samples of the industry which it regulates, compliance with § 150.606(c) may be based on that industry data. However, the Council reserves the right to require the regulatory agency to submit, or to require any regulated seller of milk and milk products to provide, any additional information that the Council considers relevant, including requesting the regulatory agency to obtain from the industry or the same sample on which its increases were predicated, the following information:

(1) For processors—the base period profit margin and the profit margin in a period reflecting the new prices; or

(2) For wholesalers or retailers—the customary initial percentage markup reflected by the allowed price increases; the gross margin realized during the pricing base period; the gross margin realized by the allowed price increases; the profit margin in the base period, and the profit margin in the period reflecting the new prices.

(e) *Effective date of price increases.*—At any time within 10 days after receiving a report under paragraph (c) of this section the Council may take any action provided in paragraph (f) of this section, or it may take no action in which case the price increases permitted by this section may become effective on the date specified in the regulatory agency order.

(f) *Council Actions.*—With respect to any price increase permitted by this section, the Council may—

(1) Require the regulatory agency to furnish additional information concerning the increase;

(2) Delay the effective date of the increase pending further Council action, but not for longer than 15 days after receiving the additional information requested under paragraph (f)(1) of this section;

(3) Suspend all or part of the increase pending further action by the Council or the regulatory agency; or

(4) Approve, reject, limit, rescind, reduce, or modify the increase.

§ 150.609 Marketing cooperatives and market risk-sharing transactions.

(a) A marketing cooperative as defined in § 150.204(b) is subject to the pricing rules in § 150.606 with respect to its food manufacturing activities. For purposes of computing food raw material costs, a marketing cooperative shall use the imputed allowable costs determined in accordance with § 150.204(d).

(b) A firm which is engaged in market risk-sharing transactions as defined in § 150.204(b) with respect to food manufacturing activities, and which is not otherwise a marketing cooperative as defined in § 150.204(b), is subject to the pricing rules in § 150.606 with respect to those transactions. For purposes of computing raw materials costs, that firm shall use the imputed allowable costs determined in accordance with § 150.-204(d).

(c) The limitation prescribed in § 150.204(c)(1) applies upon the effective date of this subpart without regard to whether a price in excess of the base price, adjusted freeze price or other authorized price is charged.

§ 150.1 [Amended]

2. Section 150.1(b) is amended by substituting "September 9, 1973," for "September 11, 1973," in the two places where the latter date appears.

§ 150.201 [Amended]

3. Section 150.201(e) is amended by adding "or Q," after "Notwithstanding Subparts A, E, K,".

§ 150.201 [Amended]

4. Section 150.304(e) is amended by deleting the period and adding the following:

", until 11:59 p.m., e.s.t., September 9, 1973."

§ 150.307 [Deleted]

5. Section 150.307 is deleted.

6. The Appendix to Subpart K is amended by adding the following merchandise categories:

197 Dairy.
198 Delicatessen.
199 Grocery.
200 Meat, fish, and poultry.
201 Produce.
202 General merchandise, nonfood, sold in connection with food retailing.

B. Part 155 of Title 6 of the Code of Federal Regulations is amended in § 155.21(b)(1) to read as follows:

§ 155.21 Purpose and scope.

* * * * *

(b) * * *

(1) Prenotifications and reports filed pursuant to subparts H, K, L, N, P, or Q of part 150;

* * * * *

[FR Doc.73-19364 Filed 9-7-73;3:30 pm]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Lemon Reg. 602]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Shipments

This regulation continues the minimum size requirements currently in effect through September 29, 1973, during the period September 30, 1973, through September 28, 1974. The minimum size requirements for lemons would continue at 1.82 inches in diameter (size 235's in cartons). The requirements are those which have been found to provide consumers with lemons of acceptable size, maturity and juice content.

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

(2) The recommendations of the Lemon Administrative Committee reflect its appraisal of the crop and current and prospective marketing conditions after consideration of factors having a bearing thereon as required by said marketing agreement and order. The committee estimates that the 1973–74 season crop of lemons will be 37,450 carlots. It further estimates that regulated fresh market channels will require about 32 percent of this volume, and the remaining 68 percent will be available for utilization in processing, export, and other outlets. The volume and size composition of the crop is such that ample supplies are available in a broad range of sizes to satisfy demand in regulated channels and in other markets. The committee advises that lemons smaller than 235's have negligible sales opportunity in fresh form, because they are costly to prepare for market and have lower juice yield than larger lemons. The minimum size requirements are designed to assure consumers of adequate supplies of fruit of acceptable sizes, maturity and juice content and to improve returns to growers consistent with the declared policy of the act.

(3) It is hereby found that good cause exists for not postponing the effective date of this section until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553). Shipments of lemons grown in the production area are currently being regulated as to size by the provisions of Lemon Regulation 499, Amendment 1, which, unless continued, will expire on September 29, 1973. The minimum size requirements prescribed by this section are the same as those currently in effect, and to be of maximum benefit in the current season such requirements should be continued in effect during the period September 30, 1973, through September 28, 1974. Notice of rulemaking concerning this section, with an effective period as herein specified, was published in the FEDERAL REGISTER (38 FR 22149) and no objection to either this section or such effective period was received. Compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

§ 910.902 Lemon Regulation 602.

Order.—(a) From September 30, 1973, through September 28, 1974, no handler shall handle any lemons grown in District 1, District 2, or District 3, which are of a size smaller than 1.82 inches in diameter, which shall be the largest measurement at a right angle to a straight line running from the stem to the blossom end of the fruit: *Provided*, That not to exceed 5 percent, by count, of the lemons in any type of container may measure smaller than 1.82 inches in diameter.

(b) As used in this section "handle", "handler", and "District 1", "District 2", and "District 3" each shall have the same meaning as when used in the said amended marketing agreement and order.

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

Dated September 6, 1973, to become effective September 30, 1973.

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

[FR Doc.73-19279 Filed 9-10-73;8:45 am]

PART 930—CHERRIES GROWN IN MICHIGAN, NEW YORK, WISCONSIN, PENNSYLVANIA, OHIO, VIRGINIA, WEST VIRGINIA, AND MARYLAND

Harvest Adjustment and Release Period

This amendment changes the 10-day free and restricted percentage adjustment and reserve pool release period from September 15–25 to November 1–11. The proposal was submitted by the Cherry Administrative Board, established pursuant to Marketing Order No. 930 (7 CFR, Part 930), regulating the handling of cherries grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The board, in proposing such amendment, reported that under the present provision, the time between the completion of the cherry harvest and the date the recommendation must be made for an adjustment or release is insufficient for the compilation and verification of crop data and marketing information. The release date, as contained in the amendment would provide adequate time for such fact gathering and analysis.

Notice was published in the FEDERAL REGISTER issue of August 27, 1973 (38 FR 22897), that the Department was giving consideration to proposed amendment to the rules and regulations (Subpart—Rules and Regulations, 7 CFR, Part 930.101 through 930.161) effective pursuant to the applicable provisions of said Marketing Order No. 930 to establish November 1–11 as the 10-day revision of percentages and release period. The currently provided period is September 15–25. No written data, views, or

arguments were filed with respect to said proposed amendment.

After consideration of all relevant matter presented, including the proposal set forth in the notice, the recommendations and information submitted by the board, and upon other available information, it is hereby found that the amendment, as hereinafter set forth, of said rules and regulations is in accordance with said marketing order and will tend to effectuate the declared policy of the act.

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) It is essential that the new release period be established before the beginning of the currently specified release period so as to provide adequate time for the necessary compilation and analysis of data relating to the cherry supply so that an appropriate recommendation regarding the release of reserve pool cherries may be made; (2) notice was given of the proposed amendment through publicity in the production area and by publication in the August 28, 1973, issue of the FEDERAL REGISTER and no objection to such proposed change was received; and (3) compliance with this amendment will not require of handlers any preparation that cannot be completed by the effective time hereof.

Order.—A new § 930.110 is added to read as follows:

§ 930.110 After harvest adjustment and release period.

The 10-day period provided in § 930.53 paragraphs (a) and (b)(1) for the revision of percentages and release of reserve pool cherries shall be November 1–11, of the fiscal period.

Dated September 7, 1973, to become effective September 12, 1973.

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

[FR Doc.73-19327 Filed 9-10-73;8:45 am]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 214—NONIMMIGRANT CLASSES
PART 238—CONTRACTS WITH TRANSPORTATION LINES

Nonimmigrants Transits

Pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383) and the authority in 8 U.S.C. 1103 and 8 CFR 2.1, amendments, as set forth herein, are made in Parts 214 and 238 of Chapter I of Title 8 of the Code of Federal Regulations.

In Part 214, § 214.2(c)(1) is amended to relieve the restriction that a nonimmigrant applicant for admission under the transit without visa privilege must continue his journey within 8 hours after his arrival in this country. The amendment provides that if there is no scheduled transportation within 8 hours after an applicant's arrival in the United States continuation of his journey thereafter on the first available transport will be satisfactory. The amendment also provides for limited intermediate stops.

Pursuant to section 238(d) of the Immigration and Nationality Act, agreements have been entered into between the Acting Commissioner of Immigration and Naturalization and "JAT-YUGOSLAV AIRLINES" and "POMAIR N.V.," transportation lines operating to ports of the United States, to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. In Part 238, § 238.(b) is, therefore, amended by adding the two specified lines to the listing of signatory transportation lines.

In the light of the foregoing, the following amendments to Chapter I of Title 8, Code of Federal Regulations, are hereby prescribed:

In § 214.2, paragraph (c)(1) is amended to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(c) *Transits*—(1) *Without visas.*—An applicant for admission under the transit without visa privilege must establish that he is admissible under the immigration laws; that he has confirmed and onward reservations to at least the next country beyond the United States, and that he will continue his journey on the same line or a connecting line within 8 hours after his arrival; however, if there is no scheduled transportation within that 8-hour period, continuation of the journey thereafter on the first available transport will be satisfactory. Transfers from the equipment on which an applicant arrives to other equipment of the same or a connecting line shall be limited to 2 in number, with the last transport departing foreign (but not necessarily nonstop foreign), and the total period of waiting time for connecting time for connecting transportation shall not exceed 8 hours except as provided above. Notwithstanding the foregoing, an applicant, if seeking to join a vessel in the United States as a crewman, shall be in possession of a valid "D" visa and a letter from the owner or agent of the vessel he seeks to join, shall proceed directly to the vessel on the first available transportation and upon joining the vessel shall remain aboard at all times until it departs from the United States.

Except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without a visa must be made at one of the following ports of entry: Buffalo, N.Y.; Niagara Falls, N.Y.; Boston, Mass.; New York, N.Y.; Philadelphia, Pa.; Baltimore, Md.; Washington, D.C.; Norfolk, Va.; Atlanta, Ga.; Miami, Fla.; Port Everglades, Fla.; Tampa, Fla..; New Orleans, La.; San Antonio, Tex.; Dallas, Tex.; Houston, Tex.; Brownsville, Tex.; San Diego, Calif.; Los Angeles, Calif.; San Francisco, Calif.; Honolulu, Hawaii; Seattle, Wash.; Portland, Oreg.; Great Falls, Mont.; St. Paul, Minn.; Chicago, Ill.; Detroit, Mich.; Denver, Colo.; Anchorage, Alaska; Fairbanks, Alaska; San Juan, P.R.; Ponce, P.R.; Charlotte Amalie, V.I.; Christiansted, V.I.; Agana, Guam. The privilege of transit without a visa may be authorized only under the conditions that the transportation line, without the prior consent of the Service, will not refund the ticket which was presented to the Service as evidence of the alien's confirmed and onward reservations; that the alien will not apply for extension of temporary stay or for adjustment of status under section 245 of the Act, and that until his departure from the United States responsibility for his continuous actual custody will lie with the transportation line which brought him to the United States unless at the direction of the district director he is in the custody of this Service or other custody approved by the Commissioner.

* * * * *

§ 238.3 [Amended]

The listing of transportation lines in paragraph (b) *Signatory lines* of § 238.3 *Aliens in immediate and continuous transit* is amended by adding the following transportation lines in alphabetical sequence: "JAT-YUGOSLAV AIRLINES" and "POMAIR N.V."

Compliance with the provisions of section 553 of Title 5 of the United States Code (80 Stat. 383) as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the amendment to § 214.2(c)(1) relieves restrictions and the amendment to § 238.3(b) adds transportation lines to the listing.

Effective date.—This order shall become effective on September 11, 1973.

Dated September 6, 1973.

JAMES F. GREENE,
Acting Commissioner.

[FR Doc.73-19251 Filed 9-10-73;8:45 am]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, AND HOG CHOLERA: PROHIBITED AND RESTRICTED IMPORTATIONS

Countries Declared To Be Free of Rinderpest, Foot-and-Mouth Disease and Swine Vesicular Disease

Statement of consideration.—The purpose of these amendments is to add the Trust Territory of the Pacific Islands to the list of countries declared to be free

of rinderpest and foot-and-mouth disease in § 94.1 and to the list of countries considered to be free of swine vesicular disease in § 94.12. These actions will provide for the importation of swine, cattle, sheep, and other ruminants and fresh chilled or frozen meats thereof into the United States without complying with §§ 94.1, 94.12, 94.13, and 94.14 but subject to other applicable provisions of this Part and of Part 92.

Pursuant to section 2 of the act of February 2, 1903, as amended, section 306 of the act of June 17, 1930, as amended, and sections 2, 3, 4, and 11 of the act of July 2, 1962 (19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, 134f), Part 94, Title 9, Code of Federal Regulations, is hereby amended as follows:

1. Section 94.1(a)(2) is amended by adding thereto the name of the Trust Territory of the Pacific Islands after the reference to "Trinidad."

2. Section 94.12(a) is amended by adding thereto the name of the Trust Territory of the Pacific Islands after the reference to "Luxembourg."

(Sec. 306, 46 Stat. 689, as amended; sec. 2, 32 Stat. 792, as amended; secs. 2, 3, 4, and 11, 76 Stat. 129, 130, 132 (19 U.S.C. 1306; 21 U.S.C. 111, 134a, 134b, 134c, 134f); 37 FR 28464, 28477.)

Effective date.—The foregoing amendments shall become effective September 6, 1973.

The amendments relieve certain restrictions presently imposed but no longer deemed necessary to prevent the introduction and dissemination of the contagion of rinderpest, foot-and-mouth disease and swine vesicular disease, and must be made effective immediately to be of maximum benefit to affected persons.

It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 6th day of September 1973.

G. H. WISE,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc.73-19277 Filed 9-10-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airspace Docket No. 73-SW-45]

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

Designation of Transition Area

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to designate a 700-foot transition area at Falfurrias, Tex.

On July 18, 1973, a notice of proposed rulemaking was published in the FEDERAL REGISTER (38 FR 19131) stating the Federal Aviation Administration proposed to designate the Falfurrias, Tex., transition area.

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

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., November 8, 1973, as hereinafter set forth.

In § 71.181 (38 FR 435), the following transition area is added:

FALFURRIAS, TEX.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Brooks County Airport (latitude 27°12'15" N., longitude 98°07'15" W.) and within 3 miles each side of the 163°T bearing from the Brooks County RBN (latitude 27°12'23" N., longitude 98°07'24" W.) extending from the 5-mile radius area to 8 miles southeast of the RBN.

In the notice of proposed rulemaking, the extension of the transition area was erroneously given as the 171°T radial instead of the 163°T. Action is hereby being taken to correct the radial.

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

Issued in Fort Worth, Tex., on August 30, 1973.

A. H. THURBURN,
Acting Director, Southwest Region.

[FR Doc.73-19186 Filed 9-10-73;8:45 am]

[Airspace Docket No. 73-CE-12]

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

Alteration of Transition Area

On page 19414 of the FEDERAL REGISTER dated July 20, 1973, the Federal Aviation Administration published a Notice of Proposed Rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Lincoln, Nebraska.

Interested persons were given 30 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., November 8, 1973.

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

Issued in Kansas City, Mo., on August 31, 1973.

JOHN M. CYROCKI,
Director, Central Region.

In § 71.181 (38 FR 435), the following transition area is amended to read:

LINCOLN, NEBRASKA

That airspace extending from 700 feet above the surface within a 9-mile radius of Lincoln Municipal Airport (latitude 40°50'45" N., longitude 96°45'20" W.); within the area bounded by a line five miles west of and parallel to the Lincoln ILS localizer south course clockwise along a 17-mile arc centered on the Lincoln Municipal Airport to a line 2 miles east of and parallel to the Lincoln VORTAC 015° radial; and within 5 miles west and 9 miles east of the Lincoln ILS localizer south course, extending from the 9 mile radius area to 13 miles south of the OM; that airspace extending upward from 1,200 feet above the surface bounded by a line starting at the intersection of longitude 97°25'00" W., and the south edge of V-138, thence northwest to longitude 97°42'00" W., latitude 41°00'00" N., thence north to latitude 41°05'00" N., and the southeast edge of V-220, thence northeast following the southeast edge of V-220 until intercepting the south edge of V-172, thence east to longitude 96°22'00" W., and the south edge of V-172, thence south to longitude 96°22'00" W., latitude 41°15'00" N., thence along a 35-mile arc from the Lincoln Municipal Airport clockwise to the point of beginning, excluding that portion which overlies the Beatrice, Nebraska, Fremont, Nebraska, Columbus, Nebraska, and Omaha, Nebraska, transition areas.

[FR Doc.73-19189 Filed 9-10-73;8:45 am]

[Airspace Docket No. 73-CE-13]

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

Alteration of Transition Area

On pages 19130 and 19131 of the FEDERAL REGISTER dated July 18, 1973, the Federal Aviation Administration published a notice of proposed rulemaking which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Trenton, Missouri.

Interested persons were given 30 days to submit written comments, suggestions, or objections regarding the proposed amendment.

No objections have been received and the proposed amendment is hereby adopted without change and is set forth below.

This amendment shall be effective 0901 G.m.t., November 8, 1973.

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

Issued in Kansas City, Mo., on August 31, 1973.

JOHN M. CYROCKI,
Director, Central Region.

In § 71.181 (38 FR 435), the following transition area is amended to read:

TRENTON, MISSOURI

That airspace extending upward from 700' above the surface within a 5 mile radius of the Trenton Municipal Airport (latitude 40°05'03" N., longitude 93°35'26" W.); and within 3 miles either side of the 172° bearing from the MHW facility extending from the 5-mile radius to 8 miles south, and 3 miles either side of the 007° bearing from the MHW facility extending from the 5-mile

radius to 8.5 miles north, and that airspace extending upwards from 1200 feet above the surface 5 miles west of and 9.5 miles east of the 007° bearing from the Trenton MHW facility extending to 18.5 miles north of the MHW facility and 5 miles west of and 9.5 miles east of the 172° bearing from the Trenton MHW facility extending to 18.5 miles south of the MHW facility.

[FR Doc.73-19188 Filed 9-10-73;8:45 am]

[Docket No. 9471, Amdt. 91-116]

PART 91—GENERAL OPERATING AND FLIGHT RULES

ATC Transponder Requirements; Correction

Amendment 91-116, issued on May 25, 1973, and published in the FEDERAL REGISTER on June 4, 1973 (38 FR 14672) added several changes, to Part 91 of the Federal Aviation Regulations, affecting the use of ATC transponder equipment in U.S. airspace. One of these changes amended § 91.90(b) to add requirements that become effective after January 1, 1975. However, in reorganizing § 91.90(b)(2)(iii), there was an inadvertant omission of one provision of the regulation that is currently effective, that will remain effective until January 1, 1975, and for which no change was proposed in the Notice or intended in the amendment. The omitted provision stated that the currently effective requirement does not apply to "IFR flights operating to or from a secondary airport located within the terminal control area," or to IFR flights operating to or from an airport outside of the terminal control area "but which is in close proximity to the terminal control area."

Accordingly, § 91.90(b)(2)(iii) is corrected to read as follows:

§ 91.90 Terminal control areas.

* * * * *

(b) *Group II terminal control areas.* * * *

(2) *Equipment requirements.* * * *

(iii) On and before the applicable dates specified in paragraphs (a) and (b)(2) of § 91.24, an operable coded radar beacon transponder having at least a Mode 3/A 64-code capability, replying to Mode 3/A interrogation with the code specified by ATC. On and before those dates, this requirement is not applicable to helicopters operating within the terminal control area, or to VFR aircraft operating within the terminal control area, or to IFR flights operating to or from a secondary airport located within the terminal control area, or to IFR flights operating to or from an airport outside of the terminal control area but which is in close proximity to the terminal control area, when the commonly used transition, approach, or departure procedures to such airport require flight within the terminal control area. After the applicable dates in paragraphs (a) and (b)(2) of § 91.24, that section shall be complied with, notwithstanding the exceptions in this section.

* * * * *

Issued in Washington, D.C., on August 31, 1973.

ALEXANDER P. BUTTERFIELD,
Administrator.

[FR Doc.73-19185 Filed 9-10-73;8:45 am]

SUBCHAPTER F—AIR TRAFFIC AND GENERAL OPERATING RULES

[Reg. Docket No. 13180; Amdt. 95-237]

PART 95—IFR ALTITUDES

Miscellaneous Amendments

The purpose of this amendment to Part 95 of the Federal Aviation Regulations is to make changes in the IFR altitudes at which all aircraft shall be flown over a specified route or portion thereof. These altitudes, when used in conjunction with the current changeover points for the routes or portions thereof, also assure navigational coverage that is adequate and free of frequency interference for that route or portion thereof.

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

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator (24 FR 5662), Part 95 of The Federal Aviation Regulations is amended, effective October 11, 1973 as follows:

1. By amending Subpart C as follows:

§95.191 AMBER FEDERAL AIRWAY 1
is amended to read in part:

FROM	TO	MEA
Pantilla Lake, Alas. LF/RBN	*Farewell, Alas. LF/RBN	10000
*8600—MCA Farewell LF/RBN, E-bound		
Farewell, Alas. LF/RBN	McGrath, Alas. LFR	4000

§95.215 AMBER FEDERAL AIRWAY 15
is amended to read in part:

FROM	TO	MEA
Burwash, Yt. LFR	Northway, Alas. LFR	*#9600
*8600—MOCA		
#For that airspace over U.S. territory		

§95.1001 DIRECT ROUTES—U.S.
is amended to delete:

FROM	TO	MEA
Columbus, Miss. VOR	Hamilton, Ala. VOR	2200

§95.1001 DIRECT ROUTES—U.S.
is amended by adding:

FROM	TO	MEA
Columbus, Miss. VOR *3000—MRA	*Beaverton INT, Ala.	2200
*Beaverton INT, Ala. *3000—MRA	Hamilton, Ala. VOR	2200

Bahama Routes

1 Line is amended to read in part:

Malcolm INT Bk.	Eleuthera, Bk. NDB	*2000
*1300—MOCA		

6 Line is amended to read in part:

FROM	TO	MEA
Eleuthera, Bk. NDB	Malcolm INT, Bk.	*2000
*1300—MOCA		

20 Line is amended to read in part:

FROM	TO	MEA
Eleuthera, Bk. NDB	Malcolm INT, Bk.	*2000
*1300—MOCA		

§95.5000 HIGH ALTITUDE RNAV ROUTES

FROM/TO	TOTAL DISTANCE	CHANGEOVER POINT DISTANCE FROM GEOGRAPHIC LOCATION		TRACK ANGLE	MEA	MAA
J807R is amended to read in part:						
Belle Terre, N.Y. W/P	98.8	49.5	Belle Terre	010/190 to COP	18000	45000
Cherry Plain, N.Y. W/P				009/189 to Cherry Plain		

§95.5500 HIGH ALTITUDE RNAV ROUTES

FROM/TO	TOTAL DISTANCE	CHANGEOVER POINT DISTANCE FROM GEOGRAPHIC LOCATION		TRACK ANGLE	MEA	MAA
J926R is amended to read in part:						
Golden, Colo. W/P	118	56	Golden	234/054 to COP	18000	45000
Redstone, Colo. W/P				232/052 to Redstone		
J988 is amended to read in part:						
Belle Terre, N.Y. W/P	98.8	49.5	Belle Terre	010/190 to COP	18000	45000
Cherry Plain, N.Y. W/P				009/189 to Cherry Plain		

§95.6011 VOR FEDERAL AIRWAY 11 is amended to read in part:

FROM	TO	MEA
Brookley, Ala. VOR *1600—MOCA	Greene County, Miss. VOR	*3000
Mobile, Ala. VOR Via W alter. *1600—MOCA	Green County, Miss. VOR Via W alter.	*2000
Greene County, Miss. VOR *2700—MOCA	Richton INT, Miss.	*2000

§95.6014 VOR FEDERAL AIRWAY 14 is amended to read in part:

FROM	TO	MEA
Billings INT, Mo. Via S alter. *2700—MOCA	Springfield, Mo. VOR Via S alter.	*2500

§95.6020 VOR FEDERAL AIRWAY 20 is amended by adding:

FROM	TO	MEA
U.S. Mexican Border *1500—MOCA	McAllen, Tex. VOR	*2000

§95.6039 VOR FEDERAL AIRWAY 39 is amended to read in part:

FROM	TO	MEA
Myrtle Beach, S.C. VOR *1600—MOCA	Fayetteville, N.C. VOR	*3000 MAA—5000

§95.6063 VOR FEDERAL AIRWAY 63 is amended to read in part:

FROM	TO	MEA
Billings INT, Mo. *2700—MOCA	Springfield, Mo. VOR	*2500

§95.6070 VOR FEDERAL AIRWAY 70 is amended to read in part:

FROM	TO	MEA
Dunbar INT, La. *1400—MOCA	Tickfaw INT, La.	*1600
Tickfaw INT, La. *1400—MOCA	Picayune, Miss. VOR	*1900
Picayune, Miss. VOR *1600—MOCA	Greene County, Miss. VOR	*2500

§95.6071 VOR FEDERAL AIRWAY 71 is amended to read in part:

FROM	TO	MEA
Billings INT, Mo. Via W alter. *2700—MOCA	Springfield, Mo. VOR Via W alter.	*2900

§95.6072 VOR FEDERAL AIRWAY 72 is amended to read in part:

FROM	TO	MEA
Mansfield, Ohio VOR	Akron, Ohio VOR	3000

§95.6093 VOR FEDERAL AIRWAY 93 is amended to read in part:

FROM	TO	MEA
Baltimore, Md. VOR	Jonestown INT, Md.	2500

§95.6097 VOR FEDERAL AIRWAY 97 is amended to read in part:

FROM	TO	MEA
Joliet, Ill. VOR *2100—MOCA	Tiger INT, Ill.	*2500
Tiger INT, Ill. *2200—MOCA	Woodstock INT, Ill.	*2700

§95.6122 VOR FEDERAL AIRWAY 122 is amended to read in part:

FROM	TO	MEA
Forney, Mo. VOR *2600—MOCA	Lenox INT, Mo.	*3000

§95.6143 VOR FEDERAL AIRWAY 143 is amended to read in part:

FROM	TO	MEA
Martinsburg, W.Va. VOR	Lancaster, Pa. VOR	5000

§95.6149 VOR FEDERAL AIRWAY 149 is amended to read in part:

FROM	TO	MEA
Turner INT, Pa.	Allentown, Pa. VOR	5000

§95.6155 VOR FEDERAL AIRWAY 155 is amended to read in part:

FROM	TO	MEA
Blythewood INT, S.C. *1900—MOCA	Chesterfield, S.C. VOR	*2500

§95.6163 VOR FEDERAL AIRWAY 163 is amended by adding:

FROM	TO	MEA
U.S. Mexican Border *1300—MOCA	Brownsville, Tex. VOR	*2000

§95.6199 VOR FEDERAL AIRWAY 199 is amended to read in part:

FROM	TO	MEA
Springfield, Mo. VOR *2800—MOCA	Naples, Mo. VOR	*3000

§95.6209 VOR FEDERAL AIRWAY 209 is amended to read in part:

FROM	TO	MEA
Yazoo INT, Ala. *1800—MOCA	Kosciusko, Miss. VOR	*2000

§95.6218 VOR FEDERAL AIRWAY 218 is amended by adding:

FROM	TO	MEA
Grand Rapids, Minn. VOR *2600—MOCA	Minneapolis, Minn. VOR	*3500

§95.6280 VOR FEDERAL AIRWAY 280 is amended by adding:

FROM	TO	MEA
U.S. Mexican Border *6100—MOCA	El Paso, Tex. VOR	*8000

§95.6359 VOR FEDERAL AIRWAY 359 is added to read:

FROM	TO	MEA
U.S. Mexican Border *2500—MOCA	Laredo, Tex. VOR	*3000

§95.6429 VOR FEDERAL AIRWAY 429 is amended to read in part:

FROM	TO	MEA
Joliet, Ill. VOR *2100—MOCA	Tiger INT, Ill.	*2500
Tiger INT, Ill. *2200—MOCA	Woodstock INT, Ill.	*2700

§95.7011 JET ROUTE NO. 11 is amended by adding:

FROM	TO	MEA	MAA
U.S. Mexican Border	Tucson, Ariz. VORTAC	18000	45000

§95.7013 JET ROUTE NO. 13 is amended to delete:

FROM	TO	MEA	MAA
El Paso, Tex. VORTAC	Truth or Consequences, N.Mex. VOR	18000	45000

§95.7013 JET ROUTE NO. 13 is amended by adding:

FROM	TO	MEA	MAA
U.S. Mexican Border	Truth or Consequences, N.Mex. VORTAC	18000	45000

§95.7022 JET ROUTE NO. 22 is amended by adding:

FROM	TO	MEA	MAA
U.S. Mexican Border	Laredo, Tex. VORTAC	18000	45000

§95.7026 JET ROUTE NO. 26 is amended by adding:

FROM	TO	MEA	MAA
U.S. Mexican Border	El Paso, Tex. VORTAC	18000	45000

§95.7152 JET ROUTE NO. 152 is amended to read in part:

FROM	TO	MEA	MAA
Harrisburg, Pa. VORTAC	Int. 107M rad Harrisburg VORTAC & 066M rad Westminster VORTAC	18000	45000

2. By amending Sub-part D as follows:

§95.8003 VOR FEDERAL AIRWAY CHANGEOVER POINTS

FROM	TO	CHANGEOVER POINT DISTANCE FROM	
V-218 is amended by adding:			
Grand Rapids, Minn. VOR	Minneapolis, Minn. VOR	80	Minneapolis
V-375 is amended by adding:			
Roanoke, Va. VOR	Gordonsville, Va. VOR	48	Roanoke

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

Issued in Washington, D.C. on September 4, 1973.

JAMES M. VINES,
Chief, Aircraft Programs Division.

[FR Doc.73-19212 Filed 9-10-73;8:45 am]

CHAPTER II—CIVIL AERONAUTICS BOARD

[Reg. PR-137, Amdt. 19]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Dismissal of an Application Following Denial of Motion for Expedited Hearing or for Order To Show Cause

In notice of proposed rulemaking PDR-35/ODR-6,[1] the Board proposed to amend Part 302 of the Procedural Regulations (14 CFR, Part 302) to provide for dismissal, without prejudice, of applications filed under section 401 of the Act following denial of a motion for expedited hearing or for an order to show cause with respect to any such application, where the Board finds that the underlying application, or any other section 401 application considered in connection therewith, is not likely to be designated for hearing within three years after its

[1] 38 FR 20266, July 30, 1973 (Docket 25728).

filing, and to further provide for refund of the filing fees for such dismissed applications.[3]

Pursuant to the notice, comments have been filed by United Air Lines, supporting the proposal, and Delta Air Lines, opposing it. Upon consideration, the Board has determined to adopt the rule as proposed. The tentative findings and conclusions set forth in PDR-35/ODR-6 are incorporated herein and made final.

Delta's basic argument is that the Federal Aviation Act requires that the dismissals contemplated by the subject rule may be made only after notice and hearing. However, we find the argument unpersuasive, since dismissals under the subject rule would reflect only an administrative determination that the application is not likely to be reached, rather than an adjudication on the merits of the application. Indeed, the purely administrative nature of the rule is demonstrated by the fact that such dismissals would be without prejudice to refiling of an application and would be accompanied by a refund of the filing fee. Moreover, as explained in the notice, the subject rule merely extends an established administrative practice, Rule 911 already provides for the dismissal of applications that have not been set for hearing within three years after the date of filing (14 CFR 302.911), and Rules 12(d)-(e) provide for dismissal in whole or in part of § 401 applications which are denied consolidation (14 CFR 302.12 (d)-(e)).

Since the rule is procedural and dismissals thereunder will be without prejudice and will be accompanied by a refund of the filing fee, so that the rule imposes no substantial burden on any person, we find that it may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 302 of its Procedural Regulations (14 CFR, Part 302) adopted and effective September 5, 1973, as follows:

Amend § 302.911 by inserting, following paragraph (b), a new paragraph (b-1) to read as follows:

§ 302.911 Dismissal of certain stale applications filed under section 401.

* * * * *

(b-1) *Mandatory dismissal of applications found likely to become stale.*—Following denial of a motion for an expedited hearing or for an order to show cause with respect to an application subject to dismissal, pursuant to the provisions of paragraph (a) of this section, the Board, upon finding that such application, or any other such application which has been considered in connection with the motion, is not likely to be designated for hearing before it becomes stale, pursuant to the provisions of paragraph (b) of this section, shall dismiss the application or applications as to which such finding has been made.

* * * * *

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

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc. 73-19259 Filed 9-10-73;8:45 am]

[3] Issued concurrently with this rule is OR-78, amending Part 389 to provide for refund of filing fees.

[Reg. OR-78, Amdt. 38]

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

Refund of Fee Following Dismissal of Application After Denial of Motion for Expedited Hearing or for Order To Show Cause

By Procedural Regulation PR-137, issued contemporaneously with this rule, Part 302 has been amended to provide for dismissal, without prejudice, of certain applications under section 401 of the Act following denial of a motion for an expedited hearing or for an order to show cause with respect to any such application. The amendment herein extends to such dismissals the provisions in Part 389 allowing refund of filing fees upon dismissal of section 401 applications in specified circumstances.

Since this regulation is a rule of agency organization and relieves a burden, the rule may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 389 of its Organization Regulations (14 CFR, Part 389) adopted and effective September 5, 1973, as follows:

Amend § 389.25(a)(1) to read as follows:

§ 389.25 Schedule of filing and license fees.

(a) *Certificates of public convenience and necessity.*—(1) The filing fee for an application, under section 401 of the Act, (i) for a certificate of public convenience and necessity to engage in air transportation, or (ii) to amend, modify, renew, or transfer a certificate or to abandon a route or part thereof, is $200. The fee will be refunded, on request, if the application is withdrawn prior to hearing, is dismissed under the stale-application rules of paragraphs (b) or (b-1) of § 302.911 of this chapter, is dismissed pursuant to the denial of consolidation rule of § 302.12(e) of this chapter, or is otherwise dismissed by the Chief Administrative Law Judge prior to hearing under the authority delegated to him in § 385.10(b) of this chapter.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; (49 U.S.C. 1324), and Title V of the Independent Offices Appropriation Act of 1952, 65 Stat. 290; (31 U.S.C. 483a).)

By the Civil Aeronautics Board.

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73-19258 Filed 9-10-73;8:45 am]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Hexylcaine Hydrochloride Injection, Veterinary

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (8-018V) filed by Merck Sharp & Dohme Research Laboratories, Div. of Merck & Co., Inc., Rahway, N.J. 07065, proposing revised labeling for the safe and effective use of hexylcaine hydrochloride injection, veterinary for use as an anesthetic in mature cattle, in horses, and in dogs. The supplemental application is approved.

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

§ 135b.90 Hexylcaine hydrochloride injection, veterinary.

(a) *Specifications.*—Hexylcaine hydrochloride injection, veterinary contains 1 percent or 5 percent hexylcaine hydrochloride in a sterile aqueous solution.

(b) *Sponsor.*—See code No. 023 in § 135.501(c) of this chapter.

(c) *Conditions of use.*—(1) The drug is used as a long-lasting anesthetic for epidural anesthesia of mature cattle, of horses, and of dogs; for infiltration anethesia (field blocking) of cattle, of horses, and of dogs; and for nerve block anesthesia of cattle and of horses.

(2) The drug is administered by injection. For epidural anesthesia, it is administered to mature cattle at a dosage level of 0.2 to 0.6 milligram per pound of body weight to effect, to horses at a dosage level of 0.2 to 0.4 milligram per pound of body weight to effect, and to dogs at a dosage level of 0.5 to 1 milligram per pound of body weight to effect. For infiltration anesthesia (field blocking) and for nerve block anesthesia, either the 1 percent solution or a 2 percent solution prepared from the 5 percent solution is administered to effect.

(3) Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date.—This order shall be effective on September 11, 1973.

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

Dated August 31, 1973.

FRED J. KINGMA,
Acting Director, Bureau of Veterinary Medicine.

[FR Doc.73-19213 Filed 9-10-73;8:45 am]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT-FEDERAL HOUSING COMMISSIONER [FEDERAL HOUSING ADMINISTRATION]

[Docket No. R-73-234]

INTEREST RATES

Notice of Increase; Correction

Amendments to Chapter II were published at 38 FR 22891 on August 27, 1973, increasing the maximum rate of interest which may be charged on a mortgage insured by this Department from 7 percent to 7¾ percent.

In these amendments, on page 22892 of the FEDERAL REGISTER, reference was made to Parts 1000 and 1100. However, these Parts have been superseded by Parts 205 and 244.

Accordingly, the Part numbers for "Mortgage Insurance for Land Development" and "Mortgage Insurance for Group Practice Facilities" are changed to Part 205 and 244 respectively, and the section numbers for "Maximum interest rate" for each of these parts is changed to §§ 205.50 and 244.45 respectively.

SHELDON B. LUBAR,
Assistant Secretary-Commissioner for Housing Production and Mortgage Credit.

[FR Doc.73-19240 Filed 9-10-73;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of the Virgin Islands Plan

Background.—Part 1902 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) whereby the several States as defined in the Act (29 U.S.C. 652(7)) may submit for approval, plans to assume responsibilities for the development and enforcement of occupational safety and health standards.

On November 28, 1972, the Virgin Islands submitted a comprehensive developmental occupational safety and health plan in accordance with these procedures and on March 5, 1973, the plan was formally submitted to the Assistant Secretary. On March 20, 1973, a notice was published in the FEDERAL REGISTER (38 FR 7369) concerning the submission of the plan and the fact that the question of its approval was in issue before the Assistant Secretary.

The plan involves the enactment and implementation of legislation in the Virgin Islands to effectuate a program in that territory which will in most respects be patterned after the one administered by the Occupational Safety and Health Administration of the United States Department of Labor in accordance with the above-mentioned Act. The new program will be administered by the Virgin Islands Department of Labor. The principal distinctions between the Federal and the proposed territorial program are that:

(1) Administrative review of proposed penalties in the Virgin Islands will not be by an independent commission. Rather, they will be reviewed by the agency with overall responsibility for the administration of the program. This method of enforcement has been approved in the past (see the New Jersey decision, January 26, 1973; 38 FR 2426);

(2) In addition to employers who are held responsible for safety and health violations under the Federal program, owners, lessors, agents and managers who control premises used as places of employment in the Virgin Islands will also be subject to the penalties provided under this program. The funding of this program component will, however, be subject to the limitations discussed in the New Jersey decision, supra. That is, it will be necessary to determine in considering any grant application under section 23(g) of the Federal Act what portion of this program component substantially relates to employees and their places of employment in issues covered by the Federal standards because the Federal share of the funding of the State program will have to be based on an amount not exceeding the cost of this base. In addition, other sources of financing would operate to reduce the Federal share; and

(3) The Virgin Islands program will not extend to certain issues of occupational health and environmental control (Subpart G of 29 CFR, Part 1910 and Subpart D of 29 CFR, Part 1926) and Safety and Health for Maritime Employment (29 CFR 1910.13–16 and 29 CFR, Parts 1915–1918). See 29 CFR 1902.2(c) which authorizes these limitations on the scope of the plan.

Interested persons were afforded thirty days by the notice published on March 20, 1973, to submit written comments concerning the plan. Further, interested persons were afforded an opportunity to request an informal hearing with respect to the plan or any part thereof, upon the basis of substantial objections to the contents of the plan. No submissions or requests were received in response to the notice.

Since the Virgin Islands Plan was submitted the following significant actions with respect thereto have occurred:

(1) The territorial legislature has enacted the organic law forming an appropriate basis for the implementation of the proposed program;

(2) An amendment to the law has been introduced to correct an oversight which established a maximum fine of $1,000 rather than $10,000 for willful violations;

(3) A revised updated time table for implementation of the plan has been submitted for inclusion in the plan; and

(4) Preparation of draft regulations has been commenced. These regulations will remedy a deficiency with respect to the extent to which advance notice of inspections may be authorized (see Page SP 12 of the plan) by limiting such notice to those instances authorized under the Federal law and regulations (29 CFR 1903.6) in accordance with 29 CFR 1902.3(f).

Decision.—The Virgin Islands plan is hereby approved after careful consideration under section 18 of the Act and 29 CFR, Part 1902.

This decision incorporates requirements of the Act and implementing regulations applicable to State plans generally. It also incorporates intentions as to continued Federal enforcement of Federal standards in areas covered by the Plan and the State's developmental schedule as set out in § 1952.253 below.

Pursuant to § 1902.20(b)(iii) of Title 29, Code of Federal Regulations, the present level of Federal enforcement in the Virgin Islands will not be diminished before the legislation beomes effective on October 1, 1973, and the Standards become effective on January 1, 1974. Among other things, the U.S. Department of Labor will continue to investigate catastrophes and fatalities, investigate valid complaints under section 8(f), continue its Target Industry and Target Health Hazard programs, and inspect a cross section of all industries on a random basis. An evaluation of the State plan, as implemented, will be made on a continuing basis to assess the appropriate level of Federal enforcement activity. Federal enforcement authority will continue to be exercised after the above dates to the degree necessary or appropriate to assure adequate occupational safety and health protection to employees in the Virigin Islands.

At no time will Federal responsibilities with respect to the issues excluded from the plan (see § 1952.250(a)) be affected as a result of this approval.

Rather, the Occupational Safety and Health Administration will continue to administer and enforce these issues as if there were no State program operating within the Virgin Islands.

Part 1952 is hereby amended by adding thereto a new Subpart S reading as follows:

Subpart S—The Virgin Islands

AUTHORITY.—Sec. 18, Pub. L. 91-956, 84 Stat. (29 U.S.C. 667).

Subpart S—The Virgin Islands

§ 1952.250 Description of the Plan.

(a) The Virgin Islands Occupational Safety and Health program will be administered and enforced by the Virgin Islands Department of Labor (hereafter called the agency). It will cover all activities of employees and places of private and public employment except those subject to Subpart G of Part 1910 and Subpart D of Part 1926 of this chapter relating to occupational health and en-

vironmental control and §§ 1910.13–1910.16 and Parts 1915–1918 of this chapter relating to maritime employment.

(b)(1) The Plan requires employers of one of more employees to furnish them employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm, and to comply with all occupational safety and health standards promulgated or issued by the agency. The standards adopted by the United States Department of Labor covering issues within the scope of the plan will be adopted by the agency. The Plan also directs employees to comply with all occupational safety and health standards and regulations that are applicable to their own actions and conduct.

(2) The Plan also requires each owner, lessor, agent or manager of any premises used in whole or in part as a place of employment to comply with safety and health standards and regulations established under the program.

(c) The Plan includes procedures for providing prompt and effective standards for the protection of employees against new and unforeseen hazards and for furnishing information to employees on hazards, precautions, symptoms, and emergency treatment; and procedures for variances and the protection of employees from hazards. It provides employer and employee representatives an opportunity to accompany inspectors and call attention to possible violations, before, during, and after inspections, protection of employees against discharge or discrimination in terms and conditions of employment, notice to employees or their representatives when no compliance action is taken upon complaints, including informal review, notice to employees of their protections and obligations, adequate safeguards to protect trade secrets, prompt notice to employers and employees of alleged violations of standards and abatement requirements, effective remedies against employers and owners, and the right to review alleged violations, abatement periods, and proposed penalties with opportunity for employee participation in the review proceedings; procedures for prompt restraint or elimination of imminent danger conditions, and procedures for inspection in response to complaints.

(d)(1) The Plan includes a legal opinion that it will meet the requirements of the Occupational Safety and Health Act of 1970, and is consistent with the laws of the Virgin Islands.

(2) A merit system of personnel administration will be used.

(3) A program of education, training, and consultation for employers and employees will be developed.

(4) The Plan is supplemented by the inclusion of implementing legislation (Virgin Islands Act No. 3421) and bill number 6003 to correct section 14(e) thereof and a revised implementation time table.

§ 1952.251 Where the Plan may be inspected.

A copy of the plan may be inspected and copied during normal business hours at the following locations: United States Department of Labor, Office of Federal and State Operations, Occupational Safety and Health Administration, Room 305, 400 First Street NW., Washington, D.C. 20210; Regional Office, Occupational Safety and Health Administration, Room 3445, 1515 Broadway, New York, New York 10036; Department of Labor, Government of the Virgin Islands, Dronigan's Gade, Charlotte Amalie, St. Thomas, Virgin Islands 00801; and Department of Labor, Government of the Virgin Islands, Hospital Street, Christiansted, St. Croix, Virgin Islands 00820.

§ 1952.252 Level of Federal enforcement.

Pursuant to § 1902.20(b)(iii) of this chapter, the present level of Federal enforcement in the Virgin Islands will not be diminished until the standards take effect. Among other things, the U.S. Department of Labor will continue to investigate catastrophes and fatalities, investigate valid complaints under section 8(f) of the Occupational Safety and Health Act of 1970, continue its target industry and target health hazard programs, and inspect a cross-section of all industries on a random basis. Thereafter, Federal enforcement will be carried out to the degree necessary to assure adequate job safety and health protection.

§ 1952.253 Developmental schedule.

The following is a summary of the major developmental steps provided by the plan:

(a) Commencement of recruitment and staff training	September 10, 1973.
(b) Effective date of implementing legislation	October 1, 1973.
(c) Procedural and interpretative, regulations and standards to become effective	January 1, 1974.
(d) Enforcement program to be operational	January 1, 1974.
(e) Public employee program to be operational	July 15, 1974.
(f) Program to be fully implemented	July 1, 1975.

Signed at Washington, D.C., this 31st day of August 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-19281 Filed 9-10-73;8:45 am]

Title 31—Money and Finance: Treasury

CHAPTER I—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 91—REGULATIONS GOVERNING CONDUCT IN OR ON THE BUREAU OF THE MINT BUILDINGS AND GROUNDS

Miscellaneous Amendments

The Bureau of the Mint has determined to amend its regulations governing conduct in or on Mint buildings and grounds to reflect the transfer of the Old U.S. Mint Building, 88 Fifth Street, San Francisco, California, to the Treasury Department from the General Services Administration on April 5, 1972; and the transfer of the United States Mint, 16th and Spring Garden Streets, Philadelphia, Pennsylvania, to the General Services Administration on November 2, 1970, as surplus property.

The Old San Francisco Mint was deactivated in 1937 and some of its operations moved to 155 Hermann Street in San Francisco. It has recently been restored as a national landmark building for further use by the Mint. The Mint's numismatic services and data processing have been transferred from the Mint annex building in San Francisco to the Old Mint Building and the Bureau of the Mint is developing an educational and historical museum open to the public. It is expected that official entertainment may take place in connection with museum activities, and since existing regulations prohibit the consumption of alcoholic beverages on Mint property, § 91.8 is being amended to permit the Director to grant a written permit for appropriate official occasions. This is consistent with the General Services Administration building regulations, 41 CFR 101–19–306, concerning buildings under the jurisdiction of that agency.

Accordingly, Part 91 is amended by deleting the citation of authority following the table of contents, since this merely summarizes material contained in § 91.1.

Part 91 is further amended by amending § 91.1 to read as follows:

§ 91.1 Authority.

The regulations in this part governing conduct in and on the Bureau of the Mint buildings and grounds located as follows: U.S. Mint, Colfax, and Delaware Streets, Denver, Colorado; U.S. Bullion Depository, Fort Knox, Kentucky; U.S. Assay Office, 32 Old Slip New York, New York; U.S. Mint, 5th and Arch Streets, Philadelphia, Pennsylvania; U.S. Assay Office, 155 Hermann Street, and the Old U.S. Mint Building, 88 Fifth Street, San Francisco, California; and U.S. Bullion Depository, West Point, New York; are promulgated pursuant to the authority vested in the Secretary of the Treasury, including 5 U.S.C. 301, and that vested in him by delegation from the Administrator of General Services, 38 FR 20650 (1973), and in accordance with the authority vested in the Director of the Mint by Treasury Department Order No. 177–25 Revision 2), dated August 8, 1973, 38 FR 21947 (1973).

Part 91 is further amended by amending § 91.2 to read as follows:

§ 91.2 Applicability.

The regulations in this part apply to the buildings and grounds of the Bureau of the Mint located as follows: U.S. Mint, Colfax and Delaware Streets, Denver, Colorado; U.S. Bullion Depository, Fort Knox, Kentucky; U.S. Assay Office, 32 Old Slip, New York, New York; U.S.

Mint, Fifth and Arch Streets, Philadelphia, Pennsylvania; U.S. Assay Office, 155 Hermann Street, and the Old U.S. Mint Building, 88 Fifth Street, San Francisco, California; and U.S. Bullion Depository, West Point, New York; and to all persons entering in or on such property. Unless otherwise stated herein, the Bureau of the Mint buildings and grounds shall be referred to in these regulations as the "property".

Part 91 is further amended by amending § 91.8 to read as follows:

§ 91.8 Alcoholic beverages, narcotics, hallucinogenic and dangerous drugs.

Entering or being on the property, or operating a motor vehicle thereon by a person under the influence of alcoholic beverages, narcotics, hallucinogenic or dangerous drugs is prohibited. The use of any narcotic, hallucinogenic or dangerous drug in or on the property is prohibited. The use of alcoholic beverages in or on the property is prohibited except on occasions and on property upon which the Director of the Mint has for appropriate official uses granted and exemption permit in writing.

The Mint finds that notice and public procedure are not necessary under 5 U.S.C. 553(a), since the regulations pertian to the management of public property.

Effective date.—These amendments shall become effective on September 11, 1973.

Dated September 6, 1973.

[SEAL] MARY BROOKS,
Director of the Mint.

[FR Doc.73-19272 Filed 9-10-73;8:45 am]

CHAPTER VI—BUREAU OF ENGRAVING AND PRINTING, DEPARTMENT OF THE TREASURY

PART 605—REGULATIONS GOVERNING CONDUCT ON BUREAU OF ENGRAVING AND PRINTING BUILDING AND GROUNDS AND BUREAU OF ENGRAVING AND PRINTING ANNEX BUILDING AND GROUNDS

Miscellaneous Amendments

These amendments delete from Part 605 the reference to obsolete delegation orders of the Administrator of General Services and the Secretary of the Treasury and insert in lieu thereof references to recently revised delegation orders. In accordance with 5 U.S.C. 553(a), notice and public procedure thereon are found to be impractical, unnecessary and not required since the amendments pertain to the management of public property.

1. The authority paragraph following the table of contents is amended by deleting "35 FR 14426" and inserting in lieu thereof "38 FR 20650"; and by deleting "(Revision 1) 35 FR 15312" and inserting in lieu thereof "(Revision 2) 38 inserting in lieu thereof "(Revision 2) 38 FR 21947". As amended, the paragraph reads as follows:

AUTHORITY.—The provisions of this Part 605 issued under 5 U.S.C. 301; Delegation, Administrator, General Services, 38 FR 20650, Treasury Department Order 177-25 (Revision 2), 38 FR 21947.

2. Section 605.1 is amended by deleting "35 FR 14426 (1970)" and inserting in lieu thereof "38 FR 20605 (1973)" and by deleting "(Revision 1) 35 FR 15312 (1970)" and inserting in lieu thereof "(Revision 2) 38 FR 21947 (1973)". As amended, § 605.1 reads as follows:

§ 605.1 Authority.

The regulations in this part governing conduct in and on the Bureau of Engraving and Printing Building and grounds and the Bureau of Engraving and Printing Annex Building and grounds located in Washington, D.C. at 14th and C Streets SW., are promulgated pursuant to the authority vested in the Secretary of the Treasury, including 5 U.S.C. 301 and that vested in him by delegation from the Administrator of General Services, 38 FR 20650 (1973), and in accordance with the authority vested in the Director of the Bureau of Engraving and Printing by Treasury Department Order No. 177-25 (Revision 2), dated August 8, 1973, 38 FR 21947 (1973).

Effective date.—This amendment shall become effective on September 11, 1973.

Dated September 6, 1973.

[SEAL] JAMES A. CONLON,
Director, Bureau of Engraving and Printing.

[FR Doc.73-19273 Filed 9-10-73;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CCGD3-1-R2]

PART 127—SECURITY ZONES

Gravesend Bay, New York; Termination

This amendment terminates the security zones in the waters of Gravesend Bay, New York, surrounding the wrecked vessels Exxon Brussels and Sea Witch. The security zones are no longer needed because the vessels have been removed to a shipyard and no longer pose a navigational hazard to other vessels. Prior notice of the establishment of the security zones was given in the FEDERAL REGISTER of June 8, 1973, on page 15049.

Accordingly, Part 127 of Chapter I of Title 33 of the Code of Federal Regulations is amended by revoking § 127.302.

(46 Stat. 220, as amended, (1, 63 Stat. 503), 6(b), 80 Stat. 937; (50 U.S.C. 191, 49 U.S.C. 1655(b)); E.O. 10173, E.O. 10277, E.O. 10352, E.O. 11249, 3 CFR, 1949-1953 Comp. 356, 778, 873, 3 CFR, 1964-1965 Comp. 349, 33 CFR Part 6, 49 CFR 1.46(b).)

Effective date.—This amendment is effective on July 11, 1973.

Dated July 11, 1973.

FRANK OLIVER,
Captain, U.S. Coast Guard, Captain of the Port of New York.

[FR Doc.73-19228 Filed 9-10-73;8:45 am]

Title 39—Postal Service

CHAPTER III—POSTAL RATE COMMISSION

[Docket No. RM74-1; Order 37]

PART 3000—STANDARDS OF CONDUCT

PART 3001—RULES OF PRACTICE AND PROCEDURE

Ex Parte Communications

The Postal Rate Commission has decided to amend its rules governing ex parte communications,[1] so as to authorize certain communications in hearings held under the Postal Reorganization Act, 39 U.S.C. 3624 and 3661(c), specifically communications on procedural matters between the Officer of the Commission (or his staff) who has been designated to represent the interests of the general public on the one hand, and other participants in a proceeding, on the other hand.

The Commission's rules now contain two sections governing ex parte communications. Both sections prohibit communications to all Commission employees, including the Officer who has been designated, pursuant to the Postal Reorganization Act, 39 U.S.C. 3624(a) to represent the interests of the general public in certain proceedings before the Commission. The Assistant General Counsel, Litigation (AGCL), is the staff member so designated in all cases to date.

Commission experience has demonstrated that in certain hearing situations a prohibition against communications concerning purely procedural matters with the AGCL serves no useful purpose and results in undue complications and needless delay in the Commission's formal hearing processes.

Under the hearing procedures followed by the Commission, the parties to a proceeding are encouraged to engage in extensive pretrial development of the evidence by active utilization of available discovery processes, requests for interrogatories, and informal requests for clarification of exhibit material. The utilization of these procedures is essential to expedite the hearing process by avoiding the extensive cross-examination and delay which would result if clarification of exhibits was accomplished through formal hearing procedures.

Our experience establishes that full utilization of our pretrial procedures can best be accomplished if there is substantial informal contact between the parties; such contacts are needed for discussion of the mechanics of pretrial procedures (e.g., how much time is required to respond to a discovery request) and for the implementation of these procedures (e.g., to discuss the nature of available information, or to seek clarification of exhibits). These informal contacts frequently involve only two parties.

The AGCL is an indispensable participant during the pretrial stage. The present ex parte rules, however, hamper his effective participation by prohibiting any

[1] 39 CFR 3000.735-501 and 3001.7.

discussions between the AGCL and another participant, unless all other participants have been given actual notice and an opportunity to attend the discussions. These requirements have been cumbersome, have led to delay, and in some situations, have operated to deter the holding of otherwise desirable informal exchanges between counsel on matters of procedure.

Given these circumstances, we have concluded that when procedural matters are involved, the ex parte prohibition on AGCL does not serve a useful purpose. By their nature, procedural matters are preliminary and any decisions reached by counsel concerning them will be reflected only in the mechanical presentation of evidence for the record, but not in the evidence itself. And, it is the evidence of record, publicly available to all parties, which forms the basis for AGCL and other participants to take positions on the substantive issues of the proceeding.[3]

Moreover, so far as we are aware only one other regulatory agency, the Federal Power Commission, imposes a prohibition on ex parte communications to a staff counsel who is participating in hearing procedures. The Federal Power Commission's prohibition, however, does not extend to communications to a staff counsel relating to matters of procedure only.[4]

The Commission's ex parte rules (§ 3000.735–501) were promulgated for the Commission by the Civil Service Commission, pursuant to Executive Order 11570. We have concluded, for the reasons expressed above, that the limited amendment here proposed is consistent with that Order, including the Order's requirement that the regulations provide for "strict control" of ex parte contacts with the Commission and its employees.[5]

As a precautionary measure we will require the AGCL to maintain records of any meetings held under the exemption proposed herein. This requirement is consistent with Executive Order 11570 which indicates that the control of ex parte contacts "shall include but not be limited to the maintenance of public records of such contacts which fully identify the individual involved and the nature of the public matter discussed."

Finally, the Commission finds that the amendment herein ordered involves matters of agency organization, procedure and practice, and that, accordingly, the notice requirements of the Administrative Procedure Act, 5 U.S.C. 553, do not apply. We further find that good cause exists for making these amendments effective immediately.

Accordingly, pursuant to section 3603 of the Postal Reorganization Act, 39 U.S.C. 3603, it is ordered that Parts 3000 and 3001 of the Commission's Regulations (39 CFR Parts 3000, 3001) are hereby amended, as follows, said amendment to become effective on September 11, 1973.

1. Section 3000.75 is amended to read as follows:

§ 3000.735–501 Ex parte communications prohibited.

(a) An employee shall not, either in an official or unofficial capacity, participate in any ex parte communication—either oral or written—with any person regarding (1) a particular matter (substantive or procedural) at issue in contested proceedings before the Commission or (2) the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission. A particular matter is at issue in contested proceedings before the Commission when it is a subject of controversy in a hearing held under 39 U.S.C. 3624 or 3661(c). However, this section does not prohibit participation in off-the-record proceedings conducted under regulations adopted by the Commission for hearings held under 39 U.S.C. 3624 or 3661(c).

(b) The prohibitions of this section do not apply to a communication between a participant or a limited participator and the Officer of the Commission designated to represent the interest of the general public (or his staff, or the technical staff designated to supported him), if such communication relates to matters of procedure only, including matters arising in the course of requests for interrogatories or discovery and informal requests for clarification of evidentiary material. Said Officer shall file with the Commission a monthly report briefly describing any ex parte communication received pursuant to this exception, and this report, which shall be a public record of the Commission, shall identify the individuals involved and the nature of the subject matter discussed.

2. Section 3000.735–502 is amended to add the following new sentence at the end of the section:

§ 3000.735–502 Public record of ex parte communications.

* * * This section does not apply to ex parte communications under paragraph 3000.735–501(b).

* * * * *

3. Section 3001.7(a) of the Commission regulations is amended to read as follows:

§ 3001.7 Ex parte communications.

(a) *Prohibition.*—To avoid the possibility or appearance of impropriety or of prejudice to the public interest and persons involved in proceedings pending before the Commission, no person who is a party to any on-the-record proceeding or who is granted limited participation in accordance with § 3001.19(a) or his counsel, agent, or other person acting on his behalf, nor any interceder, shall volunteer or submit to any member of the Commission or member of his personal staff, to the presiding officer, or to any employee of the Commission, any ex parte off-the-record communication regarding any matter, either substantive or procedural, which is at issue, or any substantive matter which is likely to be at issue in the on-the-record proceeding, except as authorized by law; and no Commissioner, member of his personal staff, presiding officer, or employee of the Commission, shall request or entertain any such communication. For the purposes of this section, the term "on-the-record proceeding" means a proceeding noticed pursuant to § 3001.17. The prohibitions of this paragraph shall apply from the date of issuance of such notice. The prohibitions of this section do not apply to a communication between a participant or a limited participator and the Officer of the Commission designated to represent the interest of the general public (or his staff or the technical staff designated to support him), if such communication relates to matters of procedure only, including matters arising in the course of requests for interrogatories or discovery and informal requests for clarification of evidentiary material. Said Officer shall file with the Commission a monthly report briefly describing any ex parte communication received pursuant to this exception, and this report, which shal lbe a public record of the Commission, shall identify the individuals involved and the nature of the subject matter discussed.

* * * * *

These regulations were approved by the United States Civil Service Commission August 23, 1973, and are effective on September 11, 1973.

(Sec. 3603 Postal Reorganization Act, 84 Stat 759 (39 U.S.C. 3603; 5 U.S.C. 552, 553), 80 Stat. 383, 384; Executive Order 11570, 35 FR 18183.)

By the Commission.

JOSEPH A. FISHER,
Secretary.

[FR Doc.73-19214 Filed 9-10-73;8:45 am]

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[3] Procedural matters of the type discussed in the text, constitute the main procedural matters on which ex parte meetings are likely to be held. However, our proposed rule is intended to apply to other procedural matters as well. By definition, procedural matters do not extend to the ultimate substantive issues in a case, and we see no basis for concluding that ex parte discussions on these matters would prejudice the public interest or the interest of other participants.

[4] See Order No. 479, —— FPC ——, issued April 6, 1973. The prohibition imposed by other agencies are generally limited to communications to employees involved in the decisional process of the agency. *See*, e.g., 47 CFR 1.1201 et seq. (FCC); 17 CFR 200.110 et seq. (SEC); 46 CFR 502.170 (FMC).

[5] In our Decision in Docket RM73–2, 38 FR 4324, issued February 13, 1973, we concluded that a proposed amendment of the Standards of Conduct to exempt the Litigation Division would be inconsistent with Executive Order No. 11570. Our Decision in that proceeding was directed to a much broader proposal than the amendment adopted herein which, in our judgment, is entirely consistent with our prior Decision. To the extent the views expressed herein go beyond those expressed in Commission testimony before the Subcommittee on Postal Service of the House Committee on Post Office and Civil Service (Hearings on Status and Performance of the United States Postal Service, June 28, 1972), our present views are based on additional study of the problem, and on our experience in the current mail classification case, Docket MC73–1.

Title 45—Public Welfare

CHAPTER IX—ADMINISTRATION ON AGING, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 909—NUTRITION PROGRAM FOR THE ELDERLY

Postponement of Application of Certain Standards and Organization Changes

These amendments to the regulation for the Nutrition Program for the Elderly allow postponement of the application of certain standards for nutrition projects, and make organizational changes to reflect statutory changes and reorganization within the Department of Health, Education, and Welfare.

The first amendment set out below permits States, under certain conditions, to fund nutrition projects for the elderly, for periods of up to 90 days, even though the projects do not comply fully with certain requirements previously prescribed in regulations for such projects.

The amendment is designed to encourage the prompt initiation of nutrition projects and the start of their essential work of serving nutritious meals to the elderly. The requirements that may be postponed deal with staffing of the projects, and supporting social services. These requirements were prescribed by the Commissioner to make nutrition projects as comprehensive as possible, in order to meet a range of pressing needs of the elderly. They are still considered important to an effective nutrition program.

However, the central purpose of the program is the provision of meals that meet ⅓ of the current Recommended Dietary Allowances, in congregate settings that reduce social isolation, and in view of the current pressing needs of some of the elderly for nutritional services, it seems appropriate to provide meals at once, even if all related social services are not fully available. On this basis the amendment provides a phase-in period, on a project-by-project basis, at the option of the State agency, for completing staffing, and provision of the full range of nutrition-related supporting social services. States are expected to take steps to assure that any project which is granted a postponement for staffing requirements is conducting an affirmative recruiting program which will insure having an adequate number of persons on its staff in the shortest possible period of time.

The additional amendments reflect the transfer of the Administration on Aging from the Social and Rehabilitation Service to the Office of Human Development within the Office of the Secretary, and the transfer by the Older Americans Comprehensive Services Amendments of 1973 (Pub. L. 93-29, Sec. 704(c)), of authority to operate this program from the Secretary to the Commissioner on Aging. These amendments to the regulation make no substantive change in the program.

It is the policy of the Department that notice of proposed rulemaking procedures be observed in the promulgation of rules and regulations governing grant programs. Compliance with these procedures is inappropriate in the present instance. Delay in availability of postponement authority would delay the prompt delivery of meals to the elderly, and would thus thwart the principal aim of the amendment. The amendment provides for optional relaxation of a requirement, and so imposes no new rule to which State or local agencies would wish to object. Since the relaxation of the rule is permitted only temporarily, the amendment does not represent a serious weakening of the requirements originally published. The amendments dealing with organization simply conform the locus of authority for the program to the existing organization of the Department and the requirements of law. Accordingly, the amendments shall become effective at once.

Part 909 of Chapter IX of Title 45 is amended as follows:

1. A new § 909.34a, is added immediately after § 909.34, as follows:

§ 909.34a Temporary postponement of certain requirements.

(a) If the State agency determines that a project would be prevented from beginning the prompt service of meals to elderly persons by having to comply immediately with requirements under the State plan under §§ 909.35(a) and 909.42 (a), the State agency, in making a grant or contract under this part, may postpone temporarily compliance with any or all of those requirements. However, it may not postpone requirements under portions of § 909.35(a) dealing with employment of persons aged 60 or over and members of minority groups.

(b) Such a postponement may be granted by the State agency for an initial period not to exceed ninety days from the beginning date of the project, and, with the approval of the Commissioner, for one additional period not to exceed ninety days.

(c) Such a postponement may be granted only if a State agency makes a determination that the recipient of the grant or contract is taking positive steps to comply with the requirements, and that compliance within the postponement period is feasible.

(d) The Commissioner may approve a continuation of the initial postponement if the State agency shows that the recipient of the grant or contract is taking positive steps to comply with the requirements, and that compliance within the postponement period is feasible, and that the State agency will accept review and technical assistance as deemed appropriate by the Commissioner. At the end of the second 90-day postponement period, no further postponement shall be granted.

(e) The State agency shall report in writing any initial postponement for ninety days or less to the Commissioner within five days.

2. Wherever the term "of the Social and Rehabilitation Service" appears, it is revised to read "in the Office of Human Development." Wherever the term "Secretary" appears, it is revised to read "Commissioner."

3. Section 909.6 is revised to read as follows:

§ 909.6 Plan submission and approval.

The State plan and all amendments thereto shall be submitted by a duly authorized officer of the State agency to the Commissioner each fiscal year in accordance with such procedures as he may prescribe. Any State plan or amendments meeting the requirements of Title VII of the Act and of this part shall be approved.

(Sec. 2, Pub. L. 92-258, 86 Stat. 88-95; Sec. 704(c), Pub. L. 93-29, 87 Stat. 57 (42 U.S.C. 3045-3045l.)

Effective date.—These regulations shall be effective on September 11, 1973.

Dated August 28, 1973.

ARTHUR S. FLEMMING,
Commissioner on Aging.

Approved August 28, 1973.

STANLEY B. THOMAS, Jr.,
Assistant Secretary for Human Development.

Approved September 5, 1973.

FRANK CARLUCCI,
Acting Secretary.

[FR Doc.73-19235 Filed 9-10-73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Order Regarding Office of Executive Director

In the matter of editorial amendment of Part 0 of the Commission's Statement of Organization with respect to the Office of the Executive Director.

This Order is being issued to reflect organization changes in the Office of the Executive Director adopted in previous action by the Commission.

This amendment relates to internal Commission organization, and hence, the prior notice, procedure, and effective date provisions of the Administrative Procedure Act are not applicable. Authority for the promulgation of this amendment is contained in section 4(i) and 5 (b) and (d) of the Communications Act of 1934, as amended, and in § 0.231(d) of the Commission's rules.

Accordingly, it is ordered, Effective September 17, 1973, that in Part 0 of Chapter I of Title 47 of the Code of Federal Regulations, Section 0.12 is amended as follows:

§ 0.12 Units in the Office.

* * * * *

(k) Procurement Division.

Adopted September 4, 1973.

Released September 5, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] JOHN M. TORBET,
Executive Director.

[FR Doc.73-19247 Filed 9-10-73;8:45 am]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

Order Regarding Applications for Radio Stations

In the matter of amendment of Footnote US117 in Part 2 of the Commission's Rules to Require the Prior Coordination of Applications for Radio Stations in the 407–409 MHz Band in the Vicinity of the Boulder, Colorado, Solar Observatory.

1. Footnote US117 to the Table of Frequency Allocations, § 2.106 of the rules, sets forth special coordination requirements for proposed radio facilities in the 406–410 MHz band to be operated in the vicinity of radio astronomy observatories listed in the footnote. The Interdepartment Radio Advisory Committee (IRAC), acting on a request of the U.S. Department of Commerce, has recommended that footnote US117 be amended in the Commission's rules to add the Boulder, Colorado, Solar Observatory to the list of observatories contained in the note.

2. The Boulder observatory is owned and operated by the Department of Commerce for the purpose of obtaining solar data of importance to Government and the scientific community. Measurements involve the use of sensitive radio receiving equipment tuned to operate in the 406–410 MHz range. The special coordination procedure contained in US117 would minimize the chance of harmful interference being caused to the observatory by certain transmitting stations which are also authorized to operate in this band.

3. The 406–410 MHz band is allocated nationally for both Government and non-Government use. However, non-Government use of the band is limited to the radio astronomy service and to the transmission of hydrological and meteorological data in cooperation with Federal agencies on certain frequencies listed in footnote US13.

4. To extend the coordination procedure to the Boulder observatory without unduly restricting Government radio operations in the area, the IRAC concluded that the provisions of US117 should apply in this particular case to the smaller band segment 407–409 MHz. The only non-Government operation permitted within this narrower band is radio astronomy, to which the procedures of US117 do not apply. Therefore, as non-Government interests are not affected, the proposed amendment is being adopted herein without prior public notice.

5. Accordingly, pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, *It is ordered*, That effective October 12, 1973, footnote US117 to the Table of Frequency Allocations, § 2.106 of the Commission's rules, is amended as set forth in the Appendix.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082, (47 U.S.C. 154, 303).)

Adopted August 29, 1973.

Released August 31, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

In § 2.106, footnote US117 is amended to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

US1117 In the Band 406–410 MHz, all new authorizations will be limited to a maximum of 7 watts per kHz of necessary bandwidth; existing authorizations as of November 30, 1970, exceeding this power are permitted to continue in use.

New authorizations in this band for stations, other than mobile stations, within the following areas are subject to prior coordination by the applicant with the Secretary of the Committee on Radio Frequencies of the National Academy of Science:

Arecibo Observatory: Rectangle between latitudes 17°30′ N. and 19°00′ N. and between longitudes 65°10′ W. and 68°00′ W.

Boulder, Colorado Solar Observatory (407–409 MHz only): Rectangle between latitudes 39°30′ N. and 40°30′ N. and longitudes 104° 30′ and 106°00′ W. or the Continental Divide whichever is further east.

Five College Radio Astronomy Observatory: Rectangle between latitudes 41°40′ N. and 42°50′ N. and between longitudes 71°20′ W. and 73°20′ W.

Owens Vally Radio Observatory: Two contiguous rectangles one between latitudes 36° N. and 37° N. and longitudes 117°40′ W. and 118°30′ W., and the second between latitudes 37° N. and 38° N. and longitudes 118° W. and 118°50′ W.

Pennsylvania State University Radio Astronomy Observatory: Rectangle between latitudes 40°00′ N. and 41°40′′ N. and longitudes 77°15′ W. and 78°40′ W.

Sagamore Hill Radio Observatory: Rectangle between latitudes 42°10′ N. and 43°00′ N. and longitudes 70°31′ W. and 71°31′ W.

Bermillion River Observatory: Rectangle between latitudes 38°35′ N. and 41°31′ N. and longitudes 86°15′ W. and 89°30′ W. The non-Government use of this band is limited to the radio astronomy service and as provided by footnote US13.

[FR Doc. 73-19243 Filed 9-10-73;8:45 am]

PART 89—PUBLIC SAFETY RADIO SERVICES

PART 93—LAND TRANSPORTATION RADIO SERVICES

Type Acceptance of Radiolocation Equipment; Order Extending Time

In the matter of rules requirement in Parts 89 and 93 for type acceptance of radiolocation equipment authorized after January 1, 1973.

[1] Commissioners Johnson and Reid absent.

1. Sections 89.117(b) and 93.109(b) of the Public Safety and Land Transportation Radio Services, respectively, require that all new equipment authorized in radiolocation systems after December 31, 1972, be of a type that is listed in the Commission's Radio Equipment List and approved for licensing in the Part that governs the service in which the equipment is to be operated.

2. It appears that some difficulties may have been experienced in obtaining timely type-acceptance. In order to provide additional time to obtain type-acceptance for radiolocation equipment, the date by which this type-acceptance is required is extended to January 1, 1974. All applications received prior to that date will be granted. All applications received after that date will be returned to the respective applicants informing them that non-type accepted equipment may not be authorized.

3. Accordingly, pursuant to the authority delegated in Section 0.331(b) (1) of the Commission's Rules, *It Is Ordered*, That the date for which type-acceptance of radiolocation equipment is required is extended until January 1, 1974.

Adopted August 31, 1973.

Released September 4, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] CHARLES A. HIGGINBOTHAM,
Acting Chief, Safety and Special Radio Services Bureau.

[FR Doc.73-19248 Filed 9-10-73;8:45 am]

[Docket No. 19073; FCC 73-859]

PART 23—INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATION SERVICES

Report and Order

Correction

In FR Doc. 73-17286 appearing at page 22477 in the issue of Tuesday, August 21, 1973, make the following change: In the fourth line of § 23.15(b)(3), "40 plus 10 log" should read "43 plus 10 log."

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION

[OST Docket No. 1; Amdt. 1-77]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Delegation of Functions With Respect to Marine Protection, Research, and Sanctuaries Act of 1972; Correction

In the FEDERAL REGISTER of August 1, 1973 (38 FR 20449), the Department of Transportation published a delegation to the Commandant of the Coast Guard of functions vested in the Secretary of Transportation by certain sections of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. 92-532). In-

advertently, the delegation was included as a new subparagraph (4) of paragraph (o) of § 1.46 of Part 1 of Title 49 of the Code of Federal Regulations; it should have been included as a new subparagraph (5), since there was already a subparagraph (4).

In consideration of the foregoing, a new subparagraph (5) is designated, to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(o) Carry out the functions vested in the Secretary by the following statutes:

* * * * *

(5) Sections 104 (a) and (g), 107(c), 108, 201, and 302(a) of the Marine Protection, Research, and Sanctuaries Act of 1972 (Public Law 92–532) relating to ocean dumping."

(Sec. 9(e), Department of Transportation Act (49 U.S.C. 1657(e)); § 1.59(m), Regulations of the Office of the Secretary of Transportation, 49 CFR 1.59(m))

Effective date.—The effective date of this amendment is September 11, 1973.

Issued in Washington, D.C., on August 20, 1973.

J. THOMAS TIDD,
Acting General Counsel.

[FR Doc.73-19238 Filed 9-10-73;8:45 am]

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

Delegation of Functions Relating to Retired Serviceman's Survivor Benefit Plan; Correction

In the FEDERAL REGISTER of August 22, 1972 (37 FR 16874), the Department of Transportation published a delegation to the Commandant of the Coast Guard of authority to prescribe regulations relating to the designation and leasing of rental housing pursuant to 14 U.S.C. 475(c) and Executive Order 11645. The delegation was included as a new paragraph (p) in 49 CFR 1.46. In the FEDERAL REGISTER of October 19, 1972 (37 FR 22377), the Department published a delegation to the Commandant to carry out the functions vested in the Secretary of Transportation by Pub. L. 92–425 and Executive Order 11687, relating to the Retired Serviceman's Survivor Benefit Plan. Unmindful of its (p)'s and (q)'s, the Department likewise included this delegation as paragraph (p) in 49 CFR 1.46; it should have been included as a new paragraph (q).

In consideration of the foregoing, paragraphs (p) and (q) of § 1.46 of Part 1 of Title 49 of the Code of Federal Regulations are revised to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(p) Prescribe regulations relating to the designation and leasing of rental housing pursuant to 14 U.S.C. 475(c) and Executive Order 11645 (37 FR 2923), without approval by the President or the Secretary.

(q) Carry out the functions vested in the Secretary by Pub. L. 92–425 and Executive Order 11687 (37 FR 21479), relating to the Retired Serviceman's Survivor Benefit Plan.

(Sec. 9(e), Department of Transportation Act, (49 U.S.C. 1657(e)); § 1.59(m), Regulations of the Office of the Secretary of Transportation, (49 CFR 1.59(m)).)

Effective date.—The effective date of this amendment is September 11, 1973.

Issued in Washington, D.C., on August 23, 1973.

J. THOMAS TIDD,
Acting General Counsel.

[FR Doc.73-19239 Filed 9-10-73;8:45 am]

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1123, Amdt. 1]

PART 1033—CAR SERVICE

Northwestern Oklahoma Railroad Co.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 31st day of August 1973.

Upon further consideration of Service Order No. 1123 (38 FR 5174), and good cause appearing therefor:

It is ordered, That § 1033.1123 *Service Order No. 1123* (Frank W. Pollock, Jr., d/b/a Northwestern Oklahoma Railroad Co., authorized to operate over certain trackage abandoned by Missouri-Kansas-Texas Railroad Company) be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) *Expiration date.*—The provisions of this order shall expire at 11:59 p.m., February 28, 1974, unless otherwise modified, changed, or suspended by order of this Commission.

Effective date.—This amendment shall become effective at 11:59 p.m., August 31, 1973.

(Secs. 1, 12, 15, and 17(2), 24 Stat. 379, 383, 384, as amended (49 U.S.C. 1, 12, 15, and 17(2)), interprets or applies secs. 1(10–17), 15(4), and 17(2), 40 Stat. 101, as amended, 54 Stat. 911 (49 U.S.C. 1(10–17), 15(4), and 17(2).)

It is further ordered, That a copy of this amendment shall be served upon the Association of American Railroads Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this amendment be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19271 Filed 9-10-73;8:45 am]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte No. 274 (Sub-No. 1)]

PART 1121—ABANDONMENT OF RAILROAD LINES

Special Procedures; Correction

AUGUST 30, 1973.

The purpose of this corrected order is not only to add but also to correct certain paragraphs of the publication of the FEDERAL REGISTER, Volume 37, No. 15, Saturday, January 22, 1972, at page 1046. The additions will also reflect the changes set forth in the corrected order issued by the Commission August 22, 1972, and republished in the FEDERAL REGISTER September 16, 1972, Volume 37, No. 181, Saturday, at page 18918. The additions and corrections for the January 22, 1972 issue are as follows:

1. Page 1046, delete last paragraph, and insert the following:

It is ordered, That Part 1121 of Title 49 of the Code of Federal Regulations be, and it is hereby amended by designating §§ 1121.1 through 1121.5 (the only regulations in this part) issued on March 31, 1971 (36 FR 7741), as Subpart A, and which has been modified in § 1121.1 Notice with the addition of an environmental statement immediately prior to the last complete sentence beginning with the words "Any protests":

In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), "Implementation Nat'l Environmental Policy Act, 1969," 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub-No. 4), supra, Part (B)(1)–(5), 340 I.C.C. 431, 461.

§ 1121.1 [Amended]

Immediately following the Notice in § 1121.1(s)(3), add a new item "(4)":

* * * * *

(4) Will granting the authority sought in this application constitute a major Federal action having a significant effect upon the quality of the human environment? [Yes] [No] If yes, a statement complying with the requirements of 49 CFR 1100.250 as promulgated in *Implementation Nat'l Environmental Policy Act, 1969,* 340 I.C.C. 431, must be attached to this application.

and by adding Subpart B and Subpart C as follows:

§ 1121.21 [Amended]

2. Page 1047, § 1121.21(c) add the following two sentences at the end of the 4th paragraph ending with "for such hearings":

In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), Implementation Nat'l Environmental Policy Act, 1969, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission

action on the quality of the human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub-No. 4), supra, Part (B)(1)-(5), 340 I.C.C. 431, 461.

3. Page 1047, § 1121.21(c) add the following paragraph (i) after paragraph (h):

(i) *Environmental Statement.*—Will granting the authority sought in this application constitute a major Federal action having a significant effect upon the quality of the human environment? [Yes] [No] If yes, a statement complying with the requirements of 49 CFR 1100.250 as promulgated in *Implementation Nat'l Environmental Policy Act, 1969*, 340 I.C.C. 431, must be attached to this application.

4. Page 1047, Subpart C, correct title to read as follows:

Subpart C—Special Relief for Railroads Proposing Abandonments Where There Is No Significant and Material Public Objection

5. Page 1047, § 1121.30, *Scope of special rules.* Change last 3 lines at end of paragraph after word "where" to read:

§ 1121.30 Scope of special rules.

* * * there is no significant and material public objection; and certain other procedural matters with respect thereto.

§ 1121.31 [Amended]

6. Page 1048, § 1121.31(c) at end of 5th paragraph ending with "for such hearings" add the following two sentences:

In accordance with the Commission's regulations (49 CFR 1100.250) in Ex Parte No. 55 (Sub-No. 4), *Implementation Nat'l Environmental Policy Act, 1969*, 340 I.C.C. 431 (1972), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall include information relating to the relevant factors set forth in Ex Parte No. 55 (Sub-No. 4), supra, Part (B)(1)-(5), 340 I.C.C. 431, 461.

7. Page 1048, § 1121.31, add paragraph (h) at the end of paragraph (g) as follows:

(h) *Environmental Statement.*—Will granting the authority sought in this application constitute a major Federal action having a significant effect upon the quality of the human environment? [Yes] [No] If yes, a statement complying with the requirements of 49 CFR 1100.250 as promulgated in *Implementation Nat'l Environmental Policy Act, 1969*, 340 I.C.C. 431, must be attached to this application.

8. Page 1048, § 1121.33, delete last sentence, and insert the following sentence:

§ 1121.33 Defective or inadequate notice.

* * * The applicant may publish, post, and serve a notice with appropriate modification unless the Commission has already determined that significant and material public objection has been registered against the proposed abandonment, in which event the Commission will so notify the applicant, thereby precluding further use of this Subpart C for the application.

9. Page 1048, § 1121.34(b), delete entire paragraph and insert the following:

§ 1121.34 No public objection, waivers, certification.

* * * * *

(b) *Waiver of additional fee.*—Where there is no significant and material public objection, the balance of the filing fee for an application (long form) under subpart A of this part shall be waived.

* * * * *

10. Page 1048, in § 1121.35, delete paragraphs (a), (b), (c), and (d) and insert the following:

§ 1021.35 Public objection, withdrawal, refiling.

(a) *Partial withdrawal.*—Where there is significant and material public objection as to only a part of the line being proposed for abandonment, the applicant, with the consent of the protestants, may rerequest that, that part of the application be withdrawn, and that a certificate be issued permitting abandonment of the remainder of the line sought to be abandoned.

(b) A notice upon which there is significant and material public objection, in whole or in part, is without prejudice to applicant's right to file and prosecute an application for the same authority, or any portion thereof, pursuant to the provisions of subparts A or B of this part.

(c) *Application may be dismissed.*—Where public objection has been found significant and material, and no application under subparts A or B is filed, the application under these rules will be deemed to have been withdrawn and will be dismissed.

(d) *No refiling within one year.*—A notice to which public objection has been found significant and material, may not be refiled under this subpart C sooner than one year from the last publication date as provided in § 1121.32(a).

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-19270 Filed 9-10-73;8:45 am]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte 275]

PART 1115—ISSUANCE OF SECURITIES, ASSUMPTION OF OBLIGATIONS, AND FILING OF CERTIFICATES AND REPORTS

Expanded Definition of Term "Securities"

Correction

In FR Doc. 73-18749 appearing at page 23953 in the issue for Wednesday, September 5, 1973, in the first column the third paragraph should read as follows:

It further appearing, that since the proposed amendments to existing regulations relate to matters of practice and procedure resulting from the herein proceeding, further notice and public proceedings under 5 U.S.C. 533 are not necessary and good cause exists for making the amendments effective on October 23, 1973.

In the second column the first paragraph should read as follows:

It is ordered, That the term securities as found in section 20a of the Interstate Commerce Act be henceforth interpreted as including, among other things, all agreements creating a present or future interest in or indebtedness of a carrier, or in property owned, leased or otherwise employed by a carrier, and as additionally including, but not being limited to, loan agreements, credit agreements, mortgages, chattel mortgages, advances, deeds of trust, equipment trusts, security agreements, purchase agreements whose terms do not provide for full payment of the purchase price at consummation and leases of operating property or real property, but shall not at this time be interpreted to include agreements entered into for the sole purpose of acquiring motor carrier operating property;

Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 52]

CANNED RED TART PITTED CHERRIES

United States Standards for Grades

Notice is hereby given that the United States Department of Agriculture is proposing a revision of the United States Standards for Grades of Canned Red Tart Pitted Cherries (7 CFR 52.771–52.783). This grade standard is issued under authority of the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624)), which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use of producers, buyers, and consumers. Official grading services are also provided under this Act upon request of the applicant and upon payment of a fee to cover the cost of such service.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposal should file the same in duplicate by Nov. 1, 1973, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250. All written submittals made pursuant to this notice will be available for public review at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

NOTE.—Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

Statement of consideration leading to the proposed revision.—Current grade standards for canned red tart pitted cherries, which were last amended to become effective June 16, 1972, provide for only two grade classifications above Substandard. These are designated as U.S. Grade A (or "U.S. Fancy") and U.S. Grade C (or "U.S. Standard"). The National Red Cherry Institute has formally petitioned the Department to change these standards to add a third classification to be designated as U.S. Grade B (or "U.S. Choice").

Other changes requested by the Institute include redefining "blemished cherry" under the factor of "Freedom from defects" to be the same as the definition proposed by the Federal Food and Drug Administration in their standards of quality for canned cherries, and to adjust the allowances in the various quality factors for the different grade classifications to be as nearly as possible the same for grade standards for both canned and frozen red tart pitted cherries.

In order that grade standards may better serve the marketing of canned red tart pitted cherries, the following changes are proposed:

1. A third grade classification above Substandard, to be designated as "U.S. Grade B" (or "U.S. Choice"), would be added.

2. The score points and allowances would be realigned to accommodate the new grade classification.

3. "Blemished cherry" under the factor of "Freedom from defects" would be redefined to be the same as the proposed definition in the Food and Drug standard of quality for canned cherries.

4. Sample unit sizes for determination of compliance with requirements for the various quality factors would be provided.

5. A different format would be used, including a table, for listing allowances for the various quality factors to make them more understandable.

IDENTITY AND GRADES

AUTHORITY: Agricultural Marketing Act of 1946, sec. 205, 60 Stat. 1090, as amended; (7 U.S.C. 1624).

IDENTITY AND GRADES

§ 52.771 Identity.

"Canned red tart pitted cherries" means the canned product prepared from clean, sound, and mature pitted cherries of the red sour varietal group (Prunus cerasus), as such product is defined in the standard of identity for canned cherries (21 CFR 27.30), issued pursuant to the Federal Food, Drug, and Cosmetic Act.

§ 52.772 Grades.

(a) "U.S. Grade A" (or "U.S. Fancy") is the quality of canned red tart pitted cherries that have at least the following attributes:

(1) Reasonably good color;
(2) Practically free from pits;
(3) Practically free from defects;
(4) Good character;
(5) Normal flavor and odor; and
(6) Score not less than 90 points when scored in accordance with the scoring system outlined in this subpart.

Canned red tart pitted cherries of this grade may contain not more than eight cherries per sample unit that are less than 9/16 inch (14 mm) in diameter.

(b) "U.S. Grade B" (or "U.S. Choice") is the quality of canned red tart pitted cherries that have at least the following attributes:

(1) Good color;
(2) Reasonably free from pits;
(3) Reasonably free from defects;
(4) Reasonably good character;
(5) Normal flavor and odor; and
(6) Score not less than 80 points when scored in accordance with the scoring system outlined in this subpart.

Canned red tart pitted cherries of this grade may contain not more than 15 cherries per sample unit that are less than 9/16 inch (14 mm) in diameter.

(c) "U.S. Grade C" (or "U.S. Standard") is the quality of canned red tart pitted cherries that have at least the following attributes:

(1) Fairly good color;
(2) Fairly free from pits;
(3) Fairly free from defects;
(4) Fairly good character;
(5) Normal flavor and odor; and
(6) Score not less than 70 points when scored in accordance with the scoring system outlined in this subpart.

There is no size requirement for canned red tart pitted cherries of this grade.

(d) "Substandard" is the quality of canned red tart pitted cherries that fail to meet the requirements of "U.S. Grade C."

LIQUID MEDIA AND BRIX MEASUREMENTS

§ 52.773 Liquid media and Brix measurements.

(a) Brix measurement requirements for the liquid media in canned red tart pitted cherries are not incorporated in

the grades of the finished product since sirup, or any other liquid medium, as such, is not a factor of quality for the purpose of the grades. The designation of liquid packing media and Brix measurements, where applicable, are as follows:

Designations	Brix measurement
Water (cherry juice and water).	Not applicable.
Cherry juice	Not applicable.
Slightly sweetened water.	Less than 18°.
Slightly sweetened cherry juice.	Less than 18°.
Light sirup	18° or more, but less than 22°.
Light cherry juice sirup.	18° or more, but less than 22°.
Heavy sirup	22° or more, but less than 28°.
Heavy cherry juice sirup.	22° or more, but less than 28°.
Extra heavy sirup	28° or more, but less than 45°.
Extra heavy cherry juice sirup.	28° or more, but less than 45°.

(b) The densities of the packing media, as listed in this section, are measured on the refractometer, expressed as percent by weight sucrose (degrees Brix) with correction for temperature to the equivalent at 20° C. (68° F.), but without correction for invert sugars or other substances. The degrees Brix of the packing media may be determined by any other method which gives equivalent results.

(c) Brix determination is made on the packing media 15 days or more after the cherries are canned or on the blended homogenized slurry of the comminuted entire contents of the container if canned for less than 15 days.

Fill of Container

§ 72.774 Fill of container.

(a) *FDA requirements.*—Canned red tart pitted cherries shall meet the fill of container requirements as set forth in the regulations of the Food and Drug Administration (21 CFR 27.32).

(b) *Recommended minimum drained weights.*—(1) *General.*—The minimum drained weight recommendations for the various container sizes and types of packing media as listed in Table I of this section are not incorporated in the grades of the finished product since drained weight, as such, is not a factor of quality for the purpose of these grades.

(2) *Definitions.*

Sample average—Average of all the drained weights of the sample containers representing a lot.

$\bar{X}_s$—A specified minimum sample average drained weight.

LL—Lower limit for individual container drained weight.

(3) *Method for ascertaining drained weight.*—The drained weight of canned red tart pitted cherries is determined by emptying the contents of the container upon a U.S. Standard No. 8 circular sieve of proper diameter containing eight meshes to the inch (0.0937 inch (2.3 mm) ±3 percent, square openings) so as to distribute the product evenly over the sieve. Without shifting the product, incline the sieve at an angle of 17° to 20° to facilitate drainage and allow to drain for two minutes. The weight of drained cherries is the weight of the sieve and product less the weight of the dry sieve. A sieve eight inches in diameter is used for No. 3 size containers (404 × 414) and smaller, and a sieve 12 inches in diameter is used for containers larger than No. 3 size containers.

(4) *Compliance with recommended minimum drained weights.*—A lot of canned red tart pitted cherries is considered as meeting the minimum drained weight recommendations when the following criteria are met:

(i) The sample average meets the specified minimum sample average drained weight (designated as "$\bar{X}_s$" in Table I); and

(ii) The number of sample containers which fail to meet the minimum drained weight for individual containers (designated as "LL" in Table I) does not exceed the applicable acceptance number specified in Table II.

Table I—Recommended Minimum Drained Weights for Canned Red Tart Pitted Cherries

Container designation	Packed in Water		Packed in sirup or slightly sweetened water	
	LL	$\bar{X}_s$	LL	$\bar{X}_s$
	Ounces		Ounces	
No. 303	10.7	11.0	9.9	10.2
No. 303 Cylinder	14.0	14.4	12.7	13.1
No. 2	13.1	13.5	12.3	12.7
No. 10	71.2	72.0	69.4	70.2

Table II—Single-Sampling Plans and Acceptance Number

Sample Size (No. of sample containers)	3	6	13	21	29	38	48	60
Acceptance numbers	0	1	2	3	4	5	6	7

(c) *Recommended fill weights.*—(1) *General.*—The minimum fill weight recommendations for the various container sizes in Table III of this section are not incorporated in the grades of the finished product since fill weight, as such, is not a factor of quality for the purpose of these grades.

(2) *Definitions.*

Subgroup—A group of sample containers representing a portion of a sample.

$\bar{X}'_{min}$—A specified minimum lot average fill weight.

$LWL_{\bar{X}}$—Lower warning limit for subgroup averages.

$LRL_{\bar{X}}$—Lower reject limit for subgroup averages.

LWL—Lower warning limit for individual fill weight measurements.

LRL—Lower reject limit for individual fill weight measurements.

$\bar{R}'$—A specified average range value.

R_{max}—A specified maximum range for subgroups.

(3) *Method for ascertaining fill weight.*—The fill weight of canned red tart pitted cherries is determined in accordance with the U.S. Standards for Inspection by Variables and the U.S. Standards for Determination of Fill Weights.

(4) *Compliance with recommended fill weights.*—Compliance with the recommended fill weights for canned red tart pitted cherries shall be in accordance with the U.S. Standards for Inspection by Variables and the U.S. Standards for Determination of Fill Weights.

Table III—Recommended Fill Weight Values for Canned Red Tart Pitted Cherries

Container designation	Fill weight values in ounces							
	$\bar{X}'_{min}$	$LWL_{\bar{X}}$	$LRL_{\bar{X}}$	LWL	LRL	$\bar{R}'$	R_{max}	Sampling allowance code
No. 303	12.9	12.6	12.4	12.2	11.8	0.80	1.70	F
No. 303 Cylinder	16.8	16.4	16.2	15.9	15.4	1.10	2.20	H
No. 2	15.8	15.4	15.2	14.9	14.4	1.10	2.20	H
No. 10	86.7	85.9	85.5	85.0	84.1	2.00	4.20	F

Sample Unit Size

§ 52.775 Sample unit size.

Compliance with requirements for the size and the various quality factors is based on the following sample unit sizes for the applicable factor:

(a) Size, color, pits, and character—20 ounces of drained cherries.

(b) Defects (other than harmless extraneous material)—100 cherries.

(c) Harmless extraneous material—The total contents of each container in the sample.

Factors of Quality

§ 52.776 Ascertaining the grade of a sample unit.

(a) *General.*—The grade of a sample unit of canned red tart pitted cherries is ascertained by considering the factor of flavor and odor of the product and the requirement for size (in U.S. Grade A and U.S. Grade B) which are not scored; the ratings for the factors of color, freedom from pits, defects, and character, which are scored; and the limiting rules which may be applicable.

(b) *Factors rated by score points.*—The relative importance of each factor

which is scored is expressed numerically on the scale of 100. The maximum number of points that may be given each factor is:

Factors:	Points
Color	20
Freedom from pits	20
Defects	30
Character	30
Total score	100

(c) *Definition.*—"Normal flavor and odor" means that the flavor and odor are characteristic of canned red tart pitted cherries and that the product is free from objectionable flavors and objectionable odors of any kind.

§ 52.777 Ascertaining the rating for the factors which are scored.

The essential variations within each factor which is scored are so described that the value may be ascertained for each factor and expressed numerically. The numerical range within each factor which is scored is inclusive (for example, "18 to 20 points" means 18, 19, or 20 points).

§ 52.778 Color.

(a) (*A*) *classification.*—Canned red tart pitted cherries that have a good color may be given a score of 18 to 20 points. "Good color" means a practically uniform color that is bright and typical of canned red tart pitted cherries which have been prepared and processed from properly ripened cherries.

(b) (*B*) *classification.*—Canned red tart pitted cherries that have a reasonably good color may be given a score of 16 or 17 points. Canned red tart pitted cherries that fall into this clasification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good color" means a reasonably uniform color, typical of canned red tart pitted cherries which have been properly prepared and processed and which color may range from a slight yellowish-red color to a slightly mottled reddish brown.

(c) (*C*) *classification.*—Canned red tart pitted cherries that have a fairly good color may be given a score of 14 or 15 points. Canned red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good color" means a fairly uniform color typical of canned red tart pitted cherries which have been properly processed and which color may range from a brownish cast to mottled shades of brown.

(a) (*SStd.*) *classification.*—Canned red tart pitted cherries that fail to meet the color requirements for U.S. Grade C may be given a score of 0 to 15 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.779 Freedom from pits.

(a) *General.*—The factor of freedom from pits concerns the degree of freedom from pits and pit fragments.

(b) *Definitions.*—(1) A "pit," for the purposes of the allowances in this section, is a whole cherry pit or portions of pits computed as follows:

(i) A single piece of pit shell, whether or not within or attached to a whole cherry, that is larger than one-half pit shell is considered as one pit;

(ii) A single piece of pit shell, whether or not within or attached to a whole cherry, that is not larger than one-half pit shell is considered as one-half pit;

(iii) Pieces of pit shell, within or attached to a whole cherry, when their combined size is larger than one-half pit shell are considered as one pit; and

(iv) Pieces of pit shell, within or attached to a whole cherry, when their combined size is not larger than one-half pit shell are considered as one-half pit.

(2) "Drained cherries" means pitted cherries that have been drained of packing medium by the method prescribed in this subpart.

(c) (*A*) *classification.*—Canned red tart pitted cherries that are practically free from pits may be given a score of 18 to 20 points. "Practically free from pits" means that the number of pits that may be present in the drained cherries does not exceed the allowances for this classification as set forth in Table IV.

(d) (*B*) *classification.*—Canned red tart pitted cherries that are reasonably free from pits may be given a score of 16 or 17 points. Canned red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably free from pits" means that the number of pits that may be present does not exceed the allowances for this classification as set forth in Table IV.

(e) (*C*) *classification.*—Canned red tart pitted cherries that are fairly free from pits may be given a score of 14 or 15 points. Canned red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly free from pits" means that the number of pits that may be present in the drained cherries does not exceed the allowances for this classification as set forth in Table IV.

(f) (*SStd.*) *classification.*—Canned red tart pitted cherries that fail to meet the requirements of U.S. Grade C may be given a score of 0 to 13 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.780 Defects.

(a) *General.*—The factor of defects refers to the degree of freedom from harmless extraneous material, mutilated cherries, and cherries blemished by scab, hail injury, discoloration, scar tissue, or by other means.

(1) "Cherry" means a whole cherry, whether or not pitted, or portions of such cherries which in the aggregate approximate the average size of the cherries.

(2) "Harmless extraneous material" means any vegetable substance (including, but not being limited to, a leaf or a stem, and any portions thereof) that is harmless.

(3) "Mutilated cherry" means a cherry that is so pitter-torn or damaged by other means that the entire pit cavity is exposed and the appearance of the cherry is seriously affected.

(4) "Minor blemished cherry" means any cherry blemished with skin discoloration (other than scald) having an aggregate area of a circle 9/32 inch (7 mm) or less in diameter which more than slightly affects the appearance of the cherry but does not extend into the fruit tissue.

(5) "Blemished cherry" means any cherry blemished by skin discoloration (other than scald) which in the aggregate exceeds the area of a circle 9/32 inch (7 mm) in diameter. A cherry affected by skin discoloration extending into the fruit tissue or by scab, hail injury, scar tissue, or other abnormality, regardless of size, is considered a blemished cherry.

(b) (*A*) *classification.*—Canned red tart pitted cherries that are practically free from defects may be given a score of 27 to 30 points. "Practically free from defects" means that the number of defects that may be present does not exceed the number specified for the type of defects in Table IV.

(c) (*B*) *classification.*—Canned red tart pitted cherries that are reasonably free from defects may be given a score of 24 to 26 points. Canned red tart pitted cherries that fall into this classification may not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that the number of defects that may be present does not exceed the number specified for the type of defects in Table IV.

(d) (*C*) *classification.*—If the canned red tart pitted cherries are fairly free from defects, a score of 21 to 23 points may be given. Canned red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that the number of defects that may be present does not exceed the number specified for the type of defects in Table IV.

(e) (*SStd.*) *classification.*—Canned red tart pitted cherries that fail to meet the requirements for Grade C for any reason may be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.781 Character.

(a) *General.*—The factor of character refers to the degree of ripeness and the physical characteristics of the flesh of the cherries.

(b) (*A*) *classification.*—Canned red tart pitted cherries that have a good character may be given a score of 27 to 30 points. "Good character" means that the cherries are thick-fleshed and have a firm, tender texture.

(c) *(B) classification.*—Canned red tart pitted cherries that have a reasonably good character may be given a score of 24 to 26 points. Canned red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good character" means that the cherries may be reasonably thick-fleshed and may be slightly soft.

(d) *(C) classification.*—Canned red tart pitted cherries that have a fairly good character may be given a score of 21 to 23 points. Canned red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good character" means that the cherries may be thin-fleshed, and may be soft but not mushy, or slightly tough but not leathery.

(e) *(SStd.) classification.*—Canned red tart pitted cherries that fail to meet the requirements for U.S. Grade C may be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

ALLOWANCES FOR QUALITY FACTORS

§ 52.782 Allowances for quality factors.

TABLE IV—ALLOWANCES FOR QUALITY FACTORS

Factor	Sample unit size	Maximum number permissible for the respective grade					
		A		B		C	
Pits	Per 20 ozs.	Not more than 2 in any sample unit.	Sample average 1 per 40 ozs.	Not more than 3 in any sample unit.	Sample average 1 per 30 ozs.	4 or more in any sample unit.	Sample average 1 per 20 ozs.
Defects: Total—multilated, plus minor blemished plus blemished	Per 100 cherries.	10		15		20	
Blemished—limited to Harmless extraneous material.	Total contents.	3 Average 1 piece per 60 oz. net contents.		7 Average 1 piece per 40 oz. net contents.		15 Average 1 piece per 20 oz. net contents.	

LOT COMPLIANCE

§ 52.783 Ascertaining the grade of a lot.

The grade of a lot of canned red tart pitted cherries covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 to 52.87).

SCORE SHEET

§ 52.784 Score sheet for canned red tart pitted cherries.

Size and kind of container.....
Container mark or identification.....
Label.....
Net weight (ounces).....
Vacuum (inches).....
Drained weight (ounces).....
Syrup designation (extra heavy, heavy, etc.).....
Brix measurement.....
Size [1].....

Factors		Score points
Color	20	(A) 18-20; (B) [2] 16-17; (C) [2] 14-15; (SStd.) [2] 0-13
Freedom from pits	20	(A) 18-20; (B) [2] 16-17; (C) [2] 14-15; (SStd.) [2] 0-13
Freedom from defects	30	(A) 27-30; (B) [2] 24-26; (C) [2] 21-23; (SStd.) [2] 0-20
Character	30	(A) 27-30; (B) [2] 24-26; (C) [2] 21-23; (SStd.) [2] 0-20
Total score	100	

Normal flavor.....
Grade.....

[1] See size limitation for U.S. Grade A and U.S. Grade B.
[2] Indicates limiting rule.

Dated September 4, 1973.

F. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.73-19131 Filed 9-10-73;8:45 am]

[7 CFR Part 52]

FROZEN RED TART PITTED CHERRIES

United States Standards for Grades

Notice is hereby given that the United States Department of Agriculture is proposing a revision of the United States Standards for Grades of Frozen Red Tart Pitted Cherries (7 CFR 52.801–52.812). This grade standard is issued under authority of the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624)), which provides for the issuance of official U.S. grades to designate different levels of quality for the voluntary use of producers, buyers, and consumers. Official grading services are also provided under this Act upon request of the applicant and upon payment of a fee to cover the cost of such service.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposal should file the same in duplicate by Nov. 1, 1973, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250. All written submittals made pursuant to this notice will be available for public review at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

NOTE.—Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

Statement of consideration leading to the proposed revision.—The National Red Cherry Institute formally requested the Department to revise the grade standards for frozen red tart pitted cherries to provide for three grade classifications above Substandard. Current grade standards which have been in effect since June 15, 1964, provide for two grade classifications above Substandard. These are designated as "U.S. Grade A" (or "U.S. Fancy") and "U.S. Grade C" (or "U.S. Standard"). It was requested that a "U.S. Grade B" (or "U.S. Choice") classification be included. Members of the Institute suggest there is a definite need for a quality level between the current Grade A and Grade C levels.

The request from the Institute also suggested the definition for "blemished cherry" under the factor of " Freedom from defects" be redefined for more clarity. It was also suggested that the requirements for the various quality factors and grade classifications be as nearly as possible the same for the grade standards for both frozen and canned red tart pitted cherries.

In accordance with the request from the National Red Cherry Institute, the proposed revision would make the following changes from the current standards:

1. A "U.S. Grade B" (or "U.S. Choice") classification would be added.

2. Score points and allowances for the various quality factors would be realigned to accommodate the new Grade B classification.

3. The definition of "blemished cherry" would be redefined and clarified.

4. Sample unit sizes for determination of compliance with requirements for the various quality factors would be included.

5. A slightly different format would be used, including a table, for listing allowances for the various quality factors which will provide for easier reading.

6. Allowances in the various quality factors for the different grade classifications would be aligned as closely as possible with those of the grade standards for canned red tart pitted cherries.

The proposed revision is as follows:

PRODUCT DESCRIPTION AND GRADES

Sec.
52.801 Product description.
52.802 Grades of frozen red tart pitted cherries.

SAMPLE UNIT SIZE

52.803 Sample unit size.

FACTORS OF QUALITY

52.804 Ascertaining the grade of a sample unit.
52.805 Ascertaining the rating for each factor.
52.806. Color.
52.807 Freedom from pits.
52.808 Freedom from defects.
52.809 Character.

ALLOWANCES FOR QUALITY FACTORS

52.810 Allowances for quality factors.

LOT COMPLIANCE

52.811 Ascertaining the grade of a lot.

SCORE SHEET

52.812 Score sheet for frozen red tart pitted cherries.

AUTHORITY: Agricultural Marketing Act of 1946, sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

PRODUCT DESCRIPTION AND GRADES

§ 52.801 Product description.

Frozen red tart pitted cherries is the food prepared from properly matured cherries of the domestic (Prunus cerasus) red sour varietal group which have been washed, pitted, sorted, and properly drained; may be packed with or without a nutritive or a non-nutritive packing medium or dry sugar; and are frozen and stored at temperatures necessary for the preservation of the product.

§ 52.802 Grades of frozen red tart pitted cherries.

(a) "U.S. Grade A" (or "U.S. Fancy") is the qualify of frozen red tart pitted cherries of which not more than eight cherries per sample unit may be less than 9/16 inch (14 mm) in diameter, and that:

(1) Possess a good red color;

(2) Are practically free from pits;

(3) Are practically free from defects;

(4) Have a good character;

(5) Possess a normal flavor; and

(6) Score not less than 90 points when scored in accordance with the scoring system outlined in this subpart.

(b) "U.S. Grade B" (or "U.S. Choice") is the quality of frozen red tart pitted cherries of which not more than 15 cherries per sample unit may be less than 9/16 inch (14 mm) in diameter, and that:

(1) Possess a reasonably good red color;

(2) Are reasonably free from pits;

(3) Are reasonably free from defects;

(4) Have a reasonable good character;

(5) Possess a normal flavor; and

(6) Score not less than 80 points when scored in accordance with the scoring system outlined in this subpart.

(c) "U.S. Grade C" (or "U.S. Standard") is the quality of frozen red tart pitted cherries that:

(1) Possess a fairly good red color;

(2) Are fairly free from pits;

(3) Are fairly free from defects;

(4) Have a fairly good character;

(5) Possess a normal flavor; and

(6) Score not less than 70 points when scored in accordance with the scoring system outlined in this subpart.

(d) "Substandard" is the quality of frozen red tart pitted cherries that fail to meet the requirements of U.S. Grade C.

SAMPLE UNIT SIZE

§ 52.803 Sample unit size.

Compliance with requirements for size and the various quality factors is based on the following sample unit sizes for the applicable factor:

(a) Size, color, pits, and character—20 ounces of drained cherries.

(b) Defects (other than harmless extraneous material)—100 cherries.

(c) Harmless extraneous material—The total contents of each container in the sample.

FACTORS OF QUALITY

§ 52.804 Ascertaining the grade of a sample unit.

(a) The grade of frozen red tart pitted cherries is determined immediately after thawing to the extent that the cherries may be separated easily and the cherries are free from ice and solidified packing media. The grade is determined by considering in addition to the requirements of the respective grade (including the requirement for size in U.S. Grade A and U.S. Grade B), the respective ratings of the factors of color, pits, absence of defects, the total score, and the limiting rules which may be applicable.

(b) The relative importance of each factor is expressed numerically on a scale of 100. The maximum number of points that may be given each factor is:

Factors:	Points
Color	20
Freedom from pits	20
Freedom from defects	30
Character	30
Total score	100

(c) "Normal flavor" means that the flavor is characteristic of frozen red tart pitted cherries and that the product is free from objectionable flavors of any kind.

§ 52.805 Ascertaining the rating for each factor.

The essential variations within each factor are so described that the value may be ascertained for each factor and expressed numerically. The numerical range for the rating of each factor is inclusive (for example, "18 to 20 points" means 18, 19, or 20 points).

§ 52.806 Color.

(a) *(A) Classification.*—Frozen red tart pitted cherries that possess a good red color may be given a score of 18 to 20 points. "Good red color" means that the frozen cherries possess a color that is bright and typical of properly ripened cherries and that is practically uniform in that the number of cherries that vary markedly from this color due to oxidation, improper processing, or other causes, or that are undercolored, does not exceed the number specified in Table I.

(b) *(B) Classification.*—Frozen red tart pitted cherries that possess a reasonably good red color may be given a score of 16 or 17 points. Frozen red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good red color" means that the cherries possess a color that is reasonably bright and typical of properly ripened cherries and that is reasonably uniform in that the number of cherries that vary markedly from this color due to oxidation, improper processing, or other causes, or that are undercolored, does not exceed the number specified in Table I.

(c) *(C) Classification.*—If the frozen red tart pitted cherries possess a fairly good red color, a score of 14 to 15 points may be given. Frozen red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good red color" means that the frozen cherries possess a color that is fairly bright and typical of properly ripened cherries and that is fairly uniform in that the number of cherries that vary markedly from this color due to oxidation, improper processing, or other causes, or that are undercolored, does not exceed the number specified in Table I.

(d) *(SStd.) Classification.*—Frozen red tart pitted cherries that fail to meet the requirements of U.S. Grade C may be given a score of 0 to 13 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.807 Freedom from pits.

(a) *General.*—The factor of freedom from pits concerns the degree of freedom from pits and pit fragments.

(b) *Definitions.* (1) A "pit" for the purpose of the allowances in this subpart is a whole pit or portions of pits computed as follows:

(i) A single piece of pit shell, whether or not within or attached to a whole cherry, that is larger than one-half pit shell is considered as one pit;

(ii) A single piece of pit shell, whether or not within or attached to a whole cherry, that is not larger than one-half pit shell is considered as one-half pit;

(iii) Pieces of pit shell, within or attached to a whole cherry, when their combined size is larger than one-half pit shell are considered as one pit; and

(iv) Pieces of pit shell, within or attached to a whole cherry, when their combined size is not larger than one-half pit shell are considered as one-half pit.

(2) "Drained cherries" means pitted cherries that are substantially free from any adhering sirup, sugar, or other packing medium.

(c) *(A) Classification.*—Frozen red tart pitted cherries that are practically free from pits may be given a score of 18 to 20 points. "Practically free from pits" means that the number of pits that may be present does not exceed the allowances for this classification specified in Table I.

(d) *(B) Classification.*—Frozen red tart pitted cherries that are reasonably free from pits may be given a score of 16 or 17 points. Frozen red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably free from pits" means that the number of pits that may be present does not exceed the number specified in Table I.

(e) *(C) Classification.*—Frozen red tart pitted cherries that are fairly free

from pits may be given a score of 14 or 15 points. Frozen red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly free from pits" means that the number of pits that may be present does not exceed the number specified in Table I.

(f) *(SStd.) Classification.*—Frozen red tart pitted cherries that fail to meet the requirements for U.S. Grade C may be given a score of 0 to 13 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.808 Freedom from defects.

(a) *General.*—The factor of freedom from defects refers to the degree of freedom from harmless extraneous material, mutilated cherries, and cherries blemished by scab, hail injury, discoloration, scar tissue, or by other means.

(1) "Cherry" means a whole cherry, whether or not pitted, or portions of such cherries which in the aggregate approximate the average size of the cherries.

(2) "Harmless extraneous material" means any vegetable substance (including, but not being limited to, a leaf or a stem and any portions thereof) that is harmless.

(3) "Mutilated cherry" means a cherry that is so pitter-torn or damaged by other means that the entire pit cavity is exposed and the appearance of the cherry is seriously affected.

(4) "Minor blemished cherry" means any cherry blemished with discoloration (other than scald) having an aggregate area of a circle $\frac{9}{32}$ inch (7 mm) or less in diameter which more than slightly affects the appearance of the cherry but does not extend into the fruit tissue.

(5) "Blemished cherry" means any cherry blemished by skin discoloration (other than scald) which in the aggregate exceeds the area of a circle 9/32 inch (7 mm) in diameter. A cherry affected by skin discoloration extending into the fruit tissue or by scab, hail injury, scar tissue, or other abnormality, regardless of size, is considered a blemished cherry.

(b) *(A) Classification.*—Frozen red tart pitted cherries that are practically free from defects may be given a score of 27 to 30 points. "Practically free from defects" means that the number of defects that may be present does not exceed the number specified for the applicable type of defect in Table I.

(c) *(B) Classification.*—Frozen red tart pitted cherries that are reasonably free from defects may be given a score of 24 to 26 points. Frozen red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably free from defects" means that the number of defects that may be present does not exceed the number specified for the applicable type of defect in Table I.

(d) *(C) Classification.*—Frozen red tart pitted cherries that are fairly free from defects may be given a score of 21 to 23 points. Frozen red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that the number of defects that may be present does not exceed the number specified for the applicable type of defect in Table I.

(e) *(SStd.) Classification.*—Frozen red tart pitted cherries that fail to meet the requirements for Grade C may be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 52.809 Character.

(a) *General.*—The factor of character refers to the degree of ripeness of the cherries and the physical characteristics of the flesh of the cherries.

(b) *(A) Classification.*—Frozen red tart pitted cherries that have a good character may be given a score of 27 to 30 points. "Good character" means that the cherries are thick-fleshed and have a firm, tender texture.

(c) *(B) Classification.*—Frozen red tart pitted cherries that have a reasonably good character may be given a score of 24 to 26 points. Frozen red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade B, regardless of the total score for the product (this is a limiting rule). "Reasonably good character" means that the cherries may be reasonably thick-fleshed and slightly soft.

(d) *(C) Classification.*—Frozen red tart pitted cherries that have a fairly good character may be given a score of 21 to 23 points. Frozen red tart pitted cherries that fall into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good character" means that the cherries may be thin-fleshed and may be soft but not mushy, or slightly tough but not leathery.

(e) *(SStd.) Classification.*—Frozen red tart pitted cherries that fail to meet the requirements for Grade C may be given a score of 0 to 20 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

ALLOWANCES FOR QUALITY FACTORS

§ 52.810 Allowances for quality factors.

TABLE I—ALLOWANCES FOR QUALITY FACTORS

Factor	Sample unit size	Maximum number permissible for the respective grade					
		A		B		C	
Color: Very markedly or undercolored.	Per 20 ozs.	10		22		37	
Pits	Per 20 ozs.	Not more than 2 in any sample unit.	Sample average 1 per 40 ozs.	Not more than 3 in any sample unit.	Sample average 1 per 30 ozs.	4 or more in any sample unit.	Sample average 1 per 20 ozs.
Defects: Total—mutilated, minor blemished, and blemished	Per 100 cherries.	10		15		20	
of which Blemished—limited to harmless extraneous material.	Total contents.	3 Average 1 piece per 60 oz. net contents.		7 Average 1 piece per 40 oz. net contents.		15 Average 1 piece per 20 oz. net contents.	

LOT COMPLIANCE

§ 52.811 Ascertaining the grade of a lot.

The grade of a lot of frozen red tart pitted cherries covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (§§ 52.1 through 52.87).

SCORE SHEET

§ 52.812 Score sheet for frozen red tart pitted cherries.

FACTORS		SCORE POINTS
Color	20	(A) 18-20 (B) [2] 16-17 (C) [2] 14-15 (SStd.) [2] 0-13
Freedom from pits	20	(A) 18-20 (B) [2] 16-17 (C) [2] 14-15 (SStd.) [2] 0-13
Freedom from defects	30	(A) 27-30 (B) [2] 24-26 (C) [2] 21-23 (SStd.) [2] 0-20
Character	30	(A) 27-30 (B) [2] 24-26 (C) [2] 21-23 (SStd.) [2] 0-20
Total score	100	

Size and kind of container .....
Container mark or identification .....
Label (style of pack, ratio of fruit to sugar, etc. if shown) .....
Net weight (ounces)† .....
Size [1] .....

Normal flavor .....
Grade .....

[1] See size limitation for U.S. Grade A and U.S. Grade B.

[2] Indicates limiting rule.

Dated September 4, 1973.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.73-19132 Filed 9-10-73;8:45 am]

[7 CFR Part 52]

STANDARDS FOR GRADES OF FROZEN ASPARAGUS

Notice of Proposed Rule Making

Subpart—United States Standards for Grades of Frozen Asparagus

Notice of Proposed Rulemaking

Notice is hereby given that the United States Department of Agriculture is considering an amendment to the United States Standards for Grades of Frozen Asparagus (7 CFR 52.381–52.395) pursuant to the authority contained in the Agricultural Marketing Act of 1946 (sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624)).

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed amendments should file the same in duplicate by October 31, 1973 with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250. All written submissions made pursuant to this notice will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

NOTE.—Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act or with applicable state laws and regulations.

Statement of Consideration Leading to the Proposed Amendment.—The U.S. Department of Agriculture has received a request from the American Frozen Food Institute (AFFI) to revise slightly the United States Standards for Grades of Frozen Asparagus which have been in effect since April 8, 1970.

Currently, tough fiber development of one (1) inch or less is classified as a "minor" defect, that over one inch and up to two (2) inches is a "major" defect, and any over two inches is a "severe" defect. AFFI requests that the "minor" category be eliminated and any tough fiber be classified as at least a major defect.

Because "tough fiber" adversely affects the eating quality of frozen asparagus, the Department concurs that a more restrictive allowance for this defect is justified. Such reclassification would noticeably reduce the amount of tough fiber development that would be permitted in the U.S. Grade A and U.S. Grade B frozen asparagus. The amendment proposed is:

Table V of this subpart is revised to read as follows:

TABLE V
CLASSIFICATION OF DEFECTS
CHARACTER—DAMAGE

Quality factors	Defects	Classification		
		Minor	Major	Severe
Character	Spears and tips styles:			
	In grade A only: Reasonably well developed (worse than plate 1 but not worse than plate 2 or 3)	×		
	In all grades:			
	Poorly developed (worse than plate 2 or 3):		×	
	Seedy			×
	Flowered			
	Cut spears or Cuts and Tips style:			
	In all grades:			
	Poorly developed (worse than plate 2 or 3):			
	Seedy	×		
	Flowered		×	
	Tough fiber development:			
	2 inches or less		×	
	More than 2 inches or woody units of any length			×
Damage	Shattered Heads—broken or shattered to the extent that it is definitely noticeable	×		
	Misshapen—badly crooked or affected in appearance by doubles or malformations	×		
	Poorly Cut—angle of cut less than 45 degrees—cut is ragged or partially cut	×		
	Discoloration, mechanical injury, pathological or damaged by other means to the extent that the appearance and eating quality of a unit is affected:			
	Slightly	×		
	Materially		×	
	Seriously			×

For interpretative guides, see USDA illustrations of "Stages of Development in Frozen Asparagus," which are a part of this document.

(Sec. 205, 60 Stat. 1090, as amended, (7 U.S.C. 1624).)

Dated September 4, 1973.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

[FR Doc.73-19177 Filed 9-10-73;8:45 am]

[7 CFR, Part 932]

OLIVES GROWN IN CALIFORNIA

Proposed Expenses, Rate of Assessment, and Carryover of Unexpended Funds

This notice invites written comments relative to the proposed Olive Administrative Committee expenses of $825,000 and an assessment rate of $15.00 per ton of regulated California olives to support committee activities during the 1973–74 fiscal year under marketing Order No. 932. It is also proposed that unexpended assessment income from 1972–73 and prior years be carried over as a committee reserve.

Consideration is being given to the following proposals submitted by the Olive Administrative Committee, established under the marketing agreement, as amended, and Order No. 932, as amended (7 CFR, Part 932), regulating the handling of olives grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), as the agency to administer the terms and provisions thereof:

(a) That the Secretary of Agriculture find that the expenses that are reasonable and likely to be incurred by the Olive Administrative Committee during the period September 1, 1973, through August 31, 1974, will amount to $825,000.

(b) That the Secretary of Agriculture fix the rate of assessment for said period, payable by each first handler in accordance with § 932.39, at $15.00 per ton of olives.

(c) Unexpended assessment funds in excess of expenses incurred during the fiscal year ended August 31, 1973, and prior years shall be carried over as a reserve in accordance with the applicable provisions of § 932.40.

(d) 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.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal shall file the same, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than September 20, 1973. 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)).

Dated September 6, 1973.

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

[FR Doc.73-19278 Filed 9-10-73;8:45 am]

[7 CFR Part 981]

ALMONDS GROWN IN CALIFORNIA

Revision of Reporting Requirements, and Approval To Establish, Maintain, and Use an Operating Reserve

Notice is given of a proposal to amend Subpart—Administrative Rules and Regulations (7 CFR 981.441–981.482; 38 FR 9987) by revising handler reporting requirements, and to amend Subpart—Budget of Expenses and Rate of Assessment (7 CFR 981.322) by including approval for the Almond Control Board to establish, maintain, and use an operating reserve. The subparts are pursuant to the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), hereinafter collectively referred to as the "order", regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on a unanimous recommendation of the Almond Control Board.

The California almond industry is seeking ways to improve the accuracy of its crop estimates. For some time, there has been growing concern in the industry about the difference between estimates of California's almond production and actual production. The Control Board must have an accurate estimate of this production to make annual marketing policy recommendations to the Secretary. Handlers need an accurate estimate of the crop to contract sales with their customers.

To obtain more accurate crop estimates, it is necessary to accumulate data on the quantity of almonds produced in each California county. To achieve this, it is proposed that handlers indicate the county of production on the receipt which they issue pursuant to § 981.71 of the order to a producer for each lot of almonds received. Handlers are required to submit a copy of every receipt to the Control Board to enable it to establish a handler's reserve obligation and to obtain statistical information necessary for the conduct of its operations. The proposed requirements to include this additional information on the receipt form would be set forth in § 981.471 of the administrative rules and regulations.

In addition, it is proposed that handlers submit a summary report to the Control Board three times a year of the quantity of almonds received for their own account, by variety and county of production. This proposed requirement would be set forth in § 981.472.

It is also proposed that the Control Board be given approval to establish, maintain, and use an operating reserve fund pursuant to § 981.81(c). Pursuant to paragraph (c), the operating reserve fund is for marketing promotion including paid advertising, and for the maintenance and functioning and other authorized activities of the Board. For these respective activities, the amount applicable to these purposes shall not exceed approximately one crop year's budgeted expenses for such activities. The approval to establish, maintain, and use the operating reserve would be set forth as a new § 981.300 in Subpart—Budget of Expenses and Rate of Assessment.

Funds for the operating reserve are obtained from any money collected as assessments during any crop year and not expended at the end of the crop year's operations, pursuant to § 981.81 (b). It is proposed that unexpended assessment funds in excess of expenses incurred during the crop year ended June 30, 1973, be retained in the operating reserve fund.

All persons who desire to submit written data, views, or arguments in connection with the proposal should file them, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, to be received not later than September 21, 1973. 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 proposal is to amend Subpart—Administrative Rules and Regulations (7 CFR 981.441–981.482; 38 FR 9987) and Subpart—Budget of Expenses and Rate of Assessment (7 CFR 981.322) as follows:

1. In § 981.471, redesignate paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), and add a new paragraph (a) reading as follows:

§ 981.471 **Records of receipts.**

(a) Each handler, on receiving almonds for his own account, shall issue to the person from whom so received a receipt for these almonds. In addition to the information required to be shown on the receipt pursuant to § 981.71, the receipt shall also show the county in which the almonds were produced.

* * * * *

2. Redesignate the provisions in § 981.472 as paragraph (a), and add a new paragraph (b) reading as follows:

§ 981.472 **Report of almonds received.**

* * * * *

(b) Each handler shall submit a summary report of almonds received during the following periods:

July 1 to December 31;
January 1 to March 31;
April 1 to June 30.

Each summary report shall be submitted to the Control Board within 30 days after the end of the reporting period and shall show the quantity of almonds received during the reporting period by variety and county of production.

3. Add a new § 981.300 reading as follows:

§ 981.300 **Operating reserve.**

(a) Approval is hereby given for the Board to establish and maintain an operating reserve fund for marketing promotion including paid advertising, and for the maintenance and functioning and other authorized activities of the Board. For the foregoing respective activities, the amount applicable to these purposes shall not exceed approximately one crop year's budgeted expenses for such activities. Approval is hereby given for the Board to use funds accumulated in the operating reserve fund for these activities.

(b) Unexpended assessment funds in excess of expenses incurred during the crop year ended June 30, 1973, shall be retained in an operating reserve fund in accordance with applicable provisions of §§ 981.80 and 981.81.

Dated September 5, 1973.

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

[FR Doc.73-19211 Filed 9-10-73;8:45 am]

Agricultural Stabilization and Conservation Service

[7 CFR Part 722]

EXTRA LONG STAPLE COTTON

Proposed Determinations Regarding 1974 Crop

The Secretary of Agriculture is preparing to make the following determinations with respect to the 1974 crop of extra long staple cotton (referred to as ELS cotton):

a. Amount of the national marketing quota.

b. Amount of the national acreage allotment.

c. Apportionment of the national acreage allotment to States and counties.

d. Date or period for conducting the national marketing quota referendum.

e. Unrestricted use sales policy.

f. Loan level and payment rate.

g. Detailed operating provisions to carry out the price support program.

The first four determinations above are to be made pursuant to the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31, as amended; 7 U.S.C. 1281 et seq.):

(a) *National marketing quota.*—Section 347(b)(1) of the act requires the Secretary to proclaim the amount of the national marketing quota for the 1974 crop of ELS cotton by October 15, 1973. Such marketing quota shall be the number of standard bales of ELS cotton equal to the sum of the estimated domestic consumption and estimated exports, less estimated imports, for the 1974–75 marketing year, which begins August 1, 1974, plus such additional number of bales, if any, as the Secretary determines necessary to assure adequate working stocks in trade channels until ELS cotton from the 1975 crop becomes readily available without resort to Commodity Credit Corporation stocks. The Secretary may reduce the quota so determined for the purpose of reducing surplus stocks, but not below the minimum quota of 82,481 standard bales prescribed under section 347(b)(2) of the act.

(b) *National acreage allotment.*—Section 344(a) provides that the national acreage allotment for the 1974 crop of ELS cotton shall be that acreage determined by multiplying the national marketing quota in bales by 480 pounds (net weight of a standard bale) and dividing the result by the national average yield per acre of ELS cotton for the four calendar years 1969, 1970, 1971, and 1972.

(c) *Apportionment of the national acreage allotment to States and counties.*—Sections 344(b) and (e) provide that the national acreage allotment for the 1974 crop of ELS cotton shall be apportioned to States and counties on the basis of the acreage planted to ELS cotton (including acreage regarded as having been planted) during the five calendar years 1968, 1969, 1970, 1971, and 1972, adjusted for abnormal weather conditions during such period. Section 344(e) further provides that the State committee may reserve not to exceed 10 percent of its State allotment to adjust county allotments for trends in acreage, for counties adversely affected by abnormal conditions, or for small or new farms, or to correct inequities in farm allotments and to prevent hardship.

(d) *Date or period for conducting the national marketing quota referendum.*—Section 343 requires the Secretary to conduct a referendum, by secret ballot, of farmers engaged in the production of ELS cotton during 1973, by December 15, 1973, to determine whether such farmers are in favor of or opposed to the quota. If more than one-third of the farmers voting in the referendum oppose the national marketing quota, such quota shall become ineffective upon proclamation of the results of the referendum. Section 343 further requires the Secretary to proclaim the results of the referendum within 30 days after the date of such referendum.

The following determinations will be made pursuant to the Agricultural Act of 1949, as amended (63 Stat. 1051, as amended; 7 U.S.C. 1421 et seq.):

(e) *Unrestricted use sales policy.*—Section 407 of the act provides that no ELS cotton may be sold at less than 115 percent of the current loan rate.

(f) *Loan level and payment rate.*—Section 101(f) of the act (7 U.S.C. 1441(f)) requires that price support shall be made available to cooperators for the 1968 and each subsequent crop of ELS cotton, if producers have not disapproved marketing quotas therefor, through loans at a level which is not less than 50 percent or more than 100 percent in excess of the loan level established for Middling 1-inch upland cotton of such crop at average location in the United States (except that such loan level for ELS cotton shall in no event be less than 35 cents per pound). On August 27, 1973, the Secretary announced the preliminary national average loan rate of 25.26 cents per pound for Middling 1-inch upland cotton (micronaire 3.5 through 4.9), at average location. Section 101(f) also provides for price support payments at a rate which, together with the loan level established for such crop, shall be not less than 65 percent or more than 90 percent of the parity price for ELS cotton as of the month in which the payment rate is announced. Section 401 of the act (7 U.S.C. 1421) requires that, in determining the level of support in excess of the minimum level prescribed for ELS cotton, consideration shall be given to the supply of the commodity in relation to the demand therefor, the price levels at which other commodities are being supported, the availability of funds, the perishability of the commodity, the importance of the commodity to agriculture, and the national economy, the ability to dispose of stocks acquired through a price support operation, the need for offsetting temporary losses of export markets, and the ability and willingness of producers to keep supplies in line with demand.

(g) *Detailed operating provisions to carry out the price support program.*—Detailed regulations necessary to carry out the price support program on ELS cotton are also being reviewed for 1974. Provisions of this kind in effect under the current program may be found in the regulations providing the terms and conditions for payments on ELS cotton for 1968 and succeeding years (7 CFR 722.700–719 (1973 ed.), as amended by 38 FR 18451) and in the Cotton Loan Program Regulations (7 CFR 1427.1–28 and 1427.104 (1973 ed.), and as amended by 38 FR 13651 and 20090).

Prior to making any of the foregoing determinations and issuing related regulations, consideration will be given to any data, views, and recommendations which are submitted in writing to the Director, Cotton, Rice, and Oilseeds Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, Washington, D.C. 20250.

In order to be sure of consideration, all submissions must be received not later than September 20, 1973. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in Room 4091, South Building, 14th and Independence Avenue SW., Washington, D.C.

Signed at Washington, D.C., on September 6, 1973.

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

[FR Doc.73-19293 Filed 9-10-73;8:45 am]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

BLUE RIDGE PARKWAY, NORTH CAROLINA AND VIRGINIA

Parking and Crossing Permits for Hunters

Notice is hereby given that pursuant to the authority contained in section 3 of the Act of August 25, 1916 (39 Stat. 535 (16 U.S.C. 3)); the Act of June 30, 1936 (49 Stat. 2041 (16 U.S.C. 460a–2, as amended)); 245 DM–1 (34 FR 13879), as amended, National Park Service Order No. 77 (38 FR 7478), as amended; and Regional Director, Southeast Region Order No. 5 (37 FR 7721), it is proposed to amend § 7.34(d) of Title 36 of the Code of Federal Regulations as is set forth below.

The purpose of the amendment is to conform the periods during which the Superintendent, Blue Ridge Parkway, may issue permits for hunter parking and crossing, generally, with the applicable hunting seasons of the States of Virginia and North Carolina—to the extent that such hunter uses will not interfere with other recreational uses of the parkway. Due to the nature and extent of these other parkway uses at certain peak seasons, it has been determined that hunter parkway and crossing permits should be limited to the periods October 15–February 28 and April 15–May 15.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment to the Superintendent, Blue Ridge Parkway, Post Office Box 7606, Asheville, N.C. 28807, on or before Oct. 11, 1973.

It is proposed to amend paragraph (d) of § 7.34 to read as follows:

§ 7.34 Blue Ridge Parkway.

* * * * *

(d) *Parking and crossing permits for hunters.*—During the hunting seasons prescribed by the States of North Carolina and Virginia (but not to exceed the periods October 15 through February 28 and April 15 through May 15), hunters may, under permits issued by the Superintendent, park vehicles in designated parking areas and cross Parkway lands from and to their vehicles with dogs on leash, firearms with breach or chamber open, and wildlife lawfully killed on lands adjacent to the Parkway. The loading or unloading of any hunter, dog, or game from any point within the Parkway boundaries other than at previously designated parking areas is prohibited.

* * * * *

GRANVILLE B. LILES,
Superintendent, Blue Ridge Parkway.

[FR Doc.73-19215 Filed 9-10-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 117]

[CGD 73-196P]

RAHWAY RIVER, N.J.

Proposed Drawbridge Operation Regulations

At the request of the Central Railroad Company of New Jersey, the Coast

Guard is considering amending the regulations for the railroad bridge across the Rahway River, mile 2.0, to permit certain periods when at least 4 hours' notice is required. The draw is presently required to open on signal. This change is being considered because of limited navigation during the times proposed.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander (oan), Third Coast Guard District, Governors Island, New York, N.Y. 10004. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Third Coast Guard District.

The Commander, Third Coast Guard District, will forward any comments received before October 16, 1973, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding a new paragraph (g) to § 117.210 to read as follows:

§ 117.210 Raritan River and Arthur Kill and their navigable tributaries, bridges.

* * * * *

(g) Rahway River, mile 2.0, Central Railroad Company of New Jersey. The draw shall open on signal except that from December 1 through March 31, and from 10 p.m. to 6 a.m. from April 1 through November 30, the draw shall open on signal if at least 4 hours' notice is given.

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

Dated September 5, 1973.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.73-19230 Filed 9-10-73;8:45 am]

[33 CFR Part 117]

[CGD 73-195P]

ALABAMA RIVER, ALA.

Proposed Drawbridge Operation Regulations

The Coast Guard is considering revising the regulations for the Louisville and Nashville Railroad Company drawbridge, mile 293.3, Alabama River, to require at least 24 hours' notice before the draw is required to open for the passage of vessels. The draw is presently required to open on signal. This change is being considered because the draw has not opened for at least 8 years and also because other bridges in this reach of the Alabama River have been placed on the 24 hour notice provision.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander (oan), Eighth Coast Guard District, Customhouse, New Orleans, Louisiana 70130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Eighth Coast Guard District.

The Commander, Eighth Coast Guard District, will forward any comments received before October 16, 1973, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revised by adding a new subparagraph (12-a) immediately after subparagraph (12) of paragraph (i) of § 117.245 to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(i) * * *

(12-a) Alabama River, Ala., Louisville and Nashville railroad bridge, mile 293.3. The draw shall open on signal if at least 24 hours' notice is given.

* * * * *

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

Dated September 5, 1973.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.73-19229 Filed 9-10-73;8:45 am]

[33 CFR Part 117]

[CGD 73-198P]

ASHEPOO RIVER, S.C.

Proposed Drawbridge Operation Regulations

At the request of the Seaboard Coast Line Railroad Company, the Coast Guard is considering revising the regulations for the bridge across the Ashepoo River, mile 32.0, to permit the draw to remain closed to the passage of vessels. The draw has not been opened for the passage of vessels since 1939.

Interested persons may participate in the proposed rulemaking by submitting written data, views, of arguments to the Commander (oan), Seventh Coast Guard District, room 1018, Federal Building, Miami, Florida 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before October 16, 1973, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding a new subparagraph (4) to paragraph (h) of § 117.245 to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(h) * * *

(4) Ashepoo River, S.C.; Seaboard Coast Line drawbridge, mile 32.0. The draw need not open for the passage of vessels and paragraphs (b) through (e) of this section shall not apply to the bridge, provided that the draw shall be returned to full operation within 6 months after notification of the owner by the Commandant to take such action.

* * * * *

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

Dated September 5, 1973.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 73-19232 Filed 9-10-73;8:45 am]

[33 CFR Part 117]

[CGD 73-197P]

RED RIVER, LA. AND ARK.

Proposed Drawbridge Operation Regulations

The Coast Guard is considering revising the regulations for the drawbridges

across the Red River from mile 66.0, the location of the first drawbridge, to mile 283.1 to require at least 48 hours' notice. Those drawbridges above mile 283.1 would not be required to open for the passage of vessels. This change is being considered because of limited navigation on the Red River from mile 30.6 upward.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander (oan), Second Coast Guard District, Federal Building, 1520 Market Street, St. Louis, Missouri 63103. Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Second Coast Guard District.

The Commander, Second Coast Guard District, will forward any comments received before October 16, 1973, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by:

(1) Deleting subparagraphs (2), (2-a), (3), (4), (5), (6), and (7) of paragraph (f) of § 117.560.

(2) Adding a new subparagraph (2) to paragraph (f) of § 117.560 to read as follows:

§ 117.560 Mississippi River and its tributaries and outlets; bridges where constant attendance of drawtenders is not required.

* * * * *

(f) * * *

(2) Red River, La. and Ark., mile 66.0 to mile 283.1. At least 48 hours' notice is required. The draws of the bridges need not open for a vessel that arrives at any of these bridges more than 2 hours after the time specified in the notice, unless a second notice of at least 48 hours is given. The draws of the bridges above mile 283.1 need not open for the passage of vessels.

* * * * *

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

Dated September 5, 1973.

W. M. BENKERT,
Read Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.73-19231 Filed 9-10-73;8:45 am]

[33 CFR Part 117]

[CGD 73-199P]

CORTE MADERA CREEK, CAL.

Proposed Drawbridge Operation Regulations

The Coast Guard is considering amending the regulations for the Northwestern Pacific railroad bridge across Corte Madera to require more frequent openings of the draw. The draw is presently required to open if at least 24 hours notice is given on weekdays and at least 72 hours notice is given for Saturdays, Sundays and holidays. The proposed amendment would require the draw to open if at least 24 hours' notice is given at all times except that from May 1 through October 31 on Saturdays, Sundays, and holidays the draw would open on signal from 8 a.m. of the first day of the holiday or weekend to 10 p.m. of the last day of the weekend or holiday. This change is being considered because of a substantial increase of vessels in the area during the period proposed.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments to the Commander (oan), Twelfth Coast Guard District, 630 Sansome Street, San Francisco, California 94126.

Each person submitting comments should include his name and address, identify the bridge, and give reasons for any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Twelfth Coast Guard District.

The Commander, Twelfth Coast Guard District, will forward any comments received before October 16, 1973, with his recommendations to the Chief, Office of Marine Environment and Systems, who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by revising paragraph (e) of § 117.712 to read as follows:

§ 117.712 Tributaries of San Francisco Bay and San Pablo Bay, Cal.

* * * * *

(e) *Corte Madera Creek, Northwestern Pacific railroad bridge near Greenbrae.*—(1) The draw shall open on signal if at least 24 hours' notice has been given. However, from May 1 through October 31 on Saturdays, Sundays, and holidays that are observed on Monday or Friday during this period, the draw shall open on signal from 8 a.m. on the first day of the holiday or weekend until 10 p.m. on the last day of the weekend or holiday. If no drawtender is present during these periods the draw shall be maintained in the fully open position.

(2) The owner of or agency controlling this bridge shall keep conspicuously posted on both sides of the bridge a copy of the provisions of this paragraph together with information stating exactly how the authorized representative may be reached.

* * * * *

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

Dated September 5, 1973.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.73-19233 Filed 9-10-73;8:45 am]

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-GL-40]

TRANSITION AREA

Proposed Designation

The Federal Aviation Administration is considering amending Part 71 of the Federal Aviation Regulations so as to designate a transition area at Hillsboro, Wisconsin.

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Director, Great Lakes Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. All communications received on or before October 11, 1973, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Regional Air Traffic Division Chief. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

A new public use instrument approach procedure has been developed for the Kickapoo Airport, Hillsboro, Wisconsin. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Hillsboro, Wisconsin. The new procedure will become effective concurrently with the designation of the transition area.

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations as hereinafter set forth:

In § 71.181 (38 FR 435), the following transition area is added:

HILLSBORO, WISC.

That airspace extending upward from 700 feet above the surface within a 8 mile radius of the Kickapoo Airport (latitude 43°39'24" N., longitude 90°19'41" W.).

This amendment is proposed under the authority of section 307(a) of the Fed-

eral Aviation Act of 1958 (49 U.S.C. 1348), and of section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Des Plaines, Ill., on August 21, 1973.

R. O. ZIEGLER,
Acting Director,
Great Lakes Region.

[FR Doc.73-19187 Filed 9-10-73;8:45 am]

Hazardous Materials Regulations Board

[49 CFR Parts 172, 173]

[Docket No. HM-57; Notice No. 73-6]

CLASSIFICATION AND PACKAGING OF CORROSIVE MATERIALS

Notice of Proposed Rule Making

On March 23, 1972, April 26, 1972, September 16, 1972, May 16, 1973, and August 3, 1973, the Hazardous Materials Regulations Board (the Board) published Docket No. HM-57, Amendment Nos. 171-14, 172-14, 172-20, 173-61, 173-74, 174-14, 175-7, 177-21, 178-26 (37 FR 5946, 8383, and 18918, 38 FR 12807 and 20837) prescribing new regulations for the classification, packaging, marking, labeling, and transportation of corrosive materials. Compliance with these amendments has been authorized as of April 21, 1972. The mandatory effective date is December 31, 1973.

When the Board extended the mandatory effective date to December 31, 1973 (38 FR 12807), it stated that several problems remained to be resolved. On August 3, 1973, the Board published Amendment Nos. 172-20, 173-74, and 178-26 in this docket which resolved several issues. This notice proposes changes to resolve the remaining difficulties except for the one involving materials corrosive only to metals. The Board expects to propose a final resolution in this matter in the near future. In this document, the Hazardous Materials Regulations Board is considering amendment of Parts 172 and 173, to add a new § 173.249a, and to amend §§ 172.5, 173.28, 173.119, 173.244, and 173.245.

Tariff 6D.—The proposed changes to § 172.5 are based on several different sources of information. The primary source is the Air Transport Restricted Articles Tariff No. 6D which is the tariff used by many airlines as their public disclosure on the materials authorized aboard aircraft and the conditions under which they will be transported. The materials listed in Tariff 6D are identified in § 172.5 of this document by abbreviations following the name of the material, i.e., "(Cor)" for Corrosive liquid, "(B)" for ORA B. "ORA B" means "Other Restricted Article, Group B" and is defined in Tariff 6D as "a solid material which, when wet, becomes strongly corrosive so as to be capable of causing damage to aircraft structure." These abbreviations represent the classification given the subject materials in Tariff 6D before July 28, 1973. In a recent revision to Tariff 6D, the classification of a number of materials was changed from ORA B to "corrosive material." These changes have highlighted the existence of discrepancies between the DOT Hazardous Materials Regulations and Tariff 6D regarding corrosive materials. The Board has information regarding certain materials that indicates they may not meet the corrosive material definition. Both publications use the same definition.

Based on the evaluation of the information available to the Board, it is of the opinion that many of the corrosive materials listed in the tariff are properly classed. In an effort to ascertain that the materials listed in § 172.5 as proposed herein meet the corrosive material definition, the Board requests that additional data be made available to it.

The Board is primarily interested in reviewing data representing results of the tests prescribed in § 173.240. It also requests that persons submitting data only on metals testing indicate that the material is not skin corrosive according to the test in § 173.240(a) if this is the case. They should also indicate if the material is corrosive to steel or aluminum, or both. According to the items that are finally added to § 172.5, the Board will make corresponding changes in Part 173 in the final amendment.

As an ancillary action, after the data has been reviewed and classification determinations have been completed through the rule making process, the Department will undertake to notify the Civil Aeronautics Board of all discrepancies. In this manner, it is hoped that Tariff 6D and the DOT Hazardous Materials Regulations will be made more uniform thereby facilitating compliance with all regulations. The Board intends to follow this procedure for all classes of hazardous materials as it proceeds with the updating of its own regulations.

Additional shipping names.—The Board has information on approximately 40 additional materials which could be corrosive, and are not named in this notice. However, on the basis of the information submitted, the Board believes that some of the materials possibly should be classed as flammable liquids or Class B poisons, and is reviewing this matter in more depth. If a material requested by a petitioner to be added to § 172.5 has a Tagliabue Open-Cup (T.O.C.) flash point slightly above 100°F. or between 80°F. and 100°F., the Board did not include the material in the list because of other pending rule making in HM-102. Any person observing that the Board has not provided for a material in this list as he requested, may request further consideration by providing data indicating that the material is not a Class B poison or a flammable liquid (open and closed cup flash point). There is no need to provide such data if these persons anticipate shipping these materials as Class B poisons, n.o.s. or corrosive liquids, n.o.s., as they deem appropriate. If the T.O.C. flash point is 80°F. or below and the material meets the definition in § 173.343, the material would be classed as a flammable liquid or a Class B poison, not a corrosive material.

Additional packagings.—Some persons petitioned the Board to add certain packagings in §§ 173.119(m) and 173.245. On the basis of these petitions and the satisfactory experience gained with the use of these packagings to transport materials similar to those now covered by the regulations, §§ 173.119(m) and 173.245 are proposed to be amended.

Reconditioned drums.—Several petitions were received to amend § 173.28 (h) to provide for the use of series 17 reconditioned drums. This proposal includes a provision for limited use of these drums in a service where they have been successfully used under special permit or for materials not considered corrosive prior to revision of § 173.240.

Small quantities and exemptions.—The Council for Safe Transport of Hazardous Articles (COSTHA) has petitioned the Board for reconsideration of Amendment 173-61 in Docket HM-57 to amend the small quantities exemption provision of § 173.244 to relieve shippers from what it considers an unwarranted burden of regulation when packaging and shipping small quantities of corrosive liquids. The Board believes that the portion of COSTHA's petition relating to exemption from specification packaging requirements when corrosive liquids are packed in inside metal or plastic packagings each not over 32 ounces by volume or weight has merit. It proposes to exempt corrosive liquids when so packaged from specification packaging, by amending § 173.244.

"Low hazard" corrosive liquids.—Several petitions were received requesting that the use of certain non-DOT specification packagings be authorized for corrosive liquids not considered corrosive by shippers prior to revision of § 173.240. These materials have been identified to the Board as presenting a lesser degree of hazard. In this proposal, the Board has agreed with several of the petitioners. However, it has modified the description of the material as presented by petitioners, in an effort to assure that corrosive liquids having a higher degree of hazard would not be shipped under these provisions. A new § 173.249a is proposed to prescribe packaging for these materials. Meanwhile, the Board has been inquiring into the strength of some of the packaging referenced to determine if upgrading of the packaging is warranted and feasible. Depending on the outcome of the Board's review and the records of experience that it gathers regarding the shipment of materials in these packagings, the Board may propose further rule making in this area.

Previously submitted data.—Some data has been provided to the Board indicating that certain materials proposed to be classified as corrosive materials do not meet § 173.240. For example, some aluminum chloride solutions apparently do not meet § 173.240. While the Board does not dispute this data and this data has been made a part of the docket, it desires to obtain the advice of persons

who possess information either supporting or opposing the proposed classification of the materials as corrosive. However, persons who have submitted any data on materials listed in this notice should reaffirm their conclusions by simply referring to the data previously submitted. It is not necessary to resubmit the data. This procedure will permit the Board to have the benefit of the latest data available and it will avoid any oversights caused by the extremely large volume of data that has been developed in this docket.

In consideration of the foregoing, it is proposed to amend 49 CFR Parts 172 and 173 as follows:

PART 172—LIST OF HAZARDOUS MATERIALS CONTAINING THE SHIPPING NAME OR DESCRIPTION OF ALL MATERIALS SUBJECT TO PARTS 170–189 OF THIS SUBCHAPTER

In § 172.5 the list of hazardous materials would be amended as follows:

§ 172.5 List of hazardous materials.

(a) * * *

Article	Classed as—	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in 1 outside container by rail express
(Add)				
*Acetic acid (Cor) (*aqueous solution*)	Cor	173.244, 173.245	Corrosive	10 gallons.
Acetic acid, glacial (Cor)	Cor	173.244, 173.245	do	Do.
Acetic anhydride (Cor)	Cor	173.244, 173.247	do	1 gallon.
Acetyl bromide (Cor)	Cor	173.244, 173.247	do	Do.
Acetyl iodide (Cor)	Cor	173.244, 173.247	do	Do.
*Acid chloride compound, liquid	Cor	173.244, 173.249a	do	10 gallons.
Acrylic acid	Cor	173.244, 173.245	do	5 pints.
*Alkanesulfonic acid (Cor)	Cor	173.244, 173.245	do	1 gallon.
Aluminum bromide, anhydrous, solid (B).	Cor	173.244, 173.245b	do	100 pounds.
Aluminum chloride, anhydrous, solid (B).	Cor	173.244, 173.245b	do	Do.
*Aluminum chloride solution	Cor	173.244, 173.245	do	10 gallons.
Aluminum phosphate, solid	Cor	173.244, 173.245b	do	100 pounds.
Aminoethylethanolamine	Cor	173.244, 173.245	do	10 gallons.
2-(2-Aminoethoxy) ethanol	Cor	173.244, 173.245	do	Do.
n-Aminoethylpiperazine	Cor	173.244, 173.245	do	Do.
Aminopropyldiethanolamine	Cor	173.244, 173.245	do	Do.
n-Aminopropylmorpholine	Cor	173.244, 173.245	do	Do.
bis-(Aminopropyl) piperazine	Cor	173.244, 173.245	do	Do.
Ammonium hydrogen fluoride, solid (B).	Cor	173.244, 173.245b	do	100 pounds.
*Ammonium hydrogen fluoride solution (B).	Cor	173.244, 173.245	do	5 gallons.
Amyl acid phosphate	Cor	173.244, 173.245	do	10 gallons.
Antimony trichloride, solid (Cor)	Cor	173.244, 173.245b	do	100 pounds.
*Antimony trichloride solution (Cor)	Cor	173.244, 173.245	do	5 pints.
Boron trifluoride-acetic acid complex (Cor).	Cor	173.244, 173.247	do	1 gallon.
Bromoacetic acid, solid (B)	Cor	173.244, 173.245b	do	100 pounds.
*Bromoacetic acid solution (Cor)	Cor	173.244, 173.245	do	1 quart.
n-Butyl acid phosphate (B)	Cor	173.244, 173.245	do	5 gallons.
Butyric acid	Cor	173.244, 173.245	do	10 gallons.
*Calcium hydrogen sulfite solution (B).	Cor	173.244, 173.245	do	5 gallons.
Caustic potash, dry or solid. *See* Caustic soda, dry, etc.				
Chloroacetic acid, solid (B)	Cor	173.244, 173.245b	do	100 pounds.
Chlorophenyl trichlorosilane (Cor)	Cor	No exemption, 173.280	do	10 gallons.
Chromic fluoride, solid (B)	Cor	173.244, 173.245b	do	100 pounds.
*Chromic fluoride solution (Cor)	Cor	173.244, 173.245	do	1 gallon.
*Coal tar dye, liquid (*not otherwise specifically named in § 172.5*)	Cor	173.244, 173.249a	do	10 gallons.
*Compounds, cleaning liquid (*containing phosphoric acid, acetic acid, sodium or potassium hydroxide*)	Cor	173.244, 173.249a	do	Do.
Crotonic acid	Cor	173.244, 173.245	do	Do.
Dichloroacetic acid (Cor)	Cor	173.244, 173.245	do	1 quart.
Dichloroacetyl chloride (Cor)	Cor	173.244, 173.247	do	1 gallon.
Dichloroisopropyl ether	Cor	173.244, 173.245	do	10 gallons.
Dichlorophenyl trichlorosilane (Cor)	Cor	No exemption, 173.280	do	Do.
Dichloropropene — dichloropropane mixture.	Cor	173.244, 173.245	do	Do.
Dichloropropene and propylene dichloride mixture.	Cor	173.244, 173.245	do	Do.
D(2-ethylhexyl) phosphoric acid	Cor	173.244, 173.245	do	Do.
Diisopropylethanolamine	Cor	173.244, 173.245	do	Do.
Diphenylmethylbromide, solid (Cor).	Cor	173.244, 173.245b	do	100 pounds.
*Diphenylmethyl bromide solution (Cor).	Cor	173.244, 173.247	do	1 gallon.
*Dye intermediate, liquid	Cor	173.244, 173.249a	do	10 gallons.
Ferric chloride, solid (B)	Cor	173.244, 173.245b	do	100 pounds.
*Ferric chloride solution	Cor	173.244, 173.245	do	10 gallons.
Fluoboric acid (Cor)	Cor	173.244, 173.264(a)	do	1 gallon.
Fumaryl chloride (Cor)	Cor	173.244, 173.245	do	1 quart.
Hexamethylene diamine, solid (Cor)	Cor	173.244, 173.245b	do	100 pounds.
Hexamethylene imine	Cor	173.244, 173.245	do	10 gallons.
Hexanoic acid	Cor	173.244, 173.245	do	Do.
*Hydrazine solution, *containing more than 50% of water.*	Cor	173.244, 173.245	do	5 gallons.
Iminobispropylamine	Cor	173.244, 173.245	do	10 gallons.
Iodine pentafluoride (Cor)	Cor	No exemption, 713.284	do	100 pounds.
Isobutyric acid	Cor	173.244, 173.245	do	10 gallons.
Isobutyric anhydride	Cor	173.244, 173.245	do	Do.
Isopentanoic acid	Cor	173.244, 173.245	do	Do.
Isopropyl acid phosphate, solid (B)	Cor	173.244, 173.245b	do	100 pounds.
Lead sulfate, solid, *containing more than 5% free acid.*	Cor	173.244, 173.245b	do	Do.
Methyl chloroform	Cor	173.244, 173.245	do	10 gallons.
Methyl dichloroacetate (Cor)	Cor	173.244, 173.245	do	1 quart.
Methyl ethyl pyridine	Cor	173.244, 173.245	do	10 gallons.
Methyl norbornene dicarboxylic anhydride.	Cor	No exemption, 173.245	do	1 quart.
*Mining reagent, liquid (containing 20% or more cresylic acid).	Cor	173.244, 173.249a	do	10 gallons.
Monoethanolamine	Cor	173.244, 173.245	do	Do.
Nonyl phenol	Cor	173.244, 173.245	do	Do.
Phenolsulfonic acid, liquid (Cor)	Cor	173.244, 173.263	do	10 pints.
*Potassium hydrogen fluoride solution (Cor).	Cor	173.244, 173.249	do	5 gallons.
*Potassium fluoride solution (Cor)	Cor	173.244, 173.249	do	Do.
Potassium hydroxide, dry or solid. *See* Caustic soda, dry, etc.				
Propionic acid (B)	Cor	173.244, 173.245	do	Do.
Propionic anhydride	Cor	173.244, 173.245	do	10 gallons.
Propylene diamine	Cor	173.244, 173.245	do	Do.
Selenic acid, liquid (Cor)	Cor	No exemption, 173.245	do	5 pints.
Soda lime, solid (B)	Cor	173.244, 173.245	do	100 pounds.
*Sodium fluoride solution (Cor)	Cor	173.244, 173.245	do	5 gallons.
Sodium hydrogen sulfate, solid (B)	Cor	173.244, 173.245b	do	100 pounds.
*Sodium hydrogen sulfate solution (Cor).	Cor	173.244, 173.245	do	1 gallon.
Sodium hydrogen sulfite, solid (B)	Cor	173.244, 173.245b	do	100 pounds.
*Sodium methylate, alcohol mixture	Cor	173.244, 173.245	do	10 gallons.
Sodium monoxide, solid (B)	Cor	173.244, 173.245b	do	100 pounds.
Sodium phenolate, solid	Cor	173.244, 173.245b	do	Do.
Tetraethylenepentamine	Cor	173.244, 173.245	do	10 gallons.
1,2,3,6-tetrahydrobenzaldehyde	Cor	173.244, 173.245	do	Do.
Tetramethylammonium hydroxide, liquid (Cor).	Cor	173.244, 173.245	do	Do.
*Textile treating compound mixture, liquid.	Cor	173.244, 173.249a	do	Do.
Thioglycolic acid (Cor)	Cor	173.244, 173.245	do	1 gallon.
Toluene sulfonic acid	Cor	173.244, 173.245	do	10 gallons.
Trichloroacetic acid, solid (B)	Cor	173.244, 173.245b	do	100 pounds.

Article	Classed as—	Exemptions and packing (see sec.)	Label required if not exempt	Maximum quantity in 1 outside container by rail express
*Trichloroacetic acid solution (Cor)	Cor	173.244, 173.245	do	1 quart.
1,1,2-trichloroethane	Cor	173.244, 173.245	do	10 gallons.
Trimethyl acetylchloride (Cor)	Cor	173.244, 173.247	do	1 gallon.
Valeric acid	Cor	173.244, 173.245	do	10 gallons.
Valeryl chloride (Cor)	Cor	173.244, 173.245	do	1 gallon.
White acid (*ammonium bifluoride and hydrocloric acid mixture*) (Cor).	Cor	173.244, 173.264(a)	do	Do.
*Zinc chloride solution (Cor)	Cor	173.244, 173.245	do	1 quart.
Zirconium tetrachloride, solid (Change)	Cor	173.244, 173.245b	do	100 pounds.
*Acids, liquid, n.o.s	Cor	173.244, 173.245	do	5 pints.
*Alkaline corrosive liquids, n.o.s	Cor	173.244, 173.249	do	10 gallons.
*Antimony pentachloride solution	Cor	173.244, 173.245	do	5 pints.
*Chromic acid solution	Cor	173.244, 173.245, 173.287	do	1 gallon.
*Cupriethylene-diamine solution	Cor	173.244, 173.249	do	Do.
*Formic acid solution	Cor	173.244, 173.245, 173.289	do	5 gallons.
*Hexamethylene diamine solution	Cor	173.244, 173.249, 173.292	do	10 gallons.

* * * * * *

PART 173—SHIPPERS

1. In Part 173 Table of Contents, § 173.249a would be added to read as follows:

Sec.
173.249a Acid chloride compound, liquid, Coal tar dye, liquid, Cleaning compound, liquid, Dye intermediate, liquid, Mining reagent, liquid, and Textile treating compound mixture, liquid.

2. In § 173.28, the introductory text of paragraph (m) would be amended to read as follows:

§ 173.28 Reuse of containers.

* * * * *

(m) Specifications 17C, 17E, and 17H steel drums (§§ 178.115, 178.116, 178.118 of this subchapter) from which contents have been removed, may be reused as prescribed in this part as packagings for shipment of flammable liquids, flammable solids, oxidizing materials, radioactive materials, and corrosive liquids covered by §§ 173.249 and 173.249a, only if the following requirements, in addition to the other requirements of this section, are complied with prior to each reuse:

* * * * *

3. In § 173.119, paragraph (m)(16) would be added to read as follows:

§ 173.119 Flammable liquids not specifically provided for.

* * * * *

(m) * * *

(16) Specification 6D or 37M (nonreusable container) (§§ 178.102, 178.134 of this subchapter). Cylindrical steel overpacks with an inside specification 2S or 2SL (§§ 178.35, 178.35a of this subchapter) polyethylene container. Authorized only for materials that will not react with polyethylene and result in container failure.

4. In § 173.244, paragraph (a) would be amended to read as follows:

§ 173.244 Exemptions for corrosive materials.

(a) Except corrosive liquids for which no exemption is provided in § 172.5 of this subchapter and unless otherwise provided in this part, corrosive liquids are exempt from specification packaging requirements when packaged:

(1) In inside metal or plastic packaging not over 32 ounces by volume or weight each;

(2) In inside glass bottles having a capacity not over 16 ounces by volume or weight each and enclosed in an inside metal can. This packaging is also exempt from Part 177 of this subchapter, except § 177.817, and from marking and labeling requirements. However, marking name of contents on outside packaging is required for shipments by water.

* * * * *

5. In § 173.245, paragraph (a)(4) would be amended; paragraph (a)(34) would be added to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(4) Specification 5A, 5B, 5C, or 5M (§§ 178.81, 178.82, 178.83, 178.90 of this subchapter). Metal barrels or drums.

* * * * *

(34) Specification 42B (§ 178.107 of this subchapter). Aluminum drum.

6. § 173.249a would be added to read as follows:

§ 173.249a Acid chloride compound, liquid, coal tar dye, liquid, cleaning compound, liquid, dye intermediate, liquid, mining reagent, liquid, and textile treating compound mixture, liquid.

(a) An acid chloride compound subject to this section is a liquid acid chloride compound not otherwise specifically named in § 172.5(a) of this subchapter.

(b) A liquid cleaning compound subject to this section must not contain any corrosive material specifically named in § 172.5(a) of this subchapter, except phosphoric acid, acetic acid, and not over 15 percent sodium or potassium hydroxide.

(c) A liquid dye intermediate is a ring compound, containing amino, hydroxy, sulfonic acid, or quinone group or a combination of these groups, used in the manufacture of dyes, and not otherwise specifically named in § 172.5 of this subchapter.

(d) Liquid acid chloride compound, liquid coal tar dye, liquid cleaning compound, liquid dye intermediate, liquid mining reagent, and liquid textile treating compound mixture must be packaged as follows:

(1) In specification packagings as prescribed in § 173.245.

(2) In packaging meeting all of the specific requirements prescribed in § 173.245 including packaging type and quantity limitations for inside packagings. The packagings are not required to meet the detailed specification requirements of Part 178 of this subchapter except that size and weight limitations for package types as prescribed in Part 178 may not be exceeded.

(3) Removable (open) head fiber drum lined or coated on the inside with a plastic material, not over 55-gallon capacity.

(4) Removable (open) head metal drum, not over 55-gallon capacity.

(5) Removable (open) head polyethylene drum, not over 6.5-gallon capacity.

Interested persons are invited to give their views on these proposals. Communications should identify the docket number and be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, Washington, D.C. 20590. Communications received on or before November 6, 1973, will be considered before final action is taken on these proposals. All comments received will be available for examination by interested persons at the Office of the Secretary, Hazardous Materials Regulations Board, room 6215 Buzzards Point Building, Second and V Streets SW., Washington, D.C., both before and after the closing date for comments.

(Secs. 831–835, title 18, U.S.C., sec. 9, Department of Transportation Act (49 U.S.C. 1657); title VI, sec. 902(h), Federal Aviation Act of 1958 (49 U.S.C. 1421–1430, 1472(h), and 1655(c)))

Issued in Washington, D.C., on August 31, 1973.

W. J. BURNS,
Director, Office of Hazardous Materials.

[FR Doc.73-19013 Filed 9-10-73;8:45 am]

COST OF LIVING COUNCIL

[6 CFR Ch. I]

RUBBER TIRE, PAPER, AND SOAP AND DETERGENT PRICE INCREASES

Notice of Public Hearings

Notice is hereby given that the Cost of Living Council will hold public hearings to receive comments from interested persons on Rubber Tire, Paper, and Soap and Detergent price increase prenotifications filed with the Cost of Living Council. The hearings will be held in the Cost of Living Council Auditorium, Room 2105, 2000 M Street NW., Washington, D.C. beginning at 9:30 a.m. on Monday, September 17, 1973, for Rubber Tires, Wednesday, September 19, 1973, for Paper, and Friday, September 21, 1973, for Soap and Detergents. The hearings

will explore facts relating to cost justification, the relationship of prices, profits, and capital investment, and the effect of productivity and volume improvement on costs and profits. Attention will also be given to what supply increases might result directly from these price increases.

In connection with these hearings the Council has suspended the running of the 30-day prenotification period on all pending prenotifications of price increases on rubber tires, paper, and soap and detergents (SIC codes 2011—Tire and inner tube; 2822—Synthetic rubber (vulcanizable elastomers); 2296—Tire cord and fabric; 2841—Soap and other detergents; and all of SIC Group 26—Paper and allied products). The firms concerned are being notified individually of the suspension and will again be notified when the suspension is lifted. The Council intends to act promptly on these prenotifications following the hearings.

Nine rubber companies, accounting for 75 percent of industry tire sales, have prenotified price increases of 6.5 percent an average on tires and tubes. Twenty paper companies, accounting for about 35 percent of industry sales, have prenotified price increases of about 5.7 percent on average on paper, paperboard, and converted paper products. Five major soap companies, accounting for about 70 percent of industry sales, have prenotified price increases of 20.3 percent on average on soap and detergent products. The specific prenotifications involved are listed in the prenotification summaries regularly issued by the Cost of Living Council.

These public hearings will be conducted under the authority of section 207(c) of the Economic Stabilization Act of 1970, as amended, which specifies that to the maximum extent possible, formal hearings be conducted for the purpose of acquiring information bearing on a change or a proposed change in prices which have or may have a significantly large impact upon the national economy.

The Cost of Living Council is inviting public participation in the form of written submissions as well as oral presentations. The Council requests all interested persons to submit for Council consideration written suggestions and comments on Rubber Tires not later than September 22, 1973, on Paper not later than September 24, 1973, and on Soap and Detergents not later than September 26, 1973.

All written submissions should be sent to Executive Secretariat, Cost of Living Council, 2000 M Street NW., Washington, D.C. 20508. All written submissions received before 5:00 p.m., e.s.t., on the applicable closing date for comments will be made part of the official record of the hearings.

Any information or data considered by the person furnishing it to be confidential must be submitted in writing, one copy only, before the person's scheduled appearance, or by the applicable closing date for written comments. The Cost of Living Council reserves the right to determine the confidential status of the information or data and to treat it accordingly.

Any person who has an interest in the subject of the hearings, or who is a representative of a group or class of persons which has an interest in the subject of the hearings, may request the opportunity to make an oral presentation by telephoning the Executive Secretariat of the Cost of Living Council at 202–254–8610 before 5:00 p.m., e.s.t., Thursday, September 13, 1973, for the Rubber Tire hearings, Friday, September 14, 1973, for the Paper hearing and Monday, September 17, 1973, for the Soap and Detergent hearings. The person making the request should be prepared to describe the interest concerned; if appropriate to state why he is a proper representative of a group or class of persons which has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where he may be contacted the requested hearing date. Oral presentations may be supplemented by written submissions filed with the Council not later than five days following the applicable hearing date.

The Council reserves the right to select the persons to be heard at the hearings, to schedule their respective presentation, and to establish the procedures governing the conduct of the hearings. Each presentation may be limited, based on the number of persons requesting to be heard.

Each person selected to be heard will be so notified by the Council before 5:00 p.m., e.s.t., September 14, 1973, for the Rubber Tire hearing, September 17, 1973, for the Paper hearing and September 18, 1973, for the Soap and Detergent hearing. Each scheduled witness must send 50 copies of his statement to the Executive Secretariat by 5:00 p.m., e.s.t., on the day preceding the applicable hearing date.

A Cost of Living Council official will be designated to preside at the hearings. They will not be judicial—or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. Any decision made by the Council with respect to the subject matter of the hearings will be based on all information available to the Council, from whatever source received. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity if he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and may not exceed 10 minutes each.

Any interested person may submit questions, to be asked of any person making a statement at the hearings, before 5:00 p.m., e.s.t., the day preceding the applicable hearing. Any person who makes an oral statement and who wishes to ask a question at the hearings may submit the question, in writing, to the presiding officer. The Council, or the presiding officer if the question is submitted at the hearings, will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Due to wide public interest in the hearings, available space may not accommodate all those who wish to attend; thus members of the general public will be admitted on a first come, first served basis.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

A transcript of the hearings will be made and the entire record of the hearings, including the transcript, will be retained by the Council and made available for inspection at the Public Reference Facility of the Council, Room 2313, 2000 M Street NW., Washington, D.C., between the hours of 8:30 a.m. and 5:30 p.m., Monday through Friday. Anyone may buy a copy of the transcript from the reporter.

Issued at Washington, D.C., on September 7, 1973.

JAMES W. MCLANE,
Deputy Director,
Cost of Living Council.

[FR Doc.73-19403 Filed 9-7-73;4:33 pm]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 180]

CERTAIN INERT INGREDIENTS IN PESTICIDE FORMULATIONS

Proposed Exemptions From Requirement of Tolerance

The Administrator of the Environmental Protection Agency has received requests to exempt 29 additional inert (or occasionally active) ingredients in pesticide formulations from tolerance requirements under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act. Based on a review of the history of use and available information on the chemistry and toxicology of these substances, the Administrator finds these substances useful as adjuvants and, when used in accordance with good agricultural practice, not a hazard to the public health.

Therefore, pursuant to provisions of the act (sec. 408(c), (e) 68 Stat. 512, 514 (21 U.S.C. 346a(c), (e))), the authority transferred to the Administrator of the Environmental Protection Agency (35 FR 15623), and the authority delegated by the Administrator to the Deputy Assistant Administrator for Pesticide Programs (36 FR 9038), it is proposed that § 180.1001 be amended by alphabetically inserting new items in the tables in paragraphs (c), (d), and (e), as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
3,6-Dimethyl-4-octyn-3,6-diol	Not more than 2.5% of pesticide formulation.	Surfactants, related adjuvants of surfactants.
2-Ethyl-1-hexanol	Not more than 2.5% of pesticide formulation.	Solvent, adjuvant of surfactants.
2,4,7,9-Tetramethyl-5-decyn-4,7-diol	Not more than 2.5% of pesticide formulation.	Surfactants, related adjuvants of surfactants.
* * * * * * *		

(d) * * *

Inert ingredients	Limits	Uses
α-[p-(1,1,3,3-Tetramethylbutyl)phenyl] poly(oxypropylene) block polymer with poly(oxyethylene); the poly(oxypropylene) content averages 25 moles, the poly(oxyethylene) content averages 40 moles, the molecular weight averages 3400.		Surfactants, related adjuvants of surfactants.
Polymerized acrylic acid and its ethyl and methyl esters.		Surfactants, related adjuvants of surfactants.
(e) * * *		
α-Alkyl(C_{16}-C_{18})-omega-hydroxypoly(oxyethylene); the poly(oxyethylene) content averages 3–20 moles.		Surfactants, related adjuvants of surfactants.
α-Alkyl(C_{12}-C_{18})-omega-hydroxypoly(oxyethylene)sulfate and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the poly(oxyethylene) content averages 3 moles.		Surfactants, related adjuvants of surfactants.
α-(p-Alkylphenyl)-omega-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of alkylphenol (alkyl is a mixture of propylene tetramer and pentamer isomers and averages C_{12}) with 6 moles of ethylene oxide		Surfactants, related adjuvants of surfactants.
Alkyl(C_9-C_{15})sulfate and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts.		Surfactants, related adjuvants of surfactants.
Amine salts of alkyl(C_9-C_{15}) benzenesulfonic acid (bditylamine; dimethylaminopropylamine; mono- and diisopropylamine; and mono-, di-, and triethanolamine).		Surfactants, related adjuvants of surfactants.
Benzoic acid		Preservative for formulations.
Ethylene dichloride (1,2-dichloroethane).		Solvent, cosolvent.
FD & C Blue No. 1		Dye.
Glycerol monooleate		Surfactants, related adjuvants of surfactants.
α-Lauryl-omega-hydroxypoly(oxyethylene) sulfate, sodium salt; the poly(oxyethylene) content is 3–4 moles.		Surfactants, related adjuvants of surfactants.
α-(p-Nonylphenyl)-omega-hydroxypoly(oxyethylene) sulfate, and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4 moles.		Surfactants, related adjuvants of surfactants.
α-cis-9-Octadecenyl-omega-hydroxypoly(oxyethylene); the octadecenyl group is derived from oleyl alcohol and the poly(oxyethylene) content averages 20 moles.		Surfactants, related adjuvants of surfactants.
Potassium salts of wood rosin acids conforming to Title 21, § 121.2502.		Surfactants, related adjuvants of surfactants.
Polyglyceryl phthalate ester of coconut oil fatty acids.		Surfactants, related adjuvants of surfactants.
Polyoxyethylated sorbitol fatty acid esters; the polyoxyethylated sorbitol solution containing 15% water is reacted with fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids; the poly(oxyethylene) content averages 30 moles.		Surfactants, related adjuvants of surfactants.
Sodium dioctylsulfosuccinate		Surfactants, related adjuvants of surfactants.
Sodium hydroxide		Neutraliner.
Sorbitan fatty acid esters (fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids) and poly(oxyethylene) derivatives of sorbitan fatty acid esters; the poly(oxyethylene) content averages 16–20 moles.		Surfactants, related adjuvants of surfactants.
Sorbitol		Antidusting agent.
α-Stearoyl-omega-hydroxypoly(oxyethylene); the poly(oxyethylene) content averages 8 moles or 40 moles; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be 8 or 40 moles.		Surfactants, related adjuvants of surfactants.
Tall oil; fatty acids not less than 58%, rosin acids not more than 44%, unsaponifiables not more than 8%.		Surfactants, related adjuvants of surfactants.
α-[p-(1,1,3,3-Tetramethylbutyl)phenyl] -omega-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of p-(1,1,3,3-tetramethylbutyl)phenol with an average of 4–14 or 30–70 moles of ethylene oxide; if a blend of products is used, the average number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 4–14 or 30–70.		Surfactants, related adjuvants of surfactants.
Toluene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts.		Surfactants, related adjuvants of surfactants.
Xylene sulfonic acid and its ammonium, calcium, magnesium, potassium, sodium, and zinc salts.		Surfactants, related adjuvants of surfactants.

Any person who has registered or submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing any of the ingredients listed herein may request on or before October 10, 1973, that this proposal be referred to an advisory committee in accordance with section 408(e) of the act.

Interested persons may, on or before October 10, 1973, file with the Hearing Clerk, Environmental Protection Agency, Room 1019E, 4th & M Streets, SW., Waterside Mall, Washington, D.C. 20460, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. All written submissions made pursuant to this proposal will be made available for public inspection at the office of the Hearing Clerk.

Dated August 30, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-19106 Filed 9-10-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 61]

[Docket No. 19528]

MTS AND WATS

Proposals for New or Revised Classes; Extension of Time for Filing Comments

Order. In the matter of proposals for new or revised classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Telephone Service (WATS).

1. We have before us a Motion for Extension of Time in this proceeding filed by the North American Telephone Association (NATA) which requests that the time for filing of comments and reply comments be extended for ninety days, respectively. In support of its motion, NATA states: (1) That in the proposed rulemaking now before the North Carolina Utilities Commission, September 4, 1973, is the date for filing of comments, and hearings are scheduled to convene on October 2, 1973; (2) that the Attorney General of the State of Nebraska issued an opinion on July 18, 1972, that seems to enable carriers to prohibit intrastate interconnection and accordingly, (3) the entire manpower and resources of NATA have been diverted from the urgent questions raised in Docket 19528 to the urgent necessity of protecting the continued economic life and existence of the interconnect industry in these and other state proceedings which are contemplated.

2. We also have before us Extension of Time Statement of Position filed by Communications Certification Laboratory (CCL) which opposes any further extension of time for filing of comments only. In support of its position CCL states: (1) That in hearings before State Commissions of Utah, California, Missouri, Illinois, New York, and Georgia statements have been made urging delay of action by the states until the Commission acts; (2) that other parties have indicated an intent to file comments only and accordingly, (3) there is no justification for further delay.

3. Although we have previously granted two 30 day extensions, the first upon the request of the Ad Hoc Telecommunications Committee (38 FR 13663, May 24, 1973), and the second upon the request of the Association of American Railroads (AAR) (38 FR 18269, July 9, 1973) it appears that the NATA has shown cause for further extension of time. However, considering that the First Supplemental Notice herein was released April 3, 1973 (40 F.C.C. 2d 315), and the granting of the two previous extensions, the full ninety days requested does not appear warranted. *Therefore, it is ordered,* That, pursuant to authority delegated by § 0.303(c) of the Commission's rules, the time for filing of comments in this proceeding is extended from September 17, 1973, to October 17, 1973, and the time for filing of reply comments from November 16, 1973, to December 17, 1973.

4. In the First Supplemental Notice in Docket No. 19528, In the Matter of Proposals for new or revised classes of Interstate and Foreign Message Toll Telephone Service (MTS) and Wide Area Service (WATS), released April 3, 1973, the Commission announced that further proposals would be forthcoming from the Dialer and Answering Devices Advisory Committee and that such proposals would be the subject of comments submitted on or before the due date for filing of comments.

5. The Commission has received a status report, released August 16, 1973, from the Answering Devices Subcommittee in addition to the report of the Dialer Devices Subcommittee, released April 3, 1973. The report of the Answering Devices Subcommittee is not complete. However, the Chairman of the Subcommittee stated that there was no agreement on the procedures and enforcement portion of the Committee's work. The Chairman concluded that it was not possible to obtain a consensus at this time. By this order we are hereby advising parties of the availability of both of these reports and that any comments on these reports should be submitted to the Commission on October 17, 1973. This order hereby amends FCC Notice, Dialer Subcommittee Report, June 29, 1973.

6. DASA Corp., as a member of the Dialer Devices Subcommittee, in its letter to Commissioner R. E. Lee, released July 6, 1973, requested that its comments on the Dialer Devices Subcommittee Report of June 1973 be put forth in public comment. DASA, in its comments objected to severing the question of economics of independently supplied Dialer Devices from the evaluation of the Subcommittee's report. In light of the Dialer Subcommittee Chairman Dempsey's statement that additional views on the Subcommittee's Report may be forthcoming from Subcommittee members, we deem it appropriate that we have the benefit of public comments on the DASA Corp. letter of July 6, 1973.

7. Copies of the following pertinent documents may be obtained from Information Planning Associates at 310 Maple Drive, Rockville, Maryland 20850, telephone 301-340-0250:

a. FCC-CC-INTCN-D/A-73-1 Report of the FCC Dialer Advisory Subcommittee on DC Pulse Dialers, June 1973.

b. Status Report of Chairman of the Answering Devices of the FCC Advisory Committee on Dialer Devices and Automatic Answering Equipment, dated August 16, 1973 (document A-0097).

c. DASA Corp. letter of, released July 6, 1973, to the Honorable Robert E. Lee: Re Report of Dialer Devices Subcommittee on Direct Attachment of Phase I D.C. Pulse Dialers to the Telephone Network.

Adopted August 31, 1973.

Released September 5, 1973.

[SEAL] BERNARD STRASSBURG,
Chief, Common Carrier Bureau.

[FR Doc.73-19249 Filed 9-10-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF THE INTERIOR

National Park Service

CAPE COD NATIONAL SEASHORE ADVISORY COMMISSION

Development Policies; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, September 21, 1973. The Commission members will assemble at 10:30 a.m. at the Headquarters Building, Cape Cod National Seashore, Marconi Station Area, South Wellfleet, Massachusetts, for a field trip prior to the regular business meeting at the Headquarters Building at 1 p.m.

The Commission was established by Pub. L. 87–126 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Cape Cod National Seashore.

The members of the Commission are as follows:

Mr. Joshua A. Nickerson (Chairman), Chatham, Mass.
Mr. Nathan Malchman (Vice Chairman), Provincetown, Mass.
Mr. Linnell E. Studley (Secretary), Orleans, Mass.
Mr. Ralph A. Chase, Eastham, Mass.
Mr. Arthur W. Brownell, Boston, Mass.
Dr. Norton H. Nickerson, Reading, Mass.
Mr. Stephen R. Perry, Truro, Mass.
Mr. Chester A. Robinson, Jr., Harwich, Mass.
Mr. David F. Ryder, Chatham, Mass.
Mrs. Esther Wiles, Wellfleet, Mass.

The matters to be discussed at this meeting are: (1) The operation of commercial activities of Dick's Lower Cape Gulf Service, (2) the Arthur Joseph sandpit, (3) a proposal for expansion of the North of Highland Camping Area, and (4) a proposal for replacement of the existing hangar at the Provincetown Airport. There will be a review of the 1973 summer season's activities. The Superintendent will give a progress report covering current problems and items of interest, which will be reviewed and discussed.

The meeting will be open to the public. Transportation facilities will not be provided for the tour, but members of the public may participate in the tour by providing their own transportation. Any person may file with the Commission a written statement concerning the matters to be discussed.

Anyone wishing further information concerning this meeting or who wishes to file a written statement may contact Leslie P. Arnberger, Superintendent, Cape Cod National Seashore, South Wellfleet, Mass., at 617–349–3785. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Superintendent, Cape Cod National Seashore, South Wellfleet, Mass.

Dated August 31, 1973.

IRA WHITLOCK,
Acting Associate Director,
National Park Service.

[FR Doc.73–19241 Filed 9–10–73;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS

Notice of Issuance of Order

In FR Doc. 73–13455, appearing in the FEDERAL REGISTER issue of July 2, 1973 (38 FR 17519), revised notice was published of the intent of the Maritime Subsidy Board to issue, at a date in the near future, a final opinion and order, to be identified as Docket No. A–75, regarding conformance of the Maritime Administration Tanker Construction Program to the requirements of the National Environmental Policy Act.

The Board hereby gives notice that the Final Opinion and Order in Docket No. A–75 was served on August 30, 1973, and is available to interested persons through the Secretary, Maritime Subsidy Board, Maritime Administration, Room 3099–B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20230.

Dated September 4, 1973.

By order of the Maritime Subsidy Board, Maritime Administration.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73–19226 Filed 9–10–73;8:45 am]

Social and Economic Statistics Administration

CENSUS ADVISORY COMMITTEE ON PRIVACY AND CONFIDENTIALITY

Notice of Public Meeting

The Census Advisory Committee on Privacy and Confidentiality will convene on September 17, 1973 at 9:30 a.m. in Room 2113, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on Privacy and Confidentiality was established on October 7, 1971 to advise the Director, Bureau of the Census, on policy and procedure concerning the purpose and scope of census inquiries and on all aspects of privacy and confidentiality as they relate to the statistical work of the Bureau.

The Committee is composed of 15 members appointed by the Secretary of Commerce.

The agenda for the meeting is: (1) Report on survey of recommendations by Committee Members; (2) Confidential Procedures in Census Bureau field operations; (3) Confidentiality, Archives and related issues, and (4) Privacy issues.

A limited number of seats—approximately 15—will be available to the public. A brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Guidance and Control Officer at least three days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting should contact the Committee Guidance and Control Officer, Mr. Mathew E. Erickson, Legal Advisor, Bureau of the Census, Room 3686, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233) Telephone: 301–763–2818.

EDWARD D. FAILOR,
Administrator, Social and
Economic Statistics Administration.

[FR Doc.73–19282 Filed 9–10–73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONALLY RECOGNIZED ACCREDITING AGENCIES AND ASSOCIATIONS

List

For the purposes of determining eligibility for Federal assistance, pursuant to Pub. L. 82–550 and subsequent legislation, the U.S. Commissioner hereby publishes additions to the list of recognized accrediting agencies and associations which he determines to be reliable authority as to the quality of training offered by educational institutions or programs either in a geographical area or in a specialized field, and the general scope of recognition granted to the accrediting bodies.

These additions may be added to the list previously promulgated by the Commissioner of Education on February 14, 1973, 38 FR 4428–4430.

ASSOCIATIONS AND AGENCIES RECOGNIZED FOR THEIR INSTITUTIONAL ACCREDITATION OF SCHOOLS, JUNIOR COLLEGES, COLLEGES, AND UNIVERSITIES

COMMISSION ON PUBLIC SECONDARY SCHOOLS, NEW ENGLAND ASSOCIATION OF SCHOOLS AND COLLEGES

COMMISSION ON VOCATIONAL TECHNICAL INSTITUTIONS, NEW ENGLAND ASSOCIATIONS OF SCHOOLS AND COLLEGES

Dated August 20, 1973.

PETER P. MUIRHEAD,
Acting Commissioner of Education.

[FR Doc.73-19227 Filed 9-10-73;8:45 am]

National Institutes of Health

BIOASSAY OPERATIONS SEGMENT ADVISORY GROUP

Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Bioassay Operations Segment Advisory Group, National Cancer Institute, September 13-14, 1973, 9:00 a.m. to 4:30 p.m., National Institutes of Health, Building 37, Conference Room 3A15. The meeting will be closed to the public from 9:00 a.m. to 4:30 p.m., September 13, 1973, and from 9:00 a.m. to 12:00 noon, September 14, 1973, to discuss and review eight renewal contract proposals in the field of carcinogen bioassay in accordance with the provisions set forth in section 552(b)4 of Title 5, U.S. Code and section 10(d) of Pub. L. 92-463. The meeting will be open to the public from 1:15 p.m. to 4:30 p.m., September 14, 1973, to discuss the Bioassay Program within the context of the Carcinogenesis Area. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014, 301-496-1911, will furnish summaries of the open/closed meeting and roster of committee members.

Dr. James M. Sontag, Executive Secretary, Landow Building, Room A-306, National Institutes of Health, Bethesda, Maryland 20014, 301-496-5471, will provide substantive program information.

Dated September 5, 1973.

JOHN F. SHERMAN,
Deputy Director, National Institutes of Health.

[FR Doc.73-19399 Filed 9-10-73;8:45 am]

CANCER IMMUNOBIOLOGY COMMITTEE

Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Committee on Cancer Immunobiology, National Cancer Institute, September 12, 1973, 8:00 p.m. to 10:00 p.m.; September 13, 1973, 8:30 a.m. to 12:30 p.m., 4:00 p.m. to 6:00 p.m., and 8:00 p.m. to 10:00 p.m.; and September 14, 1973, 8:30 a.m. to 12:30 p.m., National Institutes of Health, Marriott Motel, Dulles International Airport, Virginia. The meeting will be open to the public from 8:00 p.m. to 10:00 p.m., September 12 and from 8:30 a.m. to 12:30 p.m., September 13-14, to discuss programs in cancer immunobiology. Attendance by the public will be limited to space available. The meeting will be closed to the public at all other times to discuss and review approximately eight contract proposals in the field of immunobiology, in accordance with the provisions set forth in section 552(b) 4 of Title 5 U.S. Code, and section 10(d) of Pub. L. 92-463.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014, 301-496-1911 will furnish summaries of the open/closed meeting and roster of committee members.

Dorothy B. Windhorst, M.D., Executive Secretary, Building 10, Room 4B-11, National Institutes of Health, Bethesda, Maryland 20014, 301-496-3639 will provide substantive program information.

Dated September 6, 1973.

THOMAS J. KENNEDY, Jr.,
Acting Deputy Director National Institutes of Health.

[FR Doc.73-19398 Filed 9-10-73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Hazardous Materials Regulations Board

SPECIAL PERMITS ISSUED

Pursuant to Docket No. HM-1, rulemaking procedures of the Hazardous Materials Regulations Board, issued May 22, 1968 (33 FR 8277) 49 CFR 170, following is a list of new DOT Special Permits upon which Board action was completed during August 1973:

Special permit No.	Issued to—Subject	Mode or modes of transportation
6786	Shippers registered with this Board to ship large quantities of radioactive materials, n.o.s. in packaging identified as the Thermoelectric Generator Model Nos. URIPS-8A and 8B.	Highway, Rail Cargo-only Aircraft, Cargo Vessel.
6787	Shippers registered with this Board to ship certain poisonous liquids, Class B in DOT-34 polyethylene containers or non-DOT specification reusable, molded, 55 gallon polyethylene containers.	Highway, Rail, Cargo Vessel.
6790	Dow Chemical Company, Midland, Mich., to ship hydrochloric acid in non-DOT specification fiberglass reinforced plastic (FRP) cargo tank.	Highway.
6793	Shippers registered with this Board to ship ortho-chloroaniline, whiskey and other flammable liquids in non-DOT specification portable tanks. (ISO type).	Highway, Cargo Vessel.
6796	Magnaflux Corporation, Chicago, Illinois and the Department of Defense, Washington, D.C., to ship sulfur hexafluoride in non-DOT specification tube head assembly having a 6 to 1 safety factor.	Highway, Passenger-Carrying Aircraft, Cargo-only Aircraft.
6797	American Smelting & Refining Co., New York, N.Y. to ship refined arsenic trioxide in single-trip non-DOT specification 22 gage steel drums of not over 15 gallons capacity.	Rail.
6799	Procter & Gamble Co., Cincinnati, Ohio to ship a flammable liquid in a one-gallon glass bottle surrounded by ¾ inch thick polystyrene overpacked in a corrugated, fiberboard box.	Highway.
6800	Shippers registered with this Board to ship certain corrosive liquids in non-DOT specification reusable, molded polyethylene containers of 55 gallon capacity.	Highway, Rail, Cargo Vessel.
6803	Shippers registered with this Board to ship anhydrous hydrofluoric acid in DOT Specification 4BW welded steel cylinders.	Highway.
6804	BASF Wyandotte Corporation, Parsippany, New Jersey to ship flammable liquids, n.o.s. and corrosive liquids, n.o.s. in foreign-made non-DOT specification packaging complying with DOT Specification 5, 5B or 6D/2SL, except for marking.	Highway, Rail, Cargo Vessel.
6805	Union Carbide Corporation, Tarrytown, New York, to ship certain gas mixtures in DOT Specification 3AAX steel cylinders.	Highway.

Denied-Subject

1. Request by E. R. Squibb & Sons, Inc., New Brunswick, New Jersey for a waiver of the regulations to permit the use of only "Radioactive White I" and "Radioactive Yellow III" labels.

G. ROUSSEAU,
Alternate Secretary.

[FR Doc.73-19146 Filed 9-10-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23287]

AIR FREIGHT FORWARDERS' CHARTERS INVESTIGATION

Notice of Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding is postponed indefinitely, and further procedural matters shall be held in abeyance.

Dated at Washington, D.C., September 6, 1973.

[SEAL] RICHARD M. HARTSOCK,
Administrative Law Judge.

[FR Doc.73-19393 Filed 9-10-73;8:45 am]

[Docket No. 25002]

KUONI TRAVEL, LTD. (SWITZERLAND) AND KUONI TRAVEL, INC.

Notice of Prehearing Conference and Hearing

Kuoni Travel Limited (Switzerland), d.b.a. Kuoni Travel, Inc., amendment of foreign air carrier permit travel group charters.

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on October 9, 1973, at 10:00 a.m. (local time) in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before

Administrative Law Judge Joseph L. Fitzmaurice.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for postponement on or before October 1, 1973.

Dated at Washington, D.C., September 6, 1973.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.73-19257 Filed 9-10-73;8:45 am]

[Docket No. 19923 etc.]

LIABILITY AND CLAIM RULES AND PRACTICES INVESTIGATION

Notice of Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in the above-entitled matter is assigned to be held before the Board on October 24, 1973, at 10:00 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., September 5, 1973.

[SEAL] RALPH L. WISER,
Chief Administrative Law Judge.

[FR Doc.73-19261 Filed 9-10-73;8:45 am]

[Docket No. 25425]

STARLINE AVIATION LTD.

Notice of Postponement of Prehearing Conference and Hearing

Correction

In F.R. Doc. 73-18477, appearing at page 23435 in the issue of Thursday, August 30, 1973, in the fifth line of the second paragraph the time "10:30 a.m." should read "10:00 a.m.".

COMMISSION ON CIVIL RIGHTS

MICHIGAN STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan State Advisory Committee will convene on September 13, 1973, at 4:00 p.m., and reconvene on September 14, 1973, at 10:00 a.m., at the Kellogg Center of the Michigan State University, East Lansing, Michigan 48823.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Midwestern Regional Office of the Commission, Room 1428, 219 South Dearborn Street, Chicago, Illinois 60604.

The purpose of this meeting shall be to plan followup activity to the Revenue Sharing Assembly, prepare a report of the Assembly, and select new projects to be undertaken by the Michigan State Advisory Committee.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., September 6, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-19254 Filed 9-10-73;8:45 am]

NEBRASKA STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska State Advisory Committee will convene at 10:00 a.m. on September 25, 1973, in the Meeting Room adjacent to Main Lobby in the Clayton House, 10 and O Streets, Lincoln, Nebraska 68508.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Central States Regional Office of the Commission, Room 3103, Old Federal Office Building, 911 Walnut Street, Kansas City, Missouri 64106.

The purpose of this meeting shall be to make plans in preparation for a forthcoming factfinding meeting on the Corrections System in Nebraska.

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., September 6, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-19256 Filed 9-10-73;8:45 am]

NEW YORK STATE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New York State Advisory Committee will convene at 5:00 p.m. on September 18, 1973, at the Phelps Stokes Fund, 10 and East 87 Street, New York, New York 10028.

Persons wishing to attend this meeting should contact the Committee Chairman, or the Northeastern Regional Office of the Commission, Room 1639, 26 Federal Plaza, New York, New York 10007.

The purpose of this meeting shall be to review the status of all New York State Advisory Committee Projects and plan for the release of the report entitle "Puerto Rican and Public Employment in New York State."

This meeting will be conducted pursuant to the rules and regulations of the Commission.

Dated at Washington, D.C., September 6, 1973.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.73-19255 Filed 9-10-73;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

FLAMMABLE FABRICS ACT

Notice of Institution of Enforcement Policy

On May 14, 1973, the responsibilities of the Federal Trade Commission for enforcement of the Flammable Fabrics Act, as amended (15 U.S.C. 1191-1204), were transferred to the Consumer Product Safety Commission pursuant to section 30(b) of the Consumer Product Safety Act (Pub. L. 92-573), 86 Stat. 1231 (15 U.S.C. 2079(b)).

The Consumer Product Safety Commission intends to discharge its responsibilities under the Flammable Fabrics Act vigorously, expeditiously, and without compromise in order to protect the public from the hazards to life, health, and property caused by dangerously flammable products.

The Consumer Products Safety Commission has determined that its enforcement policy for the Flammable Fabrics Act, as amended, will be to have available for use in each case the full range of enforcement procedures under that act without qualification or modification. Accordingly, notice is given that the Consumer Product Safety Commission hereby institutes an enforcement policy of using in each case arising under the Flammable Fabrics Act any and all appropriate enforcement procedures available under that act.

In order to effectuate this policy, notice is hereby given that the above stated policy is adopted and substituted for any conflicting determinations and policies of the Federal Trade Commission. The following determinations and policies of the Federal Trade Commission insofar as they apply to this Commission are terminated and set aside pursuant to section 30(e)(2) of the Consumer Product Safety Act (86 Stat. 1232 (15 U.S.C. 2079(e)(2))):

1. The Federal Trade Commission's "Flammable Fabrics Enforcement Policy" published as a notice in the FEDERAL REGISTER of November 10, 1971 (36 FR 21544), as amended by a notice published April 25, 1973 (38 FR 10184), which was corrected May 8, 1973 (38 FR 11492).

2. Any Federal Trade Commission policy or directive modifying or interpreting said Enforcement Policy, as amended.

All other rules, regulations, orders, and determinations of the Federal Trade Commission under the Flammable Fabrics Act will continue in effect until modified, terminated, superseded, set aside, or repealed by the Consumer Product Safety Commission, by any

court of competent jurisdiction, or by operation of law.

Dated September 4, 1973.

SAMUEL M. HART,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc.73-19216 Filed 9-10-73;8:45 am]

COST OF LIVING COUNCIL

HEALTH INDUSTRY ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Health Industry Advisory Committee, created by section 6(b) of Executive Order 11695, will meet on September 17, 1973, at the Cost of Living Council offices, 2000 M Street NW., Washington, D.C.

The morning portion of the meeting, which will be held from 10:00 a.m. to 12:30 p.m., in the second floor auditorium, will be open to the public

The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Only members of the Committee, and its staff, may question the witnesses. Due to space limitations, it is possible that there will not be enough seating. For that reason, persons will be admitted on a first-come-first served basis.

While no unscheduled oral presentations will be entertained, anyone may submit a written statement by mailing it to Robert Saner, 2000 M Street NW., Washington, D.C. 20508.

Any statement received three or more days prior to the meeting will be provided to the Committee before the meeting. Any statement over three pages in length should be submitted with twenty copies.

The afternoon portion of the meeting, to run from 12:30 to 4:00 p.m., will be closed to the public. Since the afternoon meeting will be discussing the substance of Phase IV and other possible governmental actions therewith, I have determined that the meeting will fall within Exemption 5 of 5 U.S.C. 552(b) and it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with the operation of the Committee.

Issued in Washington, D.C., on September 7, 1973.

HENRY H. PERRITT, Jr.,
Executive Secretary, Cost of Living Council.

[FR Doc.73-19402 Filed 9-7-73;4:33 pm]

FEDERAL COMMUNICATIONS COMMISSION

AMATEUR REPEATER STATIONS

Observance of Rules

AUGUST 30, 1973.

There apparently has been some confusion among amateur licensees as to the actual effective date of the rules adopted in Docket 18803. The Commission reiterates what should be clear to all amateur licensees that the rules became effective October 17, 1972. Licensees have been informed in the Report and Order, the Memorandum Opinion and Order, and by several Public Notices and Orders, that full compliance was expected as soon as possible but not later than June 30, subsequently extended to August 30. The Commission adheres to the view that all licensees have had adequate time in which to modify their operations and fully comply with our rules, although there may not have been sufficient time to obtain the licensing authorizations for repeater station, control station, and/or auxiliary link station. Licensees operating such stations under a previous authorization are cautioned their operations must otherwise fully comply with the rules. Licensees and control operators of stations not operated in compliance are subjected to appropriate enforcement action.

An excessive number of problems are being encountered with defective amateur repeater station applications, contributing to wasted effort and lengthy processing delays. The principal problems are lack of standardization, failure to supply the required information, and/or failure to present the information in a manner permitting expeditious processing. Using the experience in processing thousands of these applications, suggested application forms designed to tered errors, are being developed. Whether these forms will be adopted as official FCC forms is undetermined. However, properly prepared applications based upon these suggested forms will be acceptable for processing. Amateurs are encouraged to develop more universally accepted terms and symbols for use in their applications.

FEDERAL COMMUNICATIONS COMMISSION.
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-19246 Filed 9-10-73;8:45 am]

[Docket No. 19744 and 19745; FCC 73R-309]

BELO BROADCASTING CORP. AND WADECO INC.

Memorandum Opinion and Order Enlarging Issues

In re applications of: BELO BROADCASTING CORP. (WFAA-TV), Dallas, Texas; for renewal of broadcast license, WADECO, INC., Dallas, Texas, for construction permit for new television broadcast station.

1. Belo Broadcasting Corporation has filed a second motion to enlarge issues so inquiry can be made whether Wadeco, Inc., has complied with § 1.65 of the rules, has misrepresented facts to the Commission relating to the availability of a loan, and has the necessary qualifications to be a Commission licensee.[1] The petition was not filed within the fifteen day period allowed by § 1.229(b) of the rules and so is untimely, but the Board finds that good cause for the late filing has been shown. Much of the factual information upon which the petition is predicated was acquired at a deposition session held on June 29, 1973, in Dallas, Texas, and the petition was filed promptly thereafter. The Board does not view the depositions as having been conducted to ascertain whether grounds exist for enlargement which would have been contrary to the Commission's ruling on this subject when it adopted the discovery procedures,[2] so we reject Wadeco's opposition in this regard.

2. The § 1.65 issue is requested on the basis of Wadeco's failure to report that two of the persons who had agreed to endorse notes to be issued by the corporation in obtaining a bank loan were released from their agreements at the times they withdrew as stockholders and subscribers of the corporation. Their withdrawal as stockholders and subscribers was reported to the Commission, and Wadeco, in opposition to the petition, contends that this "was sufficient notice that their endorsements of any notes would not be forthcoming." Under other circumstances, the Board might agree with Wadeco's explanation, but the present situation requires a different result. Wadeco's reliance upon a bank loan from Castle Trust Co. has been under question by the Commission since well before the case was designated for hearing, and Wadeco has stoutly maintained, during all this time, that the loan would be forthcoming, even as recently as June 14, 1973, when it sought deletion of the financial issue against it.[3] The released endorsers are named in the April 4, 1972, bank letter as two of those whose endorsements would be required, and they were two of the most important endorsers in terms of liquid assets available to them. Their absence from the endorsing group raises additional serious questions whether the bank loan would be available to Wadeco. Under these circumstances, the substantial and significant change in Wadeco's financial showing entailed by the release of these two endorsers required specific notification rather than leaving the conclusion to be inferred from other facts which were reported. A § 1.65 issue will be added.

3. The Board is also persuaded that the inclusion of a misrepresentation issue is warranted. As already noted, Wadeco continued to maintain that the necessary loans would be forthcoming through Castle Trust, even though it has

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[1] Belo's petition to enlarge was filed July 20, 1973; Wadeco filed an opposition August 2, 1973; the Broadcast Bureau's Comments were filed July 31, 1973; and Belo's reply was filed August 8, 1973.

[2] *Discovery Procedures*, 11 FCC 2d 185, 187 (1968).

[3] The request to delete was denied by the Board on July 27, 1973, FCC 73R-279, —— FCC 2d ——, released July 31, 1973.

known since October of 1972 that the condition of the bank's commitment, as set out in the letter of April 4, 1972, could not be met. For the foregoing reasons, the Board will add the § 1.65, misrepresentation and qualification issue as requested by Belo.

4. *Accordingly, it is ordered,* That the second motion to enlarge issues, filed on July 20, 1973, by Belo Broadcasting Corporation IS GRANTED, and that the issues herein are enlarged by addition of the following issues:

To determine whether WADECO, Inc., has failed to comply with the requirements of § 1.65 of the Commission's Rules;

To determine whether WADECO, Inc., misrepresented facts to the Commission in connection with the availability of a $2,500,000.00 loan from the Castle Trust Company Limited, Nassau, Bahamas; and

To determine whether in the light of the evidence adduced under the preceding issues WADECO, Inc., is qualified to be a licensee of the Commission.

5. *It is further ordered,* That the burden of proceeding with the introduction of evidence on the first two issues is on Belo Broadcasting Corporation and that the burden of proof as to all the added issues is on Wadeco, Inc.

Adopted August 28, 1973.

Released August 29, 1973.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-19245 Filed 9-10-73;8:45 am]

PANEL 3 (RECEIVERS) OF THE TECHNICAL ADVISORY COMMITTEE

Meeting

SEPTEMBER 5, 1973.

Panel 3 of the Cable Television Technical Advisory Committee will hold an open meeting on Wednesday, September 26, 1973, at 9:30 a.m. The meeting will be held at the Seven Continents Restaurant, O'Hare International Airport, Chicago, Ill. The agenda of the meeting will include:

(1) Draft statement on compatibility.
(2) Approval of proposed techniques for local oscillator voltage measurements.
(3) Report of EIA-R4.2 work on direct pick-up.
(4) Adjacent sound and adjacent chroma measurements.
(5) Review of Panel's present objectives and directions.
(6) Other business.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] VINCENT J. MULLINS,
Acting Secretary.

[FR Doc.73-19244 Filed 9-10-73;8:45 am]

FEDERAL MARITIME COMMISSION

AMERICAN WEST AFRICAN FREIGHT CONFERENCE

Notice of Agreement Filed

Notice is hereby given that the following agreement, accompanied by a statement of justification, has been filed with the Commission for approval pursuant to Section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763 (46 U.S.C. 814)).

Interested parties may inspect and obtain a copy of the agreement and the statement of justification at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement and the statement of justification at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by September 21, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement filed by:

John K. Cunningham, Chairman, American West African Freight Conference, 67 Broad Street, New York, New York 10004.

Agreement No. 7680-33 will modify the basic agreement of the American West African Freight Conference by increasing the admission fee for membership into the Conference from $5,000 to $7,500.

By Order of the Federal Maritime Commission.

Dated September 6, 1973.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.73-19274 Filed 9-10-73;8:45 am]

CITY OF MEMPHIS ET AL.

Notice of Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763 (46 U.S.C. 814)).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by October 1, 1973. Any person desiring a hearing on the proposed agreements shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should be also be forwarded to the party filing the agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

E. J. Sheppard IV, Attorney for St. Louis Terminals Corporation, Morgan, Lewis & Bockius, 1140 Connecticut Avenue NW., Washington, D.C. 20036.

Agreement No. T-2844, between the City of Memphis, the County of Shelby, and the Memphis & Shelby County Port Commission (the Commission) and Saint Louis Terminals Corporation (Terminals), provides for the 5-year lease to Terminals of a portion of Lot 2, of the Memphis & Shelby County Port Commission's Industrial Subdivision at Memphis, Tennessee, which is to be operated as a public river-rail-truck terminal for the handling and storage of waterborne cargo. The Commission agrees to construct certain terminal facilities on the premises as outlined in the lease. As compensation the Commission shall receive a rental which is based on tonnage handled through the terminal and is subject to an annual minimum of $9,000 for the first year, $11,000 for the second year, $12,000 for the third year, $13,000 for the fourth year and $15,000 for the fifth year of the lease term. Terminals shall publish Public Tariff handling rates for each type of commodity handled and/or service rendered and said rates shall be subject to final determination by the Memphis & Shelby County Port Commission.

Agreement No. T-2844-1, between the same parties, modifies the basic agreement, No. T-2844. The purpose of the modification is to: (1) Increase the lease term from 5 to 10 years; (2) increase the minimum guaranteed annual rental for the first 5-year period of the lease term in the ratio that the final actual cost of constructing the terminal facilities, as

provided for in the lease, bares to $1,000,000, but not to exceed an increase of 50 percent; (3) set the minimum guaranteed annual rental for the sixth year of the lease term at $25,000; and (4) set the minimum guaranteed annual rental for the seventh, eighth, ninth and tenth years as that rental due the Commission for the sixth year of the lease term.

Agreement No. T-2844-2, between the same parties, modifies the basic agreement, No. T-2844, as amended. The purpose of the modification is to: (1) Increase the lease term from 10 years to 20 years; (2) provide for an additional 5-year extension of the lease term pending Terminals' expenditure of $150,000 for permanent capital improvements on or before April 15, 1975; (3) set the minimum guaranteed annual rental at $30,000 for the 10 and 5 year lease term extensions; and (4) relieve Terminals of certain maintenance obligations.

Agreement No. T-2844-3, between the same parties, modifies the basic agreement, as amended. The purpose of the modification is to: (1) Provide for an additional 10-year extension of the lease term pending Terminals' expenditure of $350,000 for permanent capital improvements on or before April 15, 1980; (2) provide for an additional 10-year extension of the lease term pending Terminals' expenditure of $550,000 for permanent capital improvements on or before April 15, 1990; and (3) set the minimum guaranteed annual rental at $30,000 for the proposed two 10-year extensions of the lease term.

By Order of the Federal Maritime Commission.

Dated September 6, 1973.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.73-19276 Filed 9-10-73;8:45 am]

CITY OF ST. LOUIS AND ST. LOUIS TERMINALS CORP.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763 (46 U.S.C. 814)).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1015; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, and San Francisco, California. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, by October 1, 1973. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of Agreement Filed by:

E. J. Sheppard IV, Attorney for St. Louis Terminals Corporation, Morgan, Lewis & Bockius, 1140 Connecticut Avenue NW., Washington, D.C. 20036.

Agreement No. T-2839, between the City of St. Louis (City) and St. Louis Terminals Corporation (Terminals), provides for the 5-year lease (with three successive 5-year renewal options) to Terminals of certain dock and terminal facilities at the Port of St. Louis, Missouri, to be used as a public river-rail-truck terminal for the handling of waterborne cargo and uses incidental thereto. As compensation, City is to receive a rental based on tonnage handled through the terminal and subject to an annual minimum of $37,500. As rental for the three successive 5-year lease term extensions, City will receive for the second, third, and fourth lease term extensions respectively: (1) A 10 percent rental increase subject to a minimum of $41,250; (2) a 20 percent rental increase subject to a minimum of $45,000; and (3) a 30 percent rental increase subject to a minimum of $48,750. Terminals shall file Operation Circulars as published with City, outlining the services offered, terms and conditions, and publish the charges for these services rendered.

By Order of the Federal Maritime Commission.

Dated September 6, 1973.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.73-19275 Filed 9-10-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CP72-9]

ARKANSAS LOUISIANA GAS CO.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 14, 1973, Arkansas Louisiana Gas Company (Petitioner) P.O. Box 1734, Shreveport, Louisiana 71151, filed in Docket No. CP72-9 a petition to amend the order issuing a certificate of public convenience and necessity in said docket pursuant to section 7(c) of the Natural Gas Act with regard to the exchange of natural gas between Petitioner and Cities Service Gas Company (Cities), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner was authorized by the Commission order of November 1, 1971, in said docket (46 FPC 1110), as amended on July 17, 1972 (48 FPC 102), and April 20, 1973 (49 FPC ——), to exchange up to 10,000 M c.f. of gas per day at four delivery points for gas delivered to Cities from Petitioners leases in Hemphill County, Texas, and at three delivery points for gas redelivered to Petitioner in Reno and Rice Counties, Kansas, and Caddo County, Oklahoma.

An agreement executed between Petitioner and Cities will:

(a) Add a fourth delivery point in Hemphill County, Texas, to permit Petitioner to receive for Cities' account the gas dedicated to Cities from the McCulloch-State well, Hemphill County, to which Cities has no gathering system connected, since most of the gas is dedicated to Petitioner from the well;

(b) Clarify to which particular volumes the six-cent per M c.f. transportation charge will be applied in accordance with the existing exchange agreement; and

(c) Extend the term of the existing exchange agreement through March 31, 1978, with certain qualifications as to various delivery points.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 24, 1973, 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 judisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19199 Filed 9-10-73;8:45 am]

[Docket No. E-8373]

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

Notice of Termination

SEPTEMBER 5, 1973.

Take notice that on August 20, 1973, Consolidated Edison Company of New York, Inc. (Company), tendered for filing notice of termination of its Rate Schedules FPC No. 25 and FPC No. 28.

The Company states that the Rate Schedules have expired pursuant to their terms.

In its letter of transmittal, the Company requests that the Commission order that the notices of termination of FPC No. 25 and FPC No. 28 be made effective as of October 28, 1972, and December 31, 1972, respectively.

Any person desiring to be heard or to protest said application shoud file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 24, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19200 Filed 9-10-73;8:45 am]

[Docket No. CI74-146]

DAVID D. READ AND E. P. MUNSON, JR.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 24, 1973, David D. Read and E. P. Munson, Jr. (Applicants), 803 Bank of the Southwest Building, Amarillo, Texas 79109, filed in Docket No. CI74-146 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Northern Natural Gas Company from acreage in Hemphill County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that they have commenced the sale of natural gas within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and propose to continue said sale for one year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicants propose to sell an average of 2,200 M c.f. of gas per day, subject to proportionate reduction to their 0.29288 percent interest, at 45.0 cents per M c.f. at 14.65 p.s.i.a.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19193 Filed 9-10-73;8:45 am]

[Docket No. E-7994]

DUKE POWER CO.

Notice of Further Extension of Time, Postponement of Prehearing Conference and Hearing

AUGUST 30, 1973.

On August 21, 1973, Duke Power Company filed a motion for a further revision of the procedural dates fixed by notice issued July 5, 1973, in the above-designated matter. The motion states that the parties have no objection to the motion.

Upon consideration, notice is hereby given that the procedural dates are further modified as follows:

Prehearing Conference, October 16, 1973 (10:00 a.m., e.d.t.).
Service of Testimony and Exhibits by Intervenors, October 24, 1973.
Service of Rebuttal Evidence by Duke, November 8, 1973.
Cross-Examination, November 27, 1973 (10:00 a.m., e.s.t.).

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19203 Filed 9-10-73;8:45 am]

[Docket Nos. CI73-751, etc.]

EXXON CORP. ET AL.

Notice of Further Postponement of Hearing

SEPTEMBER 4, 1973.

Exxon Corporation, Docket No. CI73-751; Shenandoah Oil Corporation, Docket Nos. CI73-799, CI73-800; SOC Gas Systems, Incorporated, Docket No. CI73-801.

On August 24, 1973, a notice was issued postponing the hearing in the above-designated matters to September 11, 1973. On August 31, 1973, Staff Counsel advised that Exxon had a conflict with September 11, 1973.

Upon consideration, notice is hereby given that the hearing is further postponed to September 18, 1973, at 10:00 a.m., e.d.t., in a hearing room of the Federal Power Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19201 Filed 9-10-73;8:45 am]

[Docket No. E-8008]

FLORIDA POWER & LIGHT CO.

Notice of Cancellation and Unexecuted Service Agreement

SEPTEMBER 4, 1973.

Take notice that on August 21, 1973, Florida Power & Light Company, pursuant to Ordering Paragraph (J) of the Commission's Order of March 29, 1973, in the above-referenced case, submitted for filing copies of Notice of Cancellation, unexecuted Service Agreement, and Exhibit A, "Delivery Point and Service Specifications", for each point of delivery to Glades Electric Cooperative, Inc. (Rate Schedule FPC No. 12).

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 14, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any

person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19191 Filed 9-10-73;8:45 am]

[Docket No. ID-1549, etc.]

GERALD P. MALONEY ET AL.

Notice of Applications

SEPTEMBER 4, 1973.

Take notice that the following applications were filed on the stated dates, pursuant to section 305(b) of the Federal Power Act, for authority to hold the position of officer or director of more than one public utility, or the position of officer or director of a public utility and officer or director of a firm authorized to market utility securities, or the position of officer or director of a public utility and officer or director of a company supplying electric equipment to such public utility.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 10, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

Docket No.	Name of applicant	Date filed	Name of company
1549	Gerald P. Maloney	July 20, 1973	Ohio Power Co.
1593	John H. Larson	July 30, 1973	Monongahela Power Co. The Potomac Edison Co. West Penn Power Co.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19192 Filed 9-10-73;8:45 am]

[Docket No. E-8170]

GREAT LAKES GAS TRANSMISSION CO.

Notice of Change in Rates

September 5, 1973.

Take notice that the Great Lakes Gas Transmission Company (Great Lakes) on August 20, 1973, tendered for filing the following tariff sheets:

Third Revised Sheet No. 1 in First Revised Volume No. 1.
Eighth Revised Sheet No. 1 in Original Volume No. 2.

Great Lakes states that foregoing tariff sheets update the Table of Contents in Volumes 1 and 2 of Great Lakes' FPC Gas Tariff and are proposed to be effective on September 20, 1973.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 24, 1973. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19202 Filed 9-10-73;8:45 am]

[Docket No. CI74-147]

J. S. ABERCROMBIE MINERAL CO., INC., ET AL.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 24, 1973, J. S. Abercrombie Mineral Company, Inc., et al. (Applicants), c/o Jerome M. Alper, 818 18th Street NW., Washington, D.C. 20006, filed in Docket No. CI74-147 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to El Paso Natural Gas Company from the Antelope Ridge Area, Lea County, New Mexico, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants propose to sell approximately 600,000 M c.f. of gas per month for two years at 55.0 cents per M c.f. at 14.65 p.s.i.a., subject to upward and downward Btu adjustment, within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicants state that they are small producers but are filing the instant application for a certificate rather than make the subject sale under small producer certificates due to the uncertainty of the status of the latter certificates.[1]

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19197 Filed 9-10-73;8:45 am]

[Docket No. CP74-55]

LACLEDE GAS CO.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 29, 1973, Laclede Gas Company (Applicant), 720 Olive Street, St. Louis, Missouri 63101, filed in Docket No. CP74-55 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Mississippi River Transmission Corporation from the Mills Ranch Field, Wheeler County,

[1] By decision of December 12, 1972, in Docket 71-1560 et al., the United States Court of Appeals for the District of Columbia Circuit set aside Commission Order No. 428, as amended, which promulgated small producer regulations. The Commission has petitioned the Supreme Court of the United States for a writ of certiorari in this matter.

Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 178,960 M c.f. of gas per month for two years at 30.0 cents per M c.f. at 14.65 p.s.i.a within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70).

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1973, 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 furtl er notice that, pursuant to the

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19196 Filed 9-10-73;8:45 am]

[Docket No. E-8343]

NORTHERN STATES POWER CO.

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 2, 1973, Northern States Power Company (Minnesota) tendered for filing Supplement No. 6, dated June 29, 1973, to the Interconnection and Interchange Agreement with Minnkota Power Cooperative, dated December 12, 1963, and designated Rate Schedule FPC No. 284. Supplement No. 6 provides a Fifth Revised Exhibit A, Fifth Revised Pake B-1 and First Revised Sheet No. 4, and a Fifth Revised Exhibit C relocating the Hillsboro Interconnection.

Any person wishing to be heard or to make any protest with reference to such Application should, on or before September 28, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19204 Filed 9-10-73;8:45 am]

[Docket Nos. CI72-321, CI73-755]

PENNZOIL PRODUCING CO. AND MIDWEST OIL CORP.

Notice of Postponement of Hearing

AUGUST 31, 1973.

On August 2, 1973, an order was issued fixing a hearing in the above-designated matter to commence on September 10, 1973. It now appears that calendar conflicts in the Office of Administrative Law Judges require that the hearing be postponed.

Notice is hereby given that the following procedural dates are modified:

Commencement of hearing—September 13, 1973 (10:00 a.m., e.d.t.).

Administrative Law Judge's decision to be rendered—October 12, 1973.

Briefs on exceptions due—October 23, 1973.

Briefs opposing exceptions—October 29, 1973.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19205 Filed 9-10-73;8:45 am]

[Docket No. CP74-52]

UNITED GAS PIPE LINE CO.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 27, 1973, United Gas Pipe Line Company (United), 1525 Fairfield Avenue, Shreveport, Louisiana 77101, filed in Docket No. CP74-52 an application pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(b) of the Commission's regulations thereunder, for a certificate of public convenience and necessity authorizing the construction, during the 12-month period from the date of authorization, and operation of certain natural gas facilities to enable Applicant to take into its pipeline system supplies of natural gas which will be purchased from producers thereof, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that the purpose of this budget-type application is to augment its ability to act with reasonable dispatch in contracting for and connecting to its pipeline system supplies of natural gas in various producing areas generally coextensive with said system.

The total cost of the proposed facilities will not exceed $7,000,000 with no single onshore project costing in excess of $1,000,000, and no single offshore project costing in excess of $1,750,000. Applicant states that these costs will be financed with funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 25, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19206 Filed 9-10-73;8:45 am]

[Docket No. CI74-88]

VANDERBILT RESOURCES CORP.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 7, 1973, Vanderbilt Resources Corporation (Applicant), Suite 1803, 211 Ervay Building, Dallas, Texas 75201, filed in Docket

No. CI74-88 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Panhandle Eastern Pipe Line Company from acreage in Texas County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to sell approximately 40,000 M c.f. of gas per month for a term ending on the first day of the month following the expiration of one year from the date of initial delivery within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). The gas sales contract provides for a rate of 50.0 cents per M c.f. at 14.65 p.s.i.a., subject to upward and downward Btu adjustment; however, Applicant states that it is willing to accept a certificate conditioned to a rate of 45.0 cents per M c.f., subject to Btu adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19194 Filed 9-10-73;8:45 am]

[Docket No. CI74-141]

VANDERBILT RESOURCES CORP.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 22, 1973, Vanderbilt Resources Corporation (Applicant), Suite 1803, 211 Ervay Building, Dallas, Texas 75201, filed in Docket No. CI74-141 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Transwestern Pipeline Company from acreage in Sherman County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on July 24, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and proposes to continue said sale for one year from the end of the 60-day emergency period within the contemplation of § 2.70 of the Commission's General Policy and Interpretations (18 CFR 2.70). Applicant proposes to sell approximately 30,000 M c.f. of gas per month. The contract for the subject sale provides for a rate of 54.0 cents per M c.f. at 14.65 p.s.i.a., subject to upward and downward Btu adjustment with upward adjustment limited to 1,100 Btu per cubic foot. Applicant states that it is willing to accept a certificate conditioned to a rate of 45.0 cents per M c.f., subject to Btu adjustment.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on on before September 17, 1973, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19195 Filed 9-10-73;8:45 am]

[Docket No. E-8026]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Final Decision

SEPTEMBER 4, 1973.

Notice is hereby given that the Presiding Administrative Law Judge's Initial Decision in the above-designated matter was issued and served upon all parties on July 19, 1973. No exceptions thereto having been filed, or review initiated by the Commission, the decision became effective on August 31, 1973, as the final decision of the Commission, pursuant to § 1.30 of the rules of practice and procedure (18 CFR 1.30).

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19207 Filed 9-10-73;8:45 am]

[Docket No. E-8342]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 18, 1973, Virginia Electric and Power Company (Applicant) tendered for filing a supplement dated May 21, 1973, to an electric service agreement with Albemarle Electric Membership Corporation, changing transformer facilities serving the Morgan's Corner Delivery Point from 1 MVA capacity to 2 MVA capacity for anticipated future loads. The supplement, which supersedes Rate Schedule FPC No. 88-12 dated January 7, 1972, is to become effective in September 1973 upon completion of the facilities changeover.

Any person wishing to be heard or to make any protest with reference to such Application should, on or before September 28, 1973, file with the Federal Power Commission, Washington, D.C. 20426, petitions 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19208 Filed 9-10-73;8:45 am]

[Docket No. E-8158]

WISCONSIN POWER AND LIGHT CO.

Notice of Proposed Amendment to Fuel Price Adjustment Clause

SEPTEMBER 4, 1973.

Take notice that Wisconsin Power and Light Company (Wisconsin) of Madison, Wisconsin, on July 23, 1973, tendered for filing a proposed amendment to its proposed rate increase filing to amend its fuel price adjustment clause to comply with the Commission's requirements in Opinion No. 633 as ordered in Paragraph (H) of the Commission's Order issued June 26, 1973, in this docket. Included in the proposed amendment were the following items:

Proposed 8th Revised Sheet No. 85, Schedule W-2,
Proposed 5th Revised Sheet No. 86, Schedule W-2.1,
Proposed 7th Revised Sheet No. 89.11, Schedule W-3,
Proposed 5th Revised Sheet No. 89.12, Schedule W-3.1,
Page 2 of 3 of Statement O—Fuel Adjustment Factor,
Page 3 of 3 of Statement O—Fuel Adjustment Factor.

Wisconsin states that the proposed amendment to the fuel cost adjustment factor results in an increase in revenues for the 1972 test year as follows:

Schedule W-2	$5,132
Schedule W-3	15,343
Total increase	20,475

Take notice, also, that on August 24, 1973, Wisconsin tendered for filing the following proposed rate schedules which Wisconsin states are issued pursuant to paragraph (B) Commission's order of June 26, 1973 in this docket:

RATE W-2—RESALE SERVICE TO RURAL COOPERATIVES

Revised	Sheet	Schedule
8th	85	W-2
5th	86	W-2.1
3d	87	W-2.2
3d	88	W-2.3
4th	89	W-2.4

RATE W-3—RESALE SERVICE

7th	89.11	W-3
5th	89.12	W-3.1
3d	89.13	W-3.2
3d	89.14	W-3.3
3d	89.15	W-3.4
3d	89.16	W-3.5
1st	89.17	W-3.6

This proposed rate schedule filing of August 24, 1973, appears to be a replacement for the proposed rate schedule W-2 and W-3 filed April 26, 1973, which incorporates the proposed amended fuel cost adjustment clause filed by Wisconsin on June 23, 1973, as ordered by the Commission's order issued June 26, 1973, in this docket. Wisconsin states that these rates are being placed into effect for service rendered on and after September 1, 1973, subject to refund of such amounts as are found by the Commission after hearing not to be justified, together with interest thereon.

In both tendered filings, Wisconsin states that copies of the proposed rate schedules have been sent to all parties involved.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before September 14, 1973. 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. Parties who have previously filed protests or petitions to intervene need not file new protests or petitions relating only to this notice. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19190 Filed 9-10-73;8:45 am]

FEDERAL RESERVE SYSTEM

CEGROVE CORPORATION

Order Denying Acquisition of Bank

Cegrove Corporation, Wayne Township, New Jersey, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares (less directors' qualifying shares) of The Ramapo Bank, Wayne Township, New Jersey (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls one bank, Pilgrim State Bank, Cedar Grove, New Jersey, with deposits of $5 million which represents approximately 0.1 percent of deposits in commercial banks in the Greater Newark market. Bank, with deposits of approximately $35 million, operates three branches and is the 22nd largest of 35 organizations operating in the market approximated by the Paterson, New Jersey, SMSA. (All deposit data are as of December 31, 1972, and all market data are as of June 30, 1972.)

The Willowbrook office of Bank is separated from Pilgrim's office by only five miles, but penetration data show that neither bank derives a significant amount of business from the service area of the other and it appears that this proposal would not eliminate significant competition. There has been close cooperation in the management and operation of the two banks and its seems unlikely that future competition will develop. Apparently, consummation of the proposal would not appreciably raise the barriers to entry in any relevant area nor affect adversely the competitive situation in any relevant area, and there remains available a significant number of potential "foothold" acquisitions to afford entry into the relevant markets. Competitive considerations are regarded as consistent with approval.

In regard to financial considerations, Bank's net income decreased from $.45 per share in 1971 to $.41 per share in 1972. Bank's recent six months' figures indicate earnings per share of $.20. Pilgrim State Bank opened in March of 1971 and has never listed a profit, and it is questionable that it could turn a profit for 1973. Both banks have an aggressive loan posture and there is some evidence of a strain on Bank's capital. The proposal contemplates an undertaking by Applicant of $1.5 million in debt. On the record herein, the Board regards it as unlikely that cash derived from operations of the proposed expanded holding company system would be sufficient to service the debt without creating an undue strain on the capital of both banks involved.

Moreover, in light of the earnings picture and Applicant's proposed debt positions of the companies involved, it is not unreasonable to conclude that outside investors would not be attracted to the holding company. The Board has serious reservations as to the ability of Applicant to service the debt or raise additional capital. As the Board has stated many times, a holding company should be a source of strength for its subsidiary banks rather than vice versa. Applicant, a highly leveraged holding company, does not appear to be in a position to assist both Bank and Pilgrim Bank, the newly formed and as yet unprofitable bank in the system. In these circumstances, and in view of the entire record, the Board views the uncertain financial prospects as considerations weighing against approval of this transaction.

It should be emphasized that there is no evidence that the present financial condition of Bank or Applicant is unsound. The Board is concerned here only with a proposed expansion of a holding company and the problems related to acquisition debt and the capital structure of the proposed expanded institution.

Applicant proposes to offer services that are not currently offered by the banks involved. There is no evidence that the relevant markets are not adequately served at the present time. Considerations relating to the convenience and

needs of the community to be served are regarded as consistent with, but lend no weight toward, approval. Managerial resources of Applicant, its subsidiary bank, and Bank are regarded as adequate but these considerations do not lend weight toward approval.

In light of the entire record, it is the Board's judgment that the proposed transaction would not be in the public interest and should be, and hereby is, denied.

By order of the Board of Governors,[1] effective August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19225 Filed 9-10-73;8:45 am]

CITIZENS AND SOUTHERN HOLDING COMPANY, INC.

Order Approving Entry De Novo in Nonbanking Activities

Citizens and Southern Holding Company, Inc., Atlanta, Georgia (C&S Holding), a bank holding company within the meaning of the Bank Holding Company Act of 1956, has proposed under section 4(c)(8) of the Act: (1) To engage de novo, through a newly formed subsidiary, Citizens and Southern Mortgage Company, Inc. (C&S Mortgage), in the activities of a mortgage company including servicing of loans for others and acting as investment or financial adviser; and (2) to engage de novo, through a newly formed subsidiary, Citizens & Southern Factors Inc. (C&S Factors), in the activities of a factoring company including servicing of loans for others, and personal property leasing. The proposed activities are permissible for bank holding companies under Board's Regulation Y, § 225.4(a) (1), (3), (5), and (6) (12 CFR 225.4(a)(1), (3), (5), (6)).

Notices of the proposals, affording opportunity for interested persons to express comments and views, were duly published in newspapers of general circulation in the communities to be served,[1] in accordance with the regulations.[2] The only objections received were with respect to the mortgage banking proposal. These were filed on behalf of the Independent Bankers Association of Georgia, the National City Bank of Rome, Rome, Georgia, the Citizens Federal Savings and Loan Association of Rome, Rome, Georgia, the Home Federal Savings & Loan Association, Rome, Georgia, and the First National Bank of Athens, Athens, Georgia.

The Federal Reserve Bank of Atlanta requested additional comments from all parties and upon consideration thereof approved the proposal as being in the public interest. The objectors were advised, however, that they could seek Board review of this decision in accordance with the provisions of § 265.3 of the Board's rules regarding delegation of authority (12 CFR 265.3). Thereafter, the National City Bank of Rome, the First National Bank of Athens, and the Independent Bankers Association of Georgia petitioned for such a review and Board review was authorized. Although the objections were directed, and review of the Reserve Bank's action was requested only as to the mortgage banking proposal, in view of the nature of the objections, C&S Holding was notified by the Reserve Bank not to consummate either proposal and both proposals were referred to the Board.

The petitioners for review by the Board also requested that the Board schedule a formal hearing on their objections. After full consideration thereof the Board denied the request for hearing inasmuch as the issues were such that a hearing thereon would serve no useful purpose.

The review by the Board has been accomplished and its findings and decision are as follows:

C&S Holding is wholly owned by Citizens and Southern National Bank of Atlanta, Georgia (C&S National), a registered bank holding company and the largest bank in Georgia with deposits of $1.5 billion. C&S Holding owns more than 50 percent of the stock of eight banks and 5 percent of the stock of each of 27 other banks in the State. C&S National, together with the eight subsidiary banks and the 27 "5% banks" holds deposits of $2.3 billion, representing 23 percent of the State's total deposits. The share of deposits held by this group in the State's major markets ranges from 0 percent in Muscagee County (Columbus) and Floyd County (Rome) to 47 percent in Clarke County (Athens).[3]

Two different estimation techniques applied by the staff—because precise data are not available—indicate that the C&S system has about 10 percent of the total financial resources of Georgia financial institutions, including savings and loan associations, insurance companies, etc. In mortgage lending at the end of 1972, the C&S System had 17.6 percent of total mortgage loans outstanding for all commercial banks in Georgia, and approximately 3 to 4 percent if all mortgage lenders are included. In the only major market in the State for which information is available, the Atlanta SMSA, the C&S System had 9.6 percent of the dollar volume of mortgages with maturities of five years or more.

On the basis of the foregoing the Board finds, as did the Reserve Bank, that contrary to the contentions of the objectors, C&S System does not constitute or contribute to an undue concentration of resources in the State of Georgia. This conclusion may be compared with Board actions related to the First Bank System with 28.5 percent of deposits in Minnesota (58 F.R. Bull. 72), Northwest Bancorporation with 24 percent of deposits in Minnesota (59 F.R. Bull. 194), and First Security Corporation with 28.9 percent of deposits in Utah (59 F.R. Bull. 455). Moreover, the C&S share of deposits, financial resources and mortgages will be reduced by the portions thereof attributable to the C&S "5% banks" when the State court's order for divestiture of all incidents of direct or indirect control except for 5 percent of voting stock thereof—as discussed more fully hereinafter—is complied with. In the case of State-wide deposits the reduction would be from 23 percent to approximately 18 percent at this time if the holdings of the "5% banks" were eliminated.

It is also claimed, as grounds for denying approval, that C&S National is barred, by the branch banking laws of the State, from opening loan offices at locations specified in the proposal, and that C&S National shoud not be permitted to do indirectly—through C&S Holding, its wholly-owned subsidiary—what it may not do directly.

It is not customary for a bank holding company to be a wholly-owned subsidiary of a bank which is also a bank holding company. But the relationship in this case has been recognized since 1965 by the Comptroller of the Currency and the Board when the stock of C&S Holding, which had been held in trust for C&S National stockholders since 1928, was contributed to the capital of C&S National. Since then the Board has approved acquisitions by C&S Holding of 10 percent of the stock of a bank in 1959, of additional stock in that bank in 1964, a life insurance company and an agency in 1969 and expansion of nonbanking activities of a credit service subsidiary in 1971. The activities approved in 1969 and 1971 are not permissible directly for national banks.

We refer to the foregoing as pointing to the need for a strong showing if the Board is to disregard now the organizational structure which has been recognized since 1965.

Here, C&S Holding represents that C&S Mortgage will have a separate staff, separate Board of Directors, separate offices and separate capital structure from C&S National; that C&S Mortgage will be financed initially by investment of equity capital and loans from C&S Holding; that if, to meet lenders' requirements C&S Mortgage originates any loans for C&S National, the latter will be treated like any other customer-lender and charged the usual fee for services rendered. The evidence does not justify a conclusion that C&S Mortgage is being established to avoid branch banking restrictions or that the proposed operation is planned to be the "unitary" type indicative of branch banking. Additionally, the Attorney General of Georgia has, by written opinion to the State Commissioner of Banking and Finance, held that

[1] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

[1] Atlanta, Athens, Augusta, Macon, Savannah, Valdosta, Albany, Dalton, Rome, Columbus, and Decatur, Georgia; Charlotte, North Carolina.

[2] Section 225.4(b)(1), Regulation Y (12 CFR 265.4(b)(1)).

[3] The other markets are: Richmond County (Augusta), 27 percent; Atlanta SMSA, 30 percent; Macon SMSA, 37 percent; Savannah SMSA, 38 percent; and Albany SMSA, 42 percent.

there is no violation of the State branch banking laws indicated in the proposal with respect to C&S Mortgage. The Board is of the opinion, moreover, that the action of the Supreme Court of Georgia with respect to violations by C&S Holding and C&S National of the State bank holding company law (discussed infra) reflects what would probably occur if in carrying on the mortgage lending activities C&S Mortgage and C&S National should, notwithstanding representations made to the Board, engage in branch banking activities contrary to State law.

Protestants also claim that C&S is violating the State and Federal laws with respect to bank holding companies and thereby engaging in unfair competition.

The Board has noted the recent decision of the Supreme Court of Georgia that C&S National and C&S Holding directly and indirectly control more than 5 per cent of the voting stock of each of ten Georgia banks, in violation of the State bank holding company law; the fact that pursuant to the mandate of the Georgia Supreme Court, the Superior Court of De Kalb County has ordered the State Commissioner of Banking and Finance to take steps to require that all stock ownership in the ten banks and all incidents of indirect ownership of stock by "the C&S family" be reduced to an aggregate of 5 per cent of voting stock as allowed by State law, within two years; that the Commissioner has notified C&S that he considers the rationale of the Supreme Court's decision to be applicable to all of the C&S "5% banks" (approximately 27 in number); and that C&S officials agree with this conclusion of the State Commissioner. The Board considers it a reasonable assumption that the mandamus of the highest State court will be complied with in due course. Consequently, even if the modus operandi of C&S as regards the C&S "5% banks" should be considered as having constituted unfair competition, that practice is being corrected by the State authorities.

If, following compliance with the State court's order for divestiture of all direct or indirect incidents of control except for the 5 per cent of voting stock, it appears that C&S Holding exercises a controlling influence over management or policies of the "5% banks" the Board may then proceed with a determination of control under the Bank Holding Company Act. Initiation of such action while the State court decree is being implemented would be premature.

The objecting banks in Rome and Athens, Georgia, two of the proposed locations for mortgage lending offices, claim there is no need for another lending agency in either place, as those presently represented there are satisfying the needs of the public. However, Congress authorized the Board in section 4(c)(8) of the Bank Holding Company Act to differentiate between those nonbanking activities commenced de novo and those commenced by acquisition of a going concern. Here C&S Holding proposes to expand internally through a newly formed mortgage banking subsidiary and thus add a new lender in the Rome and Athens markets. Such entry, in the Board's view, is procompetitive, bringing an added element of competition into each market which would not otherwise be true; it should provide an increased quantity of mortgage funds for those markets and an alternative lending source for borrowers therein. Consequently the Board concludes that these public benefits outweigh any possible adverse effects.

Based on the foregoing and other considerations reflected in the record, the Board has determined that approval of the pending mortgage banking application will not result in any undue concentration of banking or financial resources, unfair competition, conflicts of interest, or unsound banking practices and that it will, in fact, produce benefits to the public in the form of greater convenience and increased competition.

The proposal to engage in factoring, servicing of loans for others and personal property leasing is not opposed, and no adverse effects are suggested or apparent. As a de novo activity it should, as pointed out above, produce public benefits in the form of increased competition and greater convenience from the provision of additional services.

Accordingly the applications are approved. This determination is subject to the conditions set forth in § 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of a holding company or any of its subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasion thereof; it is subject to the further condition that the proposed activities must be commenced within no less than three months after the effective date hereof unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Atlanta pursuant to delegated authority.

By order of the Board of Governors,[4] effective August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19218 Filed 9-10-73;8:45 am]

D. H. BALDWIN COMPANY

Acquisition of Bank

D. H. Baldwin Company, Cincinnati, Ohio, 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 80 percent or more of the voting shares of Central Colorado Bancorp, Inc., Colorado Springs, Colorado and thereby indirectly to acquire control of State Bank of Greeley, Greeley, Colorado; Central Colorado Bank of Colorado Springs, Colorado Springs, Colorado; Rock Ford National Bank, Rocky Ford, Colorado; The Academy Boulevard Bank of Colorado Springs, Colorado Springs, Colorado. 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 Kansas City. 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 September 27, 1973.

Board of Governors of the Federal Reserve System, August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19222 Filed 9-10-73;8:45 am]

FIRST VIRGINIA BANKSHARES CORPORATION

Proposed Acquisition of Robert C. Gilkinson, Inc.

First Virginia Bankshares Corporation, Falls Church, Virginia, 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 Robert C. Gilkinson, Inc., Washington, D.C. Notice of the application was published on August 5, 1973, in The Washington Post, a newspaper circulated in Washington, D.C.

Applicant states that the proposed subsidiary would provide portfolio investment and financial advice for individual, trusts, and corporations. 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

[4] Voting for this action: Chairman Burns and Governors Sheehan, Bucher, and Holland. Absent and not voting: Governors Mitchell, Daane, and Brimmer.

at the Federal Reserve Bank of Richmond.

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 September 27, 1973.

Board of Governors of the Federal Reserve System, August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19220 Filed 9-10-73;8:45 am]

GREENWOOD'S BANCORPORATION, INC.

Formation of Bank Holding Company

The Greenwood's Bancorporation, Inc., Lake Mills, Wisconsin, 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 banking holding company through acquisition of 80 percent or more of the voting shares of The Greenwood's State Bank, Lake Mills, Wisconsin. 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 Chicago. Any person wishing to comment on the application should submit his views in writing to the Reserve Bank to be received not later than September 27, 1973.

Board of Governors of the Federal Reserve System, August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19221 Filed 9-10-73;8:45 am]

INLAND FINANCIAL CORPORATION & JACOBUS COMPANY

Acquisition of Bank

Inland Financial Corporation and Jacobus Company, both of Milwaukee, Wisconsin, have 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 99 percent or more of the voting shares of Heritage Bank of West Bend, West Bend, Wisconsin. 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 Chicago. 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 September 27, 1973.

Board of Governors of the Federal Reserve System, August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19223 Filed 9-10-73;8:45 am]

MULTIBANK FINANCIAL CORP.

Order Approving Acquisition of Bank

Multibank Financial Corp., Boston, Massachusetts, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of B.M.C. Durfee Trust Company, Fall River, Massachusetts (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls five banks with total deposits of $446.9 million, representing approximately four percent of the total deposits of commercial banks in the State, and is the sixth largest banking organization in Massachusetts. (All banking data are as of December 31, 1972.) The acquisition of Bank ($56 million in deposits) would increase Applicant's share of the total State deposits by 0.45 percent, and it would remain the sixth largest banking organization in Massachusetts. Bank is the second largest of six commercial banking organizations in the Fall River banking market[1] which is deemed the relevant market. If the five mutual savings banks located in the market are also considered, Bank is the fifth largest of eleven banking organizations in the market. Bank's market share is 30.2 percent when only the commercial banks in the market are considered, but drops to 13.3 percent if all banking organizations in the market are considered. The five mutual savings banks in the Fall River market hold aggregate deposits greater than those held by the six commercial banks in the market, and their competition with the commercial banks is likely to increase in the future through their solicitation and acceptance of accounts subject to negotiable orders of withdrawal (NOW accounts). The proposed acquisition would represent Applicant's initial entry into this market.

Applicant's banking subsidiary nearest to Bank is located approximately 12 miles away in northern Bristol County in the Attleboro market, a separate market area. There presently exists no meaningful competition between Bank and that subsidiary. Although Applicant's banking subsidiary and Bank may each lawfully open branch offices in the respective market areas of the other under Massachusetts law, consummation of the proposed transaction would not have a significant adverse effect on the development of future competition. It is not expected that, absent such consummation, Applicant's banking subsidiary would avail itself of the opportunity to open branch offices in the Fall River market in view of the present economic condition of that market. The population growth of the Fall River SMSA between 1960 and 1970 was 8.6 percent, compared to growth of 12.1 percent by the entire State over the same period. The population per banking office in the SMSA is below that of the State, and, with deposits per banking office of $7.0 million, the SMSA is substantially below the State average of $13.3 million. Further, the Greater Fall River area has been classified as a substandard employment area by the Economic Development Administration. Similarly, although Bank recently branched into the fringe of the market area of Applicant's closest banking subsidiary, future branch expansion in that market by Bank in the near future is considered unlikely in view of its limited capital base and the fact that both the population per banking office and deposits per banking office of the Attleboro area are substantially below State averages.

Should the proposed transaction be consummated, Bank would become Applicant's second banking subsidiary in Bristol County, however, there would remain seven independent banks which offer holding company access to the County. Even if Bristol County should be considered the relevant market, consummation of this proposal would not increase the level of concentration of banking resources in the County to a degree that would endanger competition since Applicant would hold thereafter only 16.5 percent of total commercial bank deposits therein. Further, the significant role of mutual savings banks in the County, holding, as they do, aggregate deposits of $834 million compared to aggregate deposits of commercial banks amounting to approximately $522 million, mitigates the significance of the 16.5 percent figure. The Board concludes that the acquisition would have no significant adverse effect on the competitive situation or the concentration of banking resources in the area.

Applicant has agreed to inject capital into certain of its subsidiary banks. In that light, the Board finds the financial condition and managerial resources of the Applicant, its subsidiaries, and Bank satisfactory; and prospects for each are favorable.

Applicant intends to have Bank offer certain services not presently offered by Bank, principally equipment leasing and accounts receivable financing, as well as to implement a capital improvement program for Bank. The communities to be served should also benefit from larger lending limits and the expertise of specialized personnel in the holding company organization to become available to Bank as a result of consummation of the proposed transaction. Accordingly, considerations relating to convenience and

[1] The Fall River banking market is approximated by the Fall River Standard Metropolitan Statistical Area which includes the City of Fall River and the Towns of Somerset, Swansea, Westport, and Dighton in southern Bristol County, Massachusetts, and Tiverton, Little Compton, and Portsmouth in Newport County, Rhode Island.

needs of the communities to be served are consistent with approval. It is the Board's judgment that consummation of the proposed acquisition would be in the public interest and that the application should be approved.

Bank's sole subsidiary engages in the operation of a commercial parking lot on land owned by the subsidiary. Operation of a commercial parking lot is not an activity that is "closely related to banking", and Bank, as a subsidiary of a bank holding company, may not continue to engage in that activity either on the basis of section 4(c)(8) or section 4(c)(5) of the Act (12 U.S.C. 1843(c)(8) and (c)(5)). It is therefore expected that Bank, preferably prior to consummation of the proposed transaction, but in any event within a reasonable time after such consummation, will divest itself of that subsidiary, and approval of this application is conditioned upon such divestiture.

On the basis of the record,[2] the application is approved for the reasons summarized above. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Boston pursuant to delegated authority.

By order of the Board of Governors[3] effective August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19219 Filed 9-10-73;8:45 am]

U.S. BANCORP

Proposed Retention of Commerce Mortgage Company

U.S. Bancorp, Portland, Oregon, 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 Commerce Mortgage Company, Portland, Oregon. Notice of the application was published on July 5, 6, or 7 in newspapers of general circulation in Eugene and Portland, Oregon, Seattle, Spokane, Walla Walla, and Yakima, Washington, and Missoula, Montana.

Applicant states that the proposed subsidiary engages in the activities of a mortgage company including making loans and other extensions of credit for its own account and for the accounts of others and servicing of loans and other extensions of credit for any person. The proposed subsidiary also makes available for group policies issued to it, credit life and accident and health insurance. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for the 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 consumption 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 San Francisco.

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 September 27, 1973.

Board of Governors of the Federal Reserve System, August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19224 Filed 9-10-73;8:45 am]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area 1012]

INDIANA

Declaration of Disaster Loan Area

Whereas, it has been reported that during the month of July 1973, because of the effects of a certain disaster, damage resulted to residences and business property located in the State of Indiana;

Whereas, the Small Business Administration has investigated and received reports of other investigations of conditions in the areas affected;

Whereas, after reading and evaluating reports of such conditions, I find that the conditions in such areas constitute a catastrophe within the purview of the Small Business Act, as amended;

Now, therefore, as Administrator of the Small Business Administration, I hereby determine that:

1. Applications for disaster loans under the provisions of section 7(b)(1) of the Small Business Act, as amended, may be received and considered by the office below indicated from persons or firms whose property situated in Floyd, Lawrence, Vigo, Clay, Martin, and Owen Counties, Indiana, and adjacent affected areas, suffered damage or destruction resulting from flooding caused by heavy rains on July 20-24, 1973. Applications will be processed under the provisions of Pub. L. 93-24.

Office: Small Business Administration, District Office, 36 South Pennsylvania Street, Indianapolis, Indiana 46204.

2. Applications for disaster loans under the authority of this declaration will not be accepted subsequent to October 29, 1973.

Dated August 29, 1973.

THOMAS S. KLEPPE,
Administrator.

[FR Doc.73-19253 Filed 9-10-73;8:45 am]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON ECONOMIC TRENDS AND LABOR CONDITIONS

Notice of Meeting

The BRAC Committee on Economic Trends and Labor Conditions will meet at 10:00 a.m., September 18, 1973, at the General Accounting Office Building, 441 G Street, NW., Room 2106, Washington, D.C.

The meeting will be devoted to the presentation and discussion of the 1985 projections.

It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on (Area Code 202) 961-2559.

Signed at Washington, D.C., this 4th day of September 1973.

JULIUS SHISKIN,
Commissioner of Labor Statistics.

[FR Doc.73-19280 Filed 9-10-73;8:45 am]

Occupational Safety and Health Administration

STANDARDS ADVISORY COMMITTEE ON NOISE

Notice of Meeting

Notice is hereby given that the Standards Advisory Committee on Noise, established under section 7(b) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on Monday, September 24, 1973, and Tuesday, September 25, 1973, starting at 9:00 a.m. each day in Conference Room B, Departmental Auditorium, Constitution Avenue between 12th and 14th Streets NW., Washington, D.C.

The agenda provides for discussion of Working Draft III with a view towards voting on final recommendations.

The meeting shall be open to the public. There will be no opportunity for oral presentations at this meeting. However, written data, views, or arguments concerning the subject to be considered may be filed, together with 20 copies thereof, with the Committee's Executive Secretary by September 21, 1973. Any such

[2] Dissenting Statement of Governor Brimmer filed as part of the original document. Copies available upon request to Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or to the Federal Reserve Bank of Boston.

[3] Voting for this action: Chairman Burns and Governors Sheehan, Bucher, and Holland. Voting against this action: Governor Brimmer. Absent and not voting: Governors Mitchell and Daane.

submissions, timely received, will be provided to the members of the committee and will be included in the record of the meeting.

Communications to the Executive Secretary should be addressed as follows:

Executive Secretary
Standards Advisory Committee on Noise
Railway Labor Building—Room 509,
OSHA–OSMC
U.S. Department of Labor,
Washington, D.C. 20210

Signed at Washington, D.C., this 6th day of September 1973.

JOHN STENTER,
Assistant Secretary of Labor.

[FR Doc.73-19354 Filed 9-10-73;8:45 am]

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

NATIONAL COUNCIL ON THE ARTS

Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Council on the Arts will be held at 9:15 a.m. on September 14, 9:15 a.m. on September 15, and 9:15 a.m. on September 16, 1973, at the Sheraton Carlton Hotel, Washington, D.C.

A portion of this meeting will be open to the public on September 15 from 9:15 a.m. to 12:30 p.m. on a space available basis. Accommodations are limited. During the open session, the following areas will be discussed: 1) Resolution on the Handicapped; 2) Museum Program; 3) Architecture + Environmental Arts; 4) Visual Arts.

The remaining sessions of this meeting, September 14, September 15 from 12:30 p.m. to 5:00 p.m., and September 16, 1973, are for the purpose of Council review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER of January 10, 1973, these sessions involving matters exempt from the requirements of public disclosure, under the provisions of the Freedom of Information Act (5 U.S.C. 552(b) (4) and (6), will not be open to the public.

Further information with reference to this meeting can be obtained from Mrs. Eleanor A. Snyder, Advisory Committee Management Officer, National Endowment for the Arts, 806 15th Street NW., Washington, D.C. 20506, or call Area Code 202-382-3642.

PAUL BERMAN,
Director of Administration, National Foundation on the Arts and the Humanities.

[FR Doc.73-19405 Filed 9-10-73;12:30 am]

ATOMIC ENERGY COMMISSION

AEC-LICENSED FACILITIES

Memorandum of Understanding

Both the Environmental Protection Agency (EPA) and the Atomic Energy Commission (AEC) have complementary responsibilities in areas of environmental protection and the control of radiation effects. In order to fix an appropriate interface of the respective functions of the two agencies, to further facilitate their useful cooperation, and to avoid unnecessary duplication of regulatory effort, EPA and the AEC have executed a memorandum of understanding with regard to AEC-licensed facilities. The text of the memorandum is set forth below.

Dated at Germantown, Maryland this 6th day of September 1973.

For the Atomic Energy Commission.

GORDON M. GRANT,
Acting Secretary of the Commission.

AEC-EPA MEMORANDUM OF UNDERSTANDING WITH RESPECT TO AEC-LICENSED FACILITIES

Both the Atomic Energy Commission (AEC) and the Environmental Protection Agency (EPA) have complementary responsibilities in areas of environmental protection and the control of radiation effects. Pursuant to Reorganization Plan No. 3 of 1970, "the functions of the Atomic Energy Commission under the Atomic Energy Act of 1954, as amended, administered through its Division of Radiation Protection Standards to the extent that such functions of the Commission consist of establishing generally applicable environmental standards[1] for the protection of the general environment from radioactive material" and all functions of the Federal Radiation Council were transferred to the Administrator of EPA. The President's message to the Congress upon transmitting Reorganization plans to establish EPA and NOAA stated that "AEC would retain responsibility for the implementation and enforcement of radiation standards through its licensing authority." In order to fix an appropriate interface of the respective functions of the two agencies, to further facilitate their useful cooperation, and to avoid unnecessary duplication with regard to AEC-licensed facilities, the AEC and EPA agree as follows:

1. AEC-licensed facilities are subject through AEC licensing authority and requirements to EPA's generally applicable environmental radiation standards, as defined in Reorganization Plan No. 3 of 1970. AEC will take appropriate action to assure that AEC-licensed facilities are operated in such a manner that routine radioactive discharges therefrom do not exceed generally applicable environmental standards established by EPA, outside the site boundary, for the protection of the general environment from radioactive material.

2. The AEC and the EPA will jointly undertake and carry out arrangements for special studies for the purpose of obtaining necessary information for establishing generally applicable environmental standards for the protection of the general environment from radioactive material discharged from AEC-licensed facilities. For example, the AEC will supply to EPA AEC data and will use its best efforts to supply reasonably obtainable licensee data, relevant to radioactive effluents and the generation of pathway models. The AEC will also participate and will take appropriate action to arrange for its licensees to participate, as may be necessary, in providing data on releases and concurrent meteorological data in support of EPA field measurements and special studies such as pathway model verification at typical licensed facilities. The EPA will endeavor to minimize the number of separate typical facilities on which field measurements will be needed in establishing pathway models.

3. It is agreed that EPA may accompany AEC inspectors on AEC inspections of AEC-licensed facilities for the purpose of becoming informed on how licensees conform with generally applicable environmental standards. Such accompaniment may, at the discretion of EPA, be on either announced or unannounced AEC inspections. It is anticipated that up to 5 such accompaniments may be made in FY 1974. EPA will determine those inspections on which it wishes to accompany AEC. The first step will be for AEC to familiarize the EPA with the scope of AEC inspections.

4. EPA will advise and obtain AEC comments prior to the publication of data relating to discharges from AEC-licensed facilities and the results of these programs.

5. EPA will furnish technical advice and assistance to AEC upon request on discharges to the environment from AEC-licensed facilities.

6. Nothing in this Memorandum of Understanding, or any activities conducted hereunder, shall be construed as precedent for, or as recognizing, any authority of EPA to duplicate or supervise inspection activities of the AEC.

For the United States Atomic Energy Commission.

WILLIAM O. DOUB,
Commissioner.

AUGUST 27, 1973.

For the United States Environmental Protection Agency.

CHARLES ELKINS,
Acting Assistant Administrator for Hazardous Materials Control.

AUGUST 21, 1973.

[FR Doc.73-19250 Filed 9-7-73;8:45 am]

[1] The word "standards," as used herein, has the same meaning as in Reorganization Plan No. 3 of 1970, as follows: "standards mean limits on radiation exposure or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material."

[Docket No. 50-247]

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Order Reconvening Hearing and Reopening the Record

In the matter of Consolidated Edison Company of New York, Inc., Indian Point Nuclear Generating Unit No. 2.

In accordance with responses to previous inquiries regarding reconvening of the hearing, an evidentiary hearing shall convene at 9:00 a.m. on Wednesday, September 12, 1973, in the Main Hearing Room, Woodmont Building, 8120 Woodmont Avenue, Bethesda, Maryland, to receive into evidence and to consider the scope and terms of the applicant's quality assurance operation manual, and the staff's and intervenors' comments and inquiries thereon. Also to be considered are the water quality certification contentions asserted by the State of New York, and the applicant's request for level of testing operations.

Dated September 7, 1973.

ATOMIC SAFETY AND LICENSING BOARD,
SAMUEL W. JENSCH,
Chairman.

[FR Doc.73-19374 Filed 9-10-73;8:45 am]

GENERAL ADVISORY COMMITTEE RESEARCH SUBCOMMITTEE

Notice of Meetings

SEPTEMBER 6, 1973.

In accordance with the purposes of section 26 of the Atomic Energy Act, the Research Subcommittee of the General Advisory Committee will hold meetings on September 19 and 20, and October 8 and 9, 1973, in Room 1146 at 1717 H Street, NW., Washington, D.C.

The Subcommittee will meet with members of AEC Headquarters offices, and in executive sessions, preparatory to the formulation of recommendations to the full Committee on the AEC basic research program.

I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that the meetings will consist of exchanges of opinions and views, the discussion of which, if written, would fall within exemption (5) of (5 U.S.C. 552(b)).

It is essential to close the meetings to protect the free interchange of internal views and to avoid undue interference with Committee operation.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.73-19326 Filed 9-10-73;8:45 am]

[Docket Nos. 50-282 and 50-306]

NORTHERN STATES POWER CO.

Order Regarding Hearing Dates

In the matter of Northern States Power Co. (Prairie Island Nuclear Generating Plant, Units 1 and 2).

The evidentiary hearing in this matter shall commence at 10:00 a.m., local time, on September 17, 1973, at the District Courtroom, Goodhue County Courthouse, Red Wing, Minnesota. On September 18, 19, and 20, and thereafter until further order of the Board, sessions of the hearing will be held at the U.S. Federal Building, Courtroom No. 3, 316 North Roberts Street, St. Paul, Minn.

Members of the public are invited to attend all sessions of the evidentiary hearing. Those members of the public who may wish to make oral presentations by way of limited appearance will be permitted to do so on the initial day of the evidentiary hearing.

It is so ordered.

Issued at Washington, D.C., this 5th day of September 1973.

THE ATOMIC SAFETY AND LICENSING BOARD.
EDWARD LUTON,
Chairman.

[FR Doc.73-19234 Filed 9-10-73;8:45 am]

URANIUM ENRICHMENT SERVICES AGREEMENTS

Provision of Facilities

Notice is hereby given that, effective upon publication of this notice in the FEDERAL REGISTER, the United States Atomic Energy Commission (AEC) offers pursuant to its Uranium Enrichment Services Criteria (38 FR 12180, May 9, 1973), to provide uranium enrichment services in facilities owned by the AEC, as authorized by the Atomic Energy Act of 1954, as amended (the Act).

Such services will be provided pursuant to the following Standard Fixed-Commitment Agreements:

1. Long-Term Fixed-Commitment Agreement Including First Core. This agreement is designed for use by persons owning a nuclear reactor. Advance payments are required under this agreement.

2. Long-Term Fixed-Commitment Agreement Excluding First Core. This agreement is designed for use by persons owning a nuclear reactor. Advance payments will not be required under this agreement if the first core has been or will be supplied by AEC under other arrangements entered into prior to May 9, 1973. However, the Commission reserves the right to require advance payments in other situations.

3. Short-Term Fixed-Commitment Agreements. This agreement is designed for use by persons fabricating fuel elements for nuclear reactors to obtain necessary working inventories of enriched uranium. To the extent permitted by prior commitments, this agreement may be entered into from six months to two years prior to initial delivery and may cover deliveries over a period of up to three years.

Upon request, the Commission will consider the use of the above agreements or appropriate modifications thereof by other persons or for other purposes.

The Long-Term Fixed-Commitment Agreements will normally be executed eight years in advance of the initial delivery thereunder. However, there will be a one-time transition period to accommodate customers requiring deliveries under the new agreements less than eight years from the date of entering into such agreement. Execution of such agreements shall be no later than December 31, 1973, for cases in which the reactor requires initial delivery prior to July 1, 1978, and no later than June 30, 1974, for cases in which the reactor requires initial delivery between July 1, 1978, and June 30, 1982. Also, customers having requirements-type agreements may convert to Long-Term Fixed-Commitment Agreements at their option. However, the AEC reserves the right to put a time limit on such option.

Dated at Germantown, Md., this 7th day of September 1973.

For the Atomic Energy Commission.

GORDON M. GRANT,
Secretary of the Commission.

[FR Doc.73-19373 Filed 9-10-73;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON D. C. COOK NUCLEAR PLANT, UNITS 1 & 2

Notice of Meeting

SEPTEMBER 7, 1973.

In accordance with the purposes of section 29 and 182b, of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards Subcommittee on the D.C. Cook project will hold a meeting on September 25, 1973 in Room 1046, at 1717 H Street NW., Washington, D.C. The purpose of this meeting will be to continue the Committee's formal Operating License review of the Donald C. Cook Nuclear Plant, Units 1 & 2. This facility is located in Lake township near Benton Harbor, Michigan.

The following constitutes that portion of the Subcommittee's agenda for the above meeting which will be open to the public:

TUESDAY, SEPTEMBER 25, 1973,
9:30 A.M.-3:30 P.M.

The Subcommittee will hear presentations by Regulatory Staff and representatives of Indiana Michigan Electric Company and their representatives and hold discussions with these groups pertainent to issuance of an Operating License for Donald C. Cook Nuclear Plant, Units 1 & 2.

In connection with the above agenda item, the Subcommittee will hold an executive session beginning at 8:30 a.m. which will involve a discussion of its preliminary views, and an executive session at the end of the day, consisting of an exchange of opinions of the Subcommittee members present and internal deliberations for the purpose of formulation of recommendations to the ACRS.

In addition, prior to the executive session at the end of the day, the Subcommittee may hold a closed session with the Regulatory Staff and Applicant to discuss privileged information relating to plant security and fuel/emergency core cooling system performance, if necessary.

I have determined, in accordance with subsection 10(d) of P.L. 92-463, that the executive session at the beginning and end of the meeting will consist of an exchange of opinions and formulation of recommendations, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b) and that a closed session may be held, if necessary, to discuss certain information relating to site security and fuel/emergency core cooling system performance which is privileged and falls within exemption (4) of 5 U.S.C. 552(b). It is essential to close such portions of the meeting to protect such privileged information and protect the free interchange of internal views and to avoid undue interference with agency or Committee operation.

Practical considerations may dictate alterations in the above agenda or schedule.

The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by mailing 25 copies thereof, postmarked no later than September 18, 1973, to the Executive Secretary, Advisory Committee on Reactor Safeguards, U.S. Atomic Energy Commission, Washington, D.C. 20545. Such comments shall be based upon the Final Safety Analysis Report for this facility and related documents on file and available for public inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, and the St. Joseph Public Library, 500 Market Street, St. Joseph, Michigan 49085.

(b) Those persons submitting a written statement in accordance with paragraph (a) above may request an opportunity to make oral statements concerning the written statement. Such requests shall accompany the written statement and shall set forth reasons justifying the need for such oral statements and its usefulness to the Subcommittee. To the extent that the time available for the meeting permits, the Subcommittee will receive oral statements during a period of not more than 30 minutes at an appropriate time, chosen by the Chairman of the Subcommittee, between the hours of 1:30 p.m. and 3:00 p.m. on the day of the meeting.

(c) Requests for the opportunity to make oral statements shall be ruled on by the Chairman of the Subcommittee, who is empowered to apportion the time available among those selected by him to make oral statements.

(d) Information as to whether the meeting has been cancelled or rescheduled and in regard to the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted, can be obtained by a prepaid telephone call on September 24, 1973, to the Office of the Executive Secretary of the Committee (telephone: 301-973-5651) between 8:30 a.m. and 5:15 p.m., e.d.t.

(e) Questions may be propounded only by members of the Subcommittee and its consultants.

(f) Seating for the public will be available on a first-come, first-served basis.

(g) A copy of the transcript of the open portions of the meeting will be available for inspection during the following workday at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, and within approximately nine days at the St. Joseph Public Library, 500 Market Street, St. Joseph, Michigan 49085. On request, copies of the minutes of the meeting will be made available for inspection at the Atomic Energy Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, on or after November 25, 1973. Copies may be obtained upon payment of appropriate charges.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.73-19438 Filed 9-10-73;11:25 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REACTOR PRESSURE VESSELS

Notice of Meeting

SEPTEMBER 7, 1973.

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards Subcommittee on Reactor Pressure Vessels will hold a meeting on September 15, 1973, at O'Hare International Airport, Chicago, Illinois. The subject scheduled for discussion is a draft report to the full committee on light water reactor pressure vessel integrity.

The Subcommittee is meeting to formulate recommendations in the form of a report to the full ACRS regarding the above subject.

I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that the meeting will be to discuss a document which falls within exemption (5) of 5 U.S.C. 552(b) and will consist of an exchange of opinions, the discussion of which, if written, would fall within exemption (5) of 5 U.S.C. 552(b). It is essential to close this meeting to protect the free interchange of internal views and to avoid undue interference with agency or Committee operations.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.73-19439 Filed 9-10-73;11:25 am]

INTERSTATE COMMERCE COMMISSION

[Rev. S.O. 994; I.C.C. Order 109, Admt. 1]

ANN ARBOR RAILROAD CO.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 109 (The Ann Arbor Railroad Company) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 109 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.*—This order shall expire at 11:59 p.m., September 7, 1973, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., August 24, 1973, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 24, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.73-19264 Filed 9-10-73;8:45 am]

[Notice No. 338]

ASSIGNMENT OF HEARINGS

SEPTEMBER 6, 1973.

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. No amendments will be entertained after the date of this publication.

MC 83539 Sub 360, C & H Transportation Co., Inc., now assigned September 10, 1973, hearing is cancelled and application dismissed.

MC 83835 Sub 96, Wales Transportation, Inc., now assigned September 10, 1973, at Kansas City, Mo., is cancelled and application is dismissed.

MC-136839, Josephine Koffman & Nancy J. Nimmo, D.B.A. Bergen Limousine Rental Service, now assigned September 10, 1973, will be held in Room B-2231, 26 Federal Plaza, New York, N.Y., instead of in Room E-2222, 26 Federal Plaza.

FD 20812, Railway Express Agency, Inc., Notes, continued to October 2, 1973 for prehearing conference on the merits, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-F-11827, Joe Hodges Transportation Corporation—Purchase—Toddman Transport Co., MC 120634 Sub 19, Joe Hodges Transportation Corporation, now assigned September 24, 1973, at Dallas, Tex., is postponed indefinitely.

I. & S. M 27069, Increased Minimum Charges For Capacity Loads, now assigned October 9, 1973, at Washington, D.C., is cancelled.

MC 118610 Sub 14, L & B Express, Inc., now being assigned hearing October 30, 1973 (1 day), at Frankfort, Ky., in a hearing room to be later designated.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19268 Filed 9-10-73;8:45 am]

[Ex Parte No. 241; 8th Rev. Exemption No. 43]

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO. ET AL.

Exemption Under Provision of Mandatory Car Service Rules

To: The Atchison, Topeka and Santa Fe Railway Company, Burlington Northern Inc., Chicago and North Western Transportation Company, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Chicago, Rock Island and Pacific Railroad Company, Illinois Central Gulf Railroad Company, Missouri-Kansas-Texas Railroad Company, Missouri Pacific Railroad Company, Norfolk and Western Railway Company, Soo Line Railroad Company, Union Pacific Railroad Company.

It appearing, That there are massive movements of grain in progress in the states of Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming; that present supplies of plain boxcars owned by the railroads serving these states are inadequate to move the newly harvested grain to terminal elevators for safe storage; that use of available plain boxcars owned by other carriers for movements of this grain will substantially augment the car supplies of the railroads named herein.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, the railroads named herein, and their short line connections, are hereby authorized to use and to accept from shippers shipments of grain originating at stations located in Iowa, Kansas, Minnesota, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, when loaded into plain 40-ft. narrow-door boxcars of various ownerships without regard to the requirements of Car Service Rule 2.

Exception.—This exemption shall not apply to plain boxcars subject to Association of American Railroads' Car Relocation Directive No. 44.

Effective 11:59 p.m., August 31, 1973.

Expires 11:59 p.m., September 15, 1973.

Issued at Washington, D.C., August 28, 1973.

INTERSTATE COMMERCE COMMISSION,
R. D. PFAHLER,
Agent.

[FR Doc.73-19263 Filed 9-10-73;8:45 am]

[Rev. S.O. 994; I.C.C. Order 109, Amdt 1]

GREEN MOUNTAIN RAILROAD CORP.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order 104 (Green Mountain Railroad Corporation) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 104 be, and it is hereby, vacated and set aside.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 30, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.73-19262 Filed 9-10-73;8:45 am]

[Notice No. 121]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

SEPTEMBER 5, 1973.

The following are notices of filing of application, 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, for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the new rules of Ex Parte No. MC-67, (49 CFR 1131) published in the FEDERAL REGISTER, issue of April 27, 1965, effective July 1, 1965. These rules provide that protests to the granting of an application must be filed with the field official named in the FEDERAL REGISTER publication, within 15 calendar days after the date of notice of the filing of the application is published in the FEDERAL REGISTER. One copy of such protests must be served on the applicant, or its authorized representative, if any, and the protests must certify that such service has been made. The protests must be specific as to the service which such protestant can and will offer, and must consist of a signed original and six (6) copies.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 26396 (sub-No. 90 TA), filed August 23, 1973. Applicant: POPELKA TRUCKING CO., doing business as THE WAGGONERS, P.O. Box 990, 201 W. Park, Livingston, Mont. 59047. Applicant's representative: Dave Kemp (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber wood, lumber products, and forest products*, from ports of entry on the International Boundary line between the United States and Canada located in Idaho, Montana and Washington, to points in Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming, for 180 days. SUPPORTING SHIPPERS: Crows Nest Industries, Limited, Fernie, B.C., Canada; Slaughter Brothers, Inc., Kalispell, Mont. 59901; and Montana Lumber Sales, Inc., Missoula, Mont. 59801. SEND PROTESTS TO: Paul J. Labane, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 222 U.S. Post Office Building, Billings, Mont. 59101.

No. MC 52709 (Sub-No. 322 TA), filed August 23, 1973. Applicant: RINGSBY TRUCK LINES, INC., P.O. Box 192, Littleton, Colo. 80120. Applicant's representative: J. H. Watson (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plant site and storage facilities of Madison Food Company at or near Madison, Nebr., to points in Arizona, Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New Mexico, Rhode Island, Vermont, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor Roger L. Buchanan, Interstate Comerce Commission, Bureau of Operations, 2022 Federal Bldg., Denver, Colo. 80202.

No. MC 113362 (Sub-No. 258 TA), filed August 24, 1973. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, Iowa 50533. Applicant's representative: Milton D. Adams, Box 562, Austin, Minn. 55912. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Description in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities of Madison Foods, Inc. located

at Madison, Nebr., to points in Connecticut, Delaware, the District of Columbia, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Armour and Co., Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Herbert W. Allen, Transportation Specialist, Interstate Commerce Commission, Bureau of Operations, 875 Federal Bldg., Des Moines, Iowa 50309.

No. MC 113651 (Sub-No. 159 TA), filed August 23, 1973. Applicant: INDIANA REFRIGERATOR LINES, INC., 2404 North Broadway, Muncie, Ind. 47303. Applicant's representative: Henry A. Dillon (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of Madison Foods, Inc., at or near Madison, Nebr., to points in Indiana, Ohio, Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, New Jersey, Pennsylvania, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Vermont, Maine, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 204, 345 West Wayne Street, Fort Wayne, Ind. 46802.

No. MC 117644 (Sub-No. 33 TA), filed August 24, 1973. Applicant: D & T TRUCKING CO., INC., 498 First St. NW., P.O. Box 2611, New Brighton, Minn. 55112. Applicant's representative: William J. Boyd, 29 S. LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the plant site of Madison Foods, Inc., at Madison, Nebr., to points in Alabama, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Indiana, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor Raymond T. Jones, Interstate Commerce Commission, Bureau of Operations, 448 Federal Bldg. & U.S. Court House, 110 S. 4th St., Minneapolis, Minn. 55401

No. MC 117686 (Sub-No. 142 TA), filed August 24, 1973. Applicant: HIRSCHBACH MOTOR LINES, INC., 3324 U.S. Highway 75 N., P.O. Box 417, Sioux City, Iowa 51102. Applicant's representative: George L. Hirschbach, 309 Badgerow Building, Sioux City, Iowa 51101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of Madison Foods, Inc., at or near Madison, Nebr., to points in Tennessee, Georgia, Alabama, Mississippi, Louisiana, Arkansas, Oklahoma, and Texas, for 180 days. SUPPORTING SHIPPER: Armour and Company, Donald A. Chute, Manager, Transportation and Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 118431 (Sub-No. 13 TA), filed August 21, 1973. Applicant: DENVER SOUTHWEST EXPRESS, INC., 8716 L Street, Omaha, Nebr. 68127. Applicant's representative: Patrick E. Quinn, 605 So. 14th Street, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, (1) from the plantsites and facilities utilized by Kitchens of Sara Lee located at or near Deerfield and Chicago, Ill., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Washington, D.C., and (2) between the plantsites and facilities of Kitchens of Sara Lee at Deerfield and Chicago, Ill. and New Hampton, Iowa, for 180 days. RESTRICTION: The operations sought herein are restricted to a service to be performed under a continuing contract or contracts with Kitchens of Sara Lee, Deerfield, Ill. SUPPORTING SHIPPER: Kitchens of Sara Lee, Charles G. Sladek, Traffic Services Supervisor, 500 Waukegan Road, Deerfield, Ill. 60015. SEND PROTESTS TO: District Supervisor Carroll Russell, Bureau of Operations, Interstate Commerce Commission, 711 Federal Bldg., Omaha, Nebr. 68102.

No. MC 119669 (Sub-No. 37 TA), filed August 23, 1973. Applicant: TEMPCO TRANSPORTATION, INC., 546 S. 31A, P.O. Box 886, Columbus, Ind. 47201. Applicant's representative: William J. Boyd, 29 South LaSalle Street, Chicago, Ill. 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products and meat byproducts and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles), from the plant site of Madison Foods, Inc., at Madison, Nebr., to points in Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Rhode Island, Pennsylvania, South Carolina, Vermont, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Donald A. Chute, Mgr. of Transportation and Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: District Supervisor James W. Habermehl, Interstate Commerce Commission, Bureau of Operations, 802 Century Bldg., 36 S. Penn. Street, Indianapolis, Ind. 46204.

No. MC 119944 (Sub-No. 15 TA), filed August 24, 1973. Applicant: BROCKWAY FAST MOTOR FREIGHT, INC., 568 Central Avenue, Somerville, N.J. 08876. Applicant's representative: Daniel P. Dameo (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic pipe, conduit, ducts, and tubes and related fittings, attachments, materials, and accessories used in the installation thereof*, from Nazareth, Pa., to points in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Carlon Division, Indian Head, Inc., 2300 Chagrin Blvd., Cleveland, Ohio 44122 (Warren C. Singer, Manager, Traffic Administration). SEND PROTESTS TO: District Supervisor Robert S. H. Vance, Bureau of Operations, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 124213 (Sub-No. 7 TA), filed August 23, 1973. Applicant: SWIFT-LINES, INC., 7878 I Street, Omaha, Nebr. 68127. Applicant's representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, Minn. 68127. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts and articles distributed by meat packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite of Madison Foods, Inc., located at or near Madison, Nebr., to points in Minnesota, Iowa,

South Dakota, North Dakota, Kansas, Missouri, Wisconsin, Illinois, and Indiana, for 180 days. SUPPORTING SHIPPER: Armour and Company, Donald A. Chute, Manager, Transportation and Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 124774 (Sub-No. 87 TA), filed August 22, 1973. Applicant: MIDWEST REFRIGERATED EXPRESS, INC., 4440 Buckingham Avenue, P.O. Box 7344, Omaha, Nebr. 68107. Applicant's representative: Clifford J. Foltz (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts and articles distributed by meat packing houses*, as described in Sections "A" and "C" of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of Madison Foods, Inc., Madison, Nebr., to points in Connecticut, Delaware, the District of Columbia, Indiana, Kentucky, Maine, Maryland, Michigan (Lower Peninsula), Massachusetts, North Carolina, New Hampshire, New York, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Armour Fresh Meats Division, Greyhound Tower, Donald A. Chute, Mgr. of Transportation and Distribution, Phoenix, Ariz. 85077. SEND PROTESTS TO: Carroll Russell, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 127042 (Sub-No. 123 TA), filed August 22, 1973. Applicant: HAGEN, INC., 4120 Floyd Blvd. (P.O. Box 98—Leads Station), Sioux City, Iowa 51108. Applicant's representative: Joseph W. Harvey (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities utilized by Madison Foods, Inc., at or near Madison, Nebr., to points in Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Arizona, California, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming, for 180 days. SUPPORTING SHIPPER: Armour and Company, Donald A. Chute, Manager, Transportation and Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 128007 (Sub-No. 55 TA), filed August 24, 1973. Applicant: HOFER, INC., 4032 Parkview Drive, P.O. Box 583, Pittsburg, Kans. 66762. Applicant's representative: Clyde N. Christey, 641 Harrison, Topeka, Kans. 66603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat scraps, dried blood, blood meal and bone meal*, from points in Collin County, Tex.; San Antonio, Tex.; Okmulgee County, Okla.; Tulsa, Okla.; Roswell, Clovis, and Albuquerque, N. Mex.; Lafayette and Cooper Counties, Mo., to points in Nebraska, Iowa, Missouri, Minnesota, Kansas, Arkansas, Oklahoma, South Dakota, North Dakota, and Texas, for 180 days. SUPPORTING SHIPPER: Wellens & Co., Inc., 6700 France Avenue South, Minneapolis, Minn. 55435. SEND PROTESTS TO: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 501 Petroleum Building, Wichita, Kans. 67202.

No. MC 133590 (Sub-No. 4 TA), filed August 24, 1973. Applicant: WESTERN CARRIERS, INC., 288 Franklin Street, Worcester, Mass. 01604. Applicant's representative: Robert L. Kendall, Jr., 1719 Packard Building, Philadelphia, Pa. 19102. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pork carcasses, pork byproducts, and offal* (except commodities in bulk and hides), from the plant of Corn Country Pork, Inc., at Worthington, Ind., to the plant sites and storage facilities of Western Pork Packers, Inc., at New York Corporation, at Bronx, N.Y., and Western Pork Packers, Inc., a Mass. Corporation, at Worcester, Mass., for 180 days. SUPPORTING SHIPPERS: Western Pork Packers, Inc., 529 Westchester Avenue, Bronx, N.Y. 10455, and Western Pork Packers, Inc., 288 Franklin Street, Worcester, Mass. 01604. SEND PROTESTS TO: District Supervisor Joseph W. Balin, Bureau of Operations, Interstate Commerce Commission, 338 Federal Bldg. & U.S. Courthouse, 436 Dwight Street, Springfield, Mass. 01103.

No. MC 134134 (Sub-No. 14 TA), filed August 23, 1973. Applicant: MAINLINER MOTOR EXPRESS, INC., 2002 Madison Street, Omaha, Nebr. 68107. Applicant's representative: Robert V. Dwyer, Jr., 1601 Woodmen Tower, Omaha, Nebr. 68102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, 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 MCC 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of Madison Foods, Inc., at Madison, Nebr., to points in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Donald A. Chute, Manager, Transportation & Distribution, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Carroll Russell, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 711 Federal Office Building, Omaha, Nebr. 68102.

No. MC 134777 (Sub-No. 21 TA), filed August 23, 1973. Applicant: SOONER EXPRESS, INC., Mlg.: P.O. Box 219, Off.: Sooner Bldg., Highway 70 South, Madill, Okla. 73446. Applicant's representative: Dale Waymire (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packing houses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk and tank vehicles, from the plant site of Madison Foods (Inc.) at Madison, Nebr., to points in Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and the District of Columbia, for 180 days. SUPPORTING SHIPPER: Armour and Company, Fresh Meats Division, Greyhound Tower, Phoenix, Ariz. 85077. SEND PROTESTS TO: Transportation Specialist Gerald T. Holland, Interstate Commerce Commission, Bureau of Operations, 1100 Commerce Street, Room 13C12, Dallas, Tex. 75202.

No. MC 135874 (Sub-No. 22 TA) (CORRECTION), filed July 31, 1973, published in the FEDERAL REGISTER issue of August 22, 1973, and republished as corrected this issue. Applicant: LTL PERISHABLES, INC., 132nd & Q Streets, Mlg.: P.O. Box 37468 (Box zip 68152), Omaha, Nebr. 68137. Applicant's representative: Donald L. Stern, 7100 W. Center Road, Omaha, Nebr. 68106.

NOTE.—The purpose of this partial republication is to add the state of North Dakota as a destination point, which was omitted in previous publication. Applicant also wants to add two additional supporting shippers. The supporting shippers are Ranch Hand Foods, Inc., and The Keller Food Company, Inc. The rest of the application remains the same.

No. MC 139021 (Sub-No. 1 TA), filed August 16, 1973. Applicant: 212 AUTO SALES, INC., 325 US–20, East, P.O. Box 251, Michigan City, Ind. 46360. Applicant's representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing,

Mich. 48933. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used cars and pick-up trucks* sold at auctions between the auction sites of Grand Rapids Auto Auction, Inc., at or near Hudsonville, Mich.; Flint Auto Auction, Flint, Mich.; and Mid States Auto Auction, South Bend, Ind., on the one hand, and various points in Michigan, Ohio, Illinois, Wisconsin, and Indiana, on the other hand, for 180 days. SUPPORTING SHIPPERS: Flint Auto Auction, Inc., 3711 Western Road Flint, Mich. 48506; Grand Rapids Auto Auction, Inc., 2380 Port Sheldon, Jenison, Mich. 49428; Car Credit Center Corporation, 7600 South Western Ave., Chicago, Ill. 60602; Johnson Buick, Inc., 515 West Lake St., Oak Park, Ill. 60302; Mid States Auto Auction, Inc., 25784 Western Ave., South Bend, Ind. 46619; and Motor Town, Inc., 655 North Western Ave., Chicago, Ill. 60612. SEND PROTESTS TO: W. S. Ennis, Interstate Commerce Commission, Bureau of Operations, Room 204, 345 West Wayne Street, Fort Wayne, Ind. 46802.

No. MC 139022 (Sub-No. 1 TA), filed August 22, 1973. Applicant: GLENN A. HODSON AND BETTY L. HODSON, doing business as TRI CITY DELIVERY, 5512 W. Yellowstone Avenue, Kennewick, Wash. 99336. Applicant's representative: Glenn A. Hodson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, with the usual exceptions, having a prior or subsequent movement by air, between Pasco and Yakima, Wash., and points in Adams, Benton, Columbia, Franklin, Grant, Yakima, and Walla Walla Counties, Wash., for 180 days. SUPPORTING SHIPPER: (1) Wits, Inc., doing business as Wits Air Freight, 2515 4th Avenue, P.O. Box 3805, Seattle, Wash. 98124; (2) Seneca Foods Corporation, P.O. Box 71, Prosser, Wash. 99350; and (3) Eastman Kodak Company, 2400 Mt. Read Boulevard, Rochester, N.Y. 14650. SEND PROTESTS TO: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 6049 Federal Office Building, Seattle, Wash. 98104.

No. MC 1934 (Sub-No. 33 TA), filed August 24, 1973. Applicant: THE ARROW LINE, INC., 105 Cherry Street, East Hartford, Conn. 06108. Applicant's representative: Rene R. Dupuis (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in special round-trip operations, during the racing season of each year, beginning and ending at New London, Conn., and extending to the site of the Narragansett Racetrack, Pawtucket, R.I., and Lincoln Downs Racetrack, Lincoln, R.I., for 180 days.

NOTE.—Applicant intends to tack with MC 1934 Sub 2.

SUPPORTING SHIPPERS: There are approximately 17 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. SEND PROTESTS TO: David J. Kiernan, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 135 High Street, Room 324, Hartford, Conn. 06101.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-19267 Filed 9-10-73;8:45 am]

[Notice No. 349]

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 on or before October 1, 1973. 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-74321. (REPUBLISHED)[1] By order of August 24, 1973, the Motor Carrier Board approved the transfer to Nebraska-Iowa-Missouri Express, Inc., Kansas City, Mo., of a portion of Certificate No. MC-9644, issued January 7, 1971, to B. T. L., Inc., Kansas City, Mo., authorizing the transportation of general commodities, with exceptions, between points in Buchanan County, Mo., on the one hand, and on the other, points in a described area of Missouri and Iowa, and Nebraska City, Nebr., and points in its Commercial Zone. William Burns, 1508 Woodswether Road, Kansas City, Mo., and Don McCarty, 1221 Baltimore Avenue, Kansas City, Mo. 64105, Attorneys for applicants.

No. MC-FC-74421. By order of September 5, 1973, the Motor Carrier Board approved the transfer to Curtis Brothers Trucking Company, Inc., Falmouth, Va., of the operating rights in Certificate No. MC-134745 (Sub-No. 2) and Permit No. MC-133045 (Sub-No. 2) issued May 12, 1971, and March 14, 1969, respectively to E. N. Curtis and C. C. Curtis, a partnership, doing business as Curtis Brothers Trucking Company, Falmouth, Va., authorizing the transportation of various commodities from specified points and areas in Virginia to points in Delaware, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, West Virginia, and the District of Columbia. Daniel B. Johnson, 716 Perpetual Bldg., 1111 E St. NW., Washington, D.C. 20004, Attorney for applicants.

[SEAL] ROBERT L. OSWALD, *Secretary.*

[FR Doc.73-19269 Filed 9-10-73;8:45 am]

[1] Republished to indicate that William Burns and Don McCarty are the attorneys for the applicants in lieu of Frank W. Taylor, Jr.

[Rev. S.O. 994; I.C.C. Order 88, Amdt. 3]

PENN CENTRAL TRANSPORTATION CORP.

Rerouting or Diversion of Traffic

Upon further consideration of I.C.C. Order No. 88 (Penn Central Transportation Company, George P. Baker, Richard C. Bond, and Jervis Langdon, Jr., Trustees) and good cause appearing therefor:

It is ordered, That:

I.C.C. Order No. 88 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.*—This order shall expire at 11:59 p.m., November 30, 1973, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., August 31, 1973, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 29, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER, *Agent.*

[FR Doc.73-19265 Filed 9-10-73;8:45 am]

[Rev. S.O. 994; I.C.C. Order 79, Amdt. 4]

ST. JOHNSBURY AND LAMOILLE COUNTY RAILROAD

Rerouting or Diversion of Traffic

Upon further consideration of Revised I.C.C. Order No. 79, (St. Johnsbury & Lamoille County Railroad) and good cause appearing therefor:

It is ordered, That:

Revised I.C.C. Order No. 79 be, and it is hereby, amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.*—This order shall expire at 11:59 p.m., September 10, 1973, unless otherwise modified, changed, or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., September 3, 1973, and that this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., August 31, 1973.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.73-19266 Filed 9-10-73;8:45 am]

CUMULATIVE LISTS OF PARTS AFFECTED—SEPTEMBER

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federal register

TUESDAY, SEPTEMBER 11, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 175

PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN GEORGIA AND CERTAIN OTHER MARKETING AREAS

Proposed Amendments to Marketing Agreements

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1007, 1071, 1073, 1090, 1094, 1096, 1097, 1098, 1102, 1108]

[Docket No. AO-366-A8, etc.]

MILK IN THE GEORGIA AND CERTAIN OTHER MARKETING AREAS

Notice of Revised Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR Part	Marketing Area	Docket No.
	Group I	
1007	Georgia	AO-366-A8
1071	Neosho Valley	AO-227-A26
1073	Wichita, Kans	AO-173-A26
1090	Chattanooga, Tenn	AO-266-A15
1094	New Orleans, La	AO-108-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
1108	Central Arkansas	AO-243-A22

Notice is hereby given of the filing with the Hearing Clerk of this revised 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 15, 1973. 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 FR 19604).

This hearing was a single proceeding on proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in 33 marketing areas. In addition to those listed at the beginning of this document, such marketing areas include the following:

GROUP II

Red River Valley	Central West Texas
Oklahoma Metropolitan	Austin-Waco, Texas
Lubbock-Plainview, Texas	Corpus Christi, Texas
North Texas	Central Arizona
San Antonio, Texas	Texas Panhandle
	Rio Grande Valley

GROUP III

Minnesota-North Dakota	Minneapolis-St.Paul, Minn.
Southeastern Minnesota-Northern Iowa	Duluth-Superior
Quad Cities-Dubuque	Cedar Rapids-Iowa City
Greater Kansas City	Eastern South Dakota
Nebraska-Western Iowa	North Central Iowa
	Des Moines, Iowa

The hearing notice also included the Mississippi order (Part 1103), which was later included in the recommended decision with the "Group I" orders. The Mississippi order was terminated at midnight, April 30, 1973 (38 FR 8748), at which time it ceased to be a part of this proceeding.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on August 28, 1972, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

Because of its length, and to facilitate its distribution to interested parties, the recommended decision was published in the FEDERAL REGISTER in the form of three separate documents. Each document contained the proposed amendments for the group of 11 orders listed at the beginning of such document and, for the convenience of interested parties, an identical set of findings and conclusions. These documents were published on the following dates: Group I orders—September 16, 1972 (37 FR 18984); Group II orders—September 19, 1972 (37 FR 19210); and Group III orders—September 20, 1972 (37 FR 19482).

On the basis of exceptions to the recommended decision, a number of changes in the findings and conclusions of that decision concerning the classification and pricing of milk in certain uses are appropriate. Because such changes are substantive, a revised recommended decision is being issued with an opportunity to submit exceptions thereto.

The publication procedure used for the August 28, 1972, recommended decision is again being used in the case of this revised recommended decision. The three documents constitute, however, a single revised recommended decision under this proceeding.

The material issues, findings and conclusions, rulings, and general findings of the August 28, 1972, recommended decision are set forth in full herein, subject to the following modifications. The modifications noted do not include those where the reference to "33" orders or markets was changed to "32" orders or markets because of the termination of the Mississippi order.

1. Under the heading *"General setting of the hearing."*, paragraphs 1, 3, and 6 are changed.

2. Under the heading "1. *Application of a uniform milk classification plan in the 33 markets.*", paragraphs 1 and 9 are changed, and a new paragraph is added after the last paragraph.

3. Under the heading "2. *Revision of the present Class I classification.*", paragraphs 8, 9, 11, and 14 are changed, and the 28th paragraph is deleted and three new paragraphs are substituted therefor.

4. Under the heading "3. *Classification and pricing of milk not needed for Class I use.*", the entire discussion is changed.

5. Under the subheading "(a) *Other source milk definition.*", a new paragraph is added immediately after paragraph 7, and paragraph 8 is changed.

6. Under the subheading "(b) *Accounting for nonfat milk solids added to milk and milk products.*", the last paragraph is changed.

6a. Under the subheading "(c) *Classification of milk transferred or diverted to other plants.*", paragraph 12 is changed.

7. Under the subheading "(d) Classification of *end-of-month inventory.*", paragraphs 3 and 12 are changed.

8. Under the subheading "(e) *Classification of shrinkage, milk dumped and milk disposed of for animal feed.*", paragraphs 3-5, 8, 9, 15 and 19 are changed.

9. Under the subheading "(f) *Allocation of receipts to utilization.*", paragraph 7 is deleted, and paragraphs 9, 17, and 19 are changed.

10. Under the heading "5. *Changing the butterfat differentials.*", paragraphs 3-5, 9, 10, 13, 16, 17 and 19 are changed.

11. Under the heading "6. *Advance announcement of prices for surplus milk.*", paragraphs 3 and 4 are changed.

12. Under the heading "7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.*", paragraph 11 is deleted.

The material issues on the record of the hearing relate to:

1. Application of a uniform milk classification plan in the 32 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 revised recommended decision for the seven markets is being issued concurrently with this revised recommended decision.

Prior to the first hearing, the National Milk Producers Federation, an organization of cooperative associations of dairy farmers and federations of such cooperative associations, undertook the development of a uniform milk classification plan for use under 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 order for one of these markets (Mississippi) has since been terminated, and further reference to this group of markets will be in terms of the remaining 32 markets. The two hearings together involve a group of 39 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 32 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 32 markets. A number of cooperatives operating largely in the Upper Midwest proposed that the Class III price for markets in that area 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 four of its local markets be based on the Minnesota-Wisconsin price, with reductions of 5 to 15 cents to be applicable in three 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 32 orders, would be based on the Chicago butter price times a factor of 0.115.

A uniform classification plan for the 32 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 32 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 32 markets.* Each of the 32 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 price formula. For Class III milk, two price formulas would be used, with one applying under 18 orders and the other under 14 orders. All differential 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 32 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 32 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 32 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 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.

Some of the amendments adopted herein would change certain procedures under the orders that are carried out after the end of the month to which they apply. These include the submission of reports, the classification of milk, and the computation and announcement of certain class prices, butterfat differentials, and producer prices. It is intended, however, that the amendments apply only to that milk handled after the effective date of the changes. Such amendments are not intended to affect the completion of previously existing procedures with respect to milk handled prior to the effectuation of the amendments.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the 32 subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in the 32 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 32 orders. Only in the case of milk shake mixes might there be a higher classification under the adopted amendments than at present. Under some orders, such mixes are now included in the lowest class. This higher classification would be limited, however, to only those milk shake mixes containing less than 20 percent total solids.

The adopted Class I classification would not include eggnog, yogurt, cream or mixtures of cream and milk or skim milk containing 9 percent or more butterfat (such as half and half). A Class I classification now applies to eggnog in 9 of the 32 markets, and to yogurt in 18 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.

Six of the 32 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 II products.

Cooperatives proposed that milkshake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milkshake mixes be in Class II. The national organizations of fluid milk and ice cream processors, on the other hand, asked that all milkshake mixes be included in the lowest classification.

Milkshake and ice milk mixes are being marketed generally through two channels. Limited quantities of such mixes are processed for home consumption, with such mixes being distributed to consumers through food stores and on home delivery routes. The major outlet for milkshake and ice milk mixes, though, is the so-called "soft-serve" trade. Mixes processed by regulated handlers for this use are sold to commercial establishments where the product is run through a special freezer and dispensed to the public in a semisoft form.

Milkshake and ice milk mixes are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. Although such shake mixes are intended to be consumed in a semisoft form, or even in a very thick fluid form, they are being marketed for essentially the same use as the traditional frozen desserts. This is the case whether such mixes are sold through the "soft-serve" trade or for home use. With minor exception, as noted below, milk used in milkshake and ice milk mixes thus should be classified in the same class as milk used in the traditional frozen desserts. As discussed later in this decision, the classification plan adopted herein includes frozen desserts in Class II.

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

[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.

solids are similar in composition to chocolate milk and other flavored fluid milk products and should be a Class I product.

As proposed by cooperatives and the national organizations of fluid milk and ice cream processors, no exception to the Class I classification of milk should be made for fluid milk products in sterilized form. The sterilization of fluid milk products does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products which they resemble, such sterilized products are disposed of in fluid form for consumption as a beverage. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same customers.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are being marketed for the same beverage use. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products, which are being sold in sterilized form, are now excluded from the Class I classification and, as proposed by cooperatives and handlers, such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Fluid milk products should not be defined only on the basis of product composition, as was proposed by cooperatives. Contending that the present fluid milk product definition in each order does not clearly identify those products that are intended to be classified as Class I products, cooperatives proposed that a fluid milk product be defined solely in terms of moisture and milk solids content of the product. As proposed by producers, a "fluid milk product" would be any product containing at least 6.5 percent but less than 27 percent nonfat milk solids, less than 9 percent butterfat, and more than 20 percent moisture, all computed on the basis of weight.

In support of their proposal, proponents indicated that such a definition would result in a more uniform application among the 32 orders of the classification provisions. They contended that the listing of products under the current definitions does not accommodate the proper classification of new products or variations of the listed products when they are introduced on the market. Proponents pointed out that as market administrators have had to make order interpretations in response to this situation variations in interpretation and classification have resulted among the markets. Adoption of the proposed definition, it was contended, would eliminate such problems. Any product meeting the specified composition limits for a fluid milk product would be a fluid milk product regardless of the name under which the product might be marketed.

Proponents recognized, however, that their proposed fluid milk product definition would include some products not intended by them to be in Class I, and, at the same time, would exclude certain products that they wanted in this classification. To overcome this problem, proponents stated that certain products should be listed by name, either as inclusions or exclusions, to assure that the fluid milk product definition would include those products, and only those products, warranting a Class I classification.

Handlers 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 32 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 in fluid form falls within the composition standards of the fluid milk product definition, such standards should be applied to the composition of the porduct in its finished form, not to the composition of the product on a skim equivalent basis. A new product not intended for beverage use might contain in its finished form somewhat more than the maximum total solids specified for a fluid milk product under the adopted composition standards. On this basis, the product would not fall within the fluid milk product definition. Application of

the composition standards to this product on a skim equivalent basis, however, could result in the product meeting such standards and thus being defined as a fluid milk product.

As pointed out by producers in their exceptions, applying the composition standards to products in the form in which marketed could exclude from the fluid milk product definition a new concentrated fluid product that is intended to be consumed as a beverage only after reconstitution. For the present time, however, the composition standards should be applied to a product in its finished form. A refinement of such standards may be appropriate once there has been an opportunity to evaluate their applicability under actual market conditions.

It should be noted that under the adopted classification provisions accounting for a new product on other than a skim equivalent basis would be limited solely to determining whether or not the product meets the composition standards of the fluid milk product definition. For all other purposes under the order, the product would 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 32 orders, sodium caseinate in any product is treated under the orders as a nonmilk ingredient.[3] There is no basis for changing this procedure.

The use of composition standards as a means of defining fluid milk products should not deter the development of new milk products, as handlers contended. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered. The use of composition standards should result, however, in a more uniform classification among orders of new products developed for fluid consumption.

3. *Classification and pricing of milk not needed for Class I use.* Two use classes, Class II and Class III, should be provided in each of the 32 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 10 cents. The price under each of the orders for Class III milk should be the basic formula price for the month, but in certain markets not to exceed a butter-nonfat dry milk formula price.

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, with or without the addition of other ingredients. 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, low fat cottage cheese, dry curd cottage cheese, milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, frozen dessert mixes, any concentrated milk product in bulk fluid form, plastic cream, frozen cream, anhydrous milkfat, custards, puddings, pancake mixes, and formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

A Class II classification should apply also 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.

Class III milk should include skim milk and butterfat used to produce cheese (other than cottage cheese, low fat cottage cheese and dry curd cottage cheese), butter, any milk product in dry form, 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 product not otherwise specified as a Class I, Class II or Class III product.

Other Class III uses should include bulk and packaged fluid milk products and bulk fluid cream products in inventory at the end of the month, and that portion of modified (by the addition of nonfat milk solids) fluid milk products not included in Class I. Class III should include any fluid milk product or Class II product accounted for on a "disposed of" basis that is used 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.

As described later, the classification and pricing adopted herein for milk not needed for Class I use differs in some respects from that set forth in the August 28, 1972, recommended decision.

The present classification of milk used in the adopted Class II and Class III classifications is quite varied among the 32 orders. Seven of the orders provide for three use classes while 25 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 32 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 32 orders for milk in other than Class I uses. Seventeen orders use the Minnesota-Wisconsin manufacturing milk price. Three orders use a combination of the Minnesota-Wisconsin price and a butter-nonfat dry milk formula price. Four orders use a combination of a butter-nonfat dry milk formula price and a cheddar cheese formula price. Six orders use a butter-nonfat dry milk formula price, with four of these employing a seasonal adjustment. Two orders use the U.S. manufacturing milk price with a seasonal adjustment for milk used to produce butter, nonfat dry milk and cheddar cheese. This variety of price formulas can result in as many as eleven different prices for milk put to similar uses. Also, four additional prices can result under the five orders that have an intermediate classification and price for milk used to produce cottage cheese.

Cooperatives proposed that each of the 32 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 31 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 31 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), but-

[3] Official notice is taken of the Assistant Secretary's decision issued on Oct. 13, 1969 (34 FR 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

ter, 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. A number of 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 inappropriate for all 32 markets, they particularly urged its adoption for 11 upper midwestern markets. For four southern markets, the principal cooperative in such markets proposed the use of the Minnesota-Wisconsin price, but with minus adjustments of 5 cents for Chattanooga, 10 cents for New Orleans, and 15 cents for Georgia. 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 the industry will be better able to maintain its present small share of the cream and dessert topping market and perhaps recapture some of the market that it has lost.

In support of their various Class III pricing proposals, the cooperatives urged basically that such prices reflect the net value that can be obtained by cooperatives handling reserve supplies. They claimed that such value should take into consideration (1) product values of butter, nonfat dry milk, and cheese; (2) the cost of moving milk to available outlets; and (3) the burden of "balancing" the fluid milk supply in each market.

With respect to certain southern markets, it was contended that the net value that can be obtained for reserve milk supplies tends to differ from market to market depending upon surplus disposal conditions that prevail in each market. The principal variable factor mentioned was the cost incurred in transporting reserve supplies to available processing plants. For example, there are no plants processing hard cheese, butter, or nonfat dry milk in Georgia. Consequently, the principal cooperative in the area transports much of the reserve milk supply associated with the Georgia market to manufacturing plants located in Tennessee. The amounts so transported have ranged from one to 11 million pounds per month. The cooperative stated that for the 12 months ending with August 1971 it netted an average of 37.6 cents per hundredweight less than the Georgia order Class II price on such shipments because of the cost of hauling the milk.

Extra transportation costs are incurred also by the cooperative with respect to its disposition of reserve milk supplies in the New Orleans market. In the Nashville market, on the other hand, the same cooperative realized an average of 9.7 cents over the Nashville Class II price for the milk it moved to nonpool plants for manufacturing use during the 12 months ending with August 1971. For the Chattanooga market, the cooperative realized slightly less than the Class II price for milk moved to nonpool plants.

Another condition which the cooperative contended has influenced the returns it is able to realize on reserve milk supplies is that the quantity of such milk to be processed varies both seasonally and on certain days of the week. During the month of September, the reserve milk supply handled by the cooperative is at its lowest level. In September 1970, for example, the cooperative processed less than 500,000 pounds of milk at each of its major butter-nonfat dry milk processing plants (Lewisburg, Tenn., and Franklinton, La.). The following April, it processed 23.9 and 5.8 million pounds of milk, respectively, at such plants.

Reserve milk supplies increase on Sundays compared to other days because bottling plants in the markets served by the cooperative usually process milk only 5 or, at the most, 6 days a week. The needs of bottling plants are highest on Thursdays since sales of packaged milk tend to be higher on Thursday and Friday than on other days of the week.

Because of these circumstances, this cooperative proposed that the Class III prices adopted for the southeastern markets of Georgia, 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.

In support of their proposed butter-nonfat dry milk-cheese product price formula for markets in the Upper Midwest proponent 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 32 markets, and (2) what is the appropriate pricing mechanism for determining the Class III price in each market?

The purpose of the classification proposals considered at this hearing strongly suggests 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 32 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, as would result under the proposals of the various cooperatives, 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 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.

On the basis of the above findings, it was concluded in the August 28, 1972, recommended decision that the same Class III price should prevail under each order to resolve to the fullest extent the many classification and pricing differences among these orders. Although this concept remains valid, we are persuaded by producer exceptions to the August 28 decision that complete uniformity in the pricing of Class III milk may not be attainable at this time if orderly marketing is to be preserved. For reasons described later, an alternate Class III price formula also should apply under 14 of the 32 orders rather than the one formula initially recommended. It must be emphasized, however, that the use of an alternate Class III price formula in these markets will negate in some degree the uniformity intended to be gained through classifying a particular product in the same class in each market. The adopted classification and pricing scheme will be helpful, nevertheless, in overcoming the marketing problems being experienced by handlers because of the differences in the classification and pricing plans now in use in these 32 markets.

In considering the appropriate mechanism for determining the Class III price in each market, it is consistent with the purposes of the statute authorizing milk orders that reserve milk supplies be priced at the highest practicable level compatible with orderly disposal of the milk. Excess market supplies normally must be channeled into manufactured products that compete on a national basis with similar products made from ungraded milk. It is important, therefore, that the price for surplus milk in the regulated markets be in close alignment with prices being paid by processors of manufacturing grade milk.

The Minnesota-Wisconsin price, which is now the surplus price under 17 of the 32 orders, is a representative pay price for about half of the manufacturing grade milk in the United States. This price reflects a farm price level determined by competitive conditions that are affected by the demand for all major manufactured dairy products. It also reflects the supply and demand of such products within a highly coordinated marketing system, which is national in scope. Use of the Minnesota-Wisconsin price as the Class III price, or principal Class III price determinant, will result in order prices for surplus milk that are in close alignment with the dominant price structure for raw milk within the manufacturing milk segment of the dairy industry.

Use of the Minnesota-Wisconsin price also tends to result in 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. The Minnesota-Wisconsin price is an average of prices being paid by processors who are meeting the competitive test of the unregulated market place. Competing processors of ungraded milk purchase their supplies from farmers at

prices commensurate with the ability of the more efficient processors to pay for raw milk. As shifts in the relationship between finished product prices take place, one group of processors may be able to pay dairymen higher prices than another. Other processors generally must meet 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.

If the Class III price were based solely on market prices of certain manufactured products (e.g., butter and nonfat dry milk) minus a specified processing allowance, as proposed by certain cooperatives, handlers under each order would be assured at all times, regardless of current values of milk competitively procured for the several manufactured product uses in Class III, of a predetermined operating margin. Such pool handlers are protected in procurement competition by being able, through the pool equalization fund, to pay the blended price to producers. This is an advantage not available to manufacturers purchasing unregulated milk. The unregulated processors must pay whatever price to dairy farmers is required to maintain milk supplies, which is determined from competition with other processors. Unless regulated handlers are to have a competitive advantage, or disadvantage, in the manufactured milk product market relative to unregulated plant operators, it is necessary 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.

In the August 28, 1972, recommended decision, the Minnesota-Wisconsin price was adopted as the Class III price under each order. This would have provided a continuation of the surplus price now applicable in 17 markets and a change in pricing for the remaining 15 markets where a number of different price formulas are now in use.

Upon further consideration of this issue in light of producer exceptions and the record evidence, it is concluded that in 14 of the 15 markets where the surplus price would have been changed the Class III price should be the Minnesota-Wisconsin price but not to exceed a butter-nonfat dry milk formula price. The markets where this pricing mechanism should apply are New Orleans, Northern Louisiana, Wichita, Central Arizona, Rio Grande Valley, Oklahoma Metropolitan, Red River Valley, North Texas, Central West Texas, Texas Panhandle, Lubbuck-Plainview, Austin-Waco, San Antonio and Corpus Christi. The Class III price for the other market, Duluth-Superior, should be the Minnesota-Wisconsin price as initially recommended.

The surplus class price in all but two of these 14 markets is now based either entirely or in part on prices derived from some type of butter-nonfat dry milk formula. In the Oklahoma Metropolitan and Red River Valley markets, the surplus price is the U.S. Manufacturing price, but with a 10-cent reduction during six months of the year for milk used in butter, nonfat dry milk or hard cheese. For most of these markets, cooperatives argued in their exceptions to the August 28 decision that the present price formulas should remain in effect in the respective markets. It was contended that these formulas represent an historical recognition of particular surplus disposal conditions in these markets and that such recognition should not be abandoned at this time.

If a uniform classification and pricing scheme is to be implemented to any substantial degree, it is not possible to continue the variety of pricing formulas now applicable in these several markets as cooperatives urge. We recognize, however, that surplus prices in most of these markets historically have been tied directly to the market values of butter and nonfat dry milk. Therefore, it is reasonable to provide that the Class III prices in these 14 markets be limited to a butter-nonfat dry milk formula price should the milk equivalent value of these products become unduly low relative to the average price being paid in Minnesota and Wisconsin for manufacturing grade milk.

The same butter-nonfat dry milk price formula should be used in each of the 14 markets in conjunction with the Minnesota-Wisconsin price. This is consistent with the development of a uniform classification scheme for these markets. The formula adopted herein would be derived from converting the market prices of butter and nonfat dry milk to their milk equivalent values and subtracting a processing allowance. Specifically, such price would be computed by multiplying the average monthly price of 92-score bulk butter at Chicago by 4.2, then multiplying the average monthly price of spray process nonfat dry milk in the Chicago area by 8.2, and then subtracting 48 cents from the sum of th above results. This formula price, when used in conjunction with the Minnesota-Wisconsin price, is commonly referred to in the trade as the "butter-powder snubber."

The adopted formula is the same, or virtually the same, as all other butter-nonfat dry milk formulas now in use under orders applicable outside the 32-market area. In all cases, such formulas are being used in conjunction with the Minnesota-Wisconsin price in the same manner as proposed herein.

As indicated, the Class III price under the Duluth-Superior order should be the Minnesota-Wisconsin price even though the surplus price in this market is now based on a butter-nonfat dry milk formula. The present surplus price historically has averaged somewhat under the Minnesota-Wisconsin price. Conditions in this market do not support a continuation of this lower price level for surplus milk being processed into products such as butter, nonfat dry milk and hard cheese, residual products that would be included in Class III under the revised Duluth-Superior order.

The Duluth-Superior order regulates the handling of milk in certain areas of Minnesota and Wisconsin. Because of their location, regulated handlers in this market are operating within the competitive sphere of the largest concentration of processors of butter, nonfat dry milk and cheese in the United States. As noted earlier, about half of the manufacturing grade milk in the country is produced in this two-State area. It is the prices being paid in this area for such milk that are used in determining the "Minnesota-Wisconsin price." Use of this price for pricing Class III milk in the Duluth-Superior market will result in producer milk used in the residual products being priced at a level commensurate with unregulated milk that is being processed in the same general area into like products. A lower return to the graded producers on the Duluth-Superior market for surplus milk priced under the order is not warranted under the competitive conditions existing in this area.

It should be noted that in all other regulated markets in this two-State area producer milk processed into the residual products is priced at the Minnesota-Wisconsin price. Such markets include Minneapolis-St. Paul, Minnesota-North Dakota, and Chicago Regional, all of which are near the Duluth-Superior market. There is no indication that regulated handlers in the Duluth-Superior market are faced with conditions uniquely different from those faced by handlers in these other markets in disposing of surplus milk.

The surplus pricing adopted for the 32 markets will result in a significantly greater coordination of surplus prices under all Federal milk orders than is now the case. With the exception of one relatively small market (Appalachian), prices under all orders for milk used in the key residual products (butter, nonfat dry milk and cheese) would be based on the Minnesota-Wisconsin price, either alone or in conjunction with the butter-powder snubber adopted herein. As noted earlier, such products are marketed within a highly coordinated marketing system that is national in scope.

Class II. Certain uses of producer milk not needed for Class I purposes should be priced at a somewhat higher level than that applicable to milk in the adopted Class III uses. These higher-valued 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, which should be the same under each order, should be the Minnesota-Wisconsin price plus 10 cents.

Of the products adopted herein for inclusion in Class II, one of principal importance is cottage cheese. In 1970, about 840 million pounds of the skim milk and butterfat utilized by pool handlers under the 32 orders was used to produce cottage cheese. 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 32 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 10 cents) is a reflection of some of the 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 32 markets would generally negate any seeming price advantage attributable to differences in applicable order prices.

In the New Orleans market, certain handlers process a type of cheese described locally as "Creole cheese". This product, which apparently is limited to this market, was described at the hearing as being similar to cottage cheese. Accordingly, Creole cheese should be included in the same class as cottage cheese under the New Orleans order.

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 32 orders. In 1970, about 13 million pounds of skim milk and butterfat were utilized in yogurt production in the 32 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 also should include frozen desserts (including commercial milkshake and ice milk mixes), custards, puddings, pancake mixes, dietary and infant formulas, and sales of bulk milk and cream to commercial food processors for use in food products. In the August 28 recommended decision, such uses of skim milk and butterfat were proposed to be included in Class III. Upon consideration of exceptions filed to that decision by cooperatives, it is concluded that market conditions support a higher price for producer milk in such uses than was initially recommended.

As producers pointed out in their exceptions, the rationale set forth in the August 28 decision for including cottage cheese in an intermediate class is in several respects applicable to these other products just listed. The demand for producer milk used in these products is related closely to the current consumer demand for such products. Thus, handlers normally want adequate supplies of producer milk made available at their plants in the quantities and at the times needed for these uses. This is in contrast to the more storable residual "hard" products. Also, the processing of such products often takes place at the market center, which entails a greater hauling expense for producers than when reserve milk is processed in the production area. Moreover, it is doubtful that handlers in general would be able to obtain alternative supplies of milk or product ingredients at less than the cost of producer milk under the adopted pricing provisions.

Cooperatives proposed that the Class II price in most of these markets range from 10 to 20 cents over the Minnesota-Wisconsin price. The lower 10-cent differential (to apply to both cottage cheese and frozen desserts) was proposed for those markets where local ungraded milk supplies represent a significant competitive factor for regulated processors of ice cream and other frozen desserts. The national associations of fluid milk and ice cream processors contended that any price differential over the Class III price for milk in an intermediate class should not be more than 10 cents per hundredweight. In supporting this position, individual handlers stressed that any greater price differential would seriously jeopardize the competitive position of regulated handlers using producer milk relative to unregulated processors relying largely on ungraded milk.

With respect to the several milk uses at issue in the cooperatives' exceptions, the preponderance of evidence at the hearing focused largely on the marketing of frozen desserts. The marketing conditions for frozen desserts are somewhat varied throughout the 32-market area. Some regulated handlers rely regularly on producer milk for use in frozen desserts. In some of the southern markets where milk supplies tend to be shorter than elsewhere, handlers use producer milk when it is available but often must supplement such milk with purchases of condensed skim milk and nonfat dry milk. Some handlers, wherever located, rely on these concentrated forms of milk entirely in processing frozen desserts. Also, the concentrated products used may be made from either graded or ungraded milk. In addition, much of the processing of frozen desserts is done at unregulated plants. Some unregulated processors rely on ungraded milk, while others use milk surplus to the needs of regulated fluid markets. Other unregulated processors use concentrated forms of milk from either graded or ungraded sources.

The marketing situation in the 32-market area for the several other milk uses in question (custards, puddings, pancake mixes, dietary and infant formulas, and sales to commercial food processors) is essentially the same as for frozen desserts.

Under these varying conditions, the Class II price should be set at 10 cents over the Minnesota-Wisconsin price. Pricing Class II milk at this level should permit regulated handlers using producer milk to remain competitive in the marketplace with the unregulated sector in the sale of Class II products. At the same time, such price will reflect the minimum additional value of such high quality producer milk supplied to regulated handlers over the widespread area covered by the 32 markets at the times and places, and in the quantities, needed for the several Class II uses.

It is recognized that under the varied conditions just described an individual handler may find that producer milk does not represent the cheapest source of milk for his Class II uses. Presumably the alternative source would be concentrated forms of milk since health regulations would not permit the receipt of ungraded supplies of whole milk at a pool distributing plant, and graded supplies would not be available on a regular basis at less than the Class II price. Under the revised allocation provisions adopted herein, receipts of nonfluid other source milk such as condensed skim milk or nonfat dry milk that are used in a Class II product would be allocated directly to the handler's Class II uses, with no obligation applying under the order to such milk. Under this arrangement, the handler could choose to use the other source milk without the cost impact of down-allocation should the cost of such milk

become less than the cost of producer milk. The handler thus could rely upon whichever source of milk best fits his competitive and operational circumstances.

Classifying the several types of cream items, some of which are now in Class I while others are in Class II or Class III, in Class II will accommodate proponents' desire for a lower price for milk used in cream products and at the same time price at the same level a variety of products that compete with each other. Half and half, whether sterilized or unsterilized, and light cream are used principally by consumers in coffee. Aerated cream and sterilized and unsterilized whipping cream are used as dessert toppings. Both graded and ungraded sour cream and sour mixtures are used by consumers for similar purposes. Like classification for these cream products will result in uniform pricing to handlers for milk used in products competing in the same trade channels for essentially similar uses.

Although the present Class I cream products sold in these markets must be made from inspected milk, which is delivered regularly by producers to distributing plants, there was general agreement by producers and handlers that milk sold in the form of such products should no longer be subject to the Class I price. Relative to the total Class I sales of producer milk in these markets, cream products represent only 1.5 percent of the present Class I market. Thus, this classification change will have relatively little effect in total on the returns to producers.

In connection with the reclassification of cream products, it is desirable to define a new term—"fluid cream product." "Fluid cream product" would mean cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

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 9 of the 32 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 about 12 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 32 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.

Condensed milk or skim milk in bulk, plastic cream, frozen cream and anhydrous milk fat are "intermediate" products that also should be included in Class II. These products are not end uses in themselves but instead are used in making other products, including frozen desserts and food products such as candy and soup. Under the classification adopted herein, frozen desserts and food products are Class II uses for milk. Accordingly, producer milk used in the several intermediate products likewise should be priced at the Class II level.

A Class II classification should not apply to evaporated or condensed milk or skim milk in consumer-type containers as the cooperatives proposed. Such storable products should remain in the lowest price class. A Class III classification for producer milk in these products will permit such uses to remain as a competitive outlet for milk surplus to the needs of the Class I market. Such products made from milk regulated under these orders must compete over wide areas with the same products processed from ungraded milk or other graded milk that is often priced at no more than the Minnesota-Wisconsin price. Comparable pricing should prevail under these 32 orders.

Although cooperatives proposed Class II price differentials of 10, 15, 20, and 25 cents, the Class II differential for each market should be the same. The distribution of the adopted Class II products from a single plant often extends over a broad region encompassing several Federal order marketing areas. Numerous examples were cited on the record concerning the widespread sales of yogurt, cream items, frozen desserts and cottage cheese in particular. 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 10 cents reasonably reflects the added value which handlers are able to pay for producer milk in such uses as compared to procuring milk supplies or finished products from other sources.

In proposing a generally uniform classification plan for the 32 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 32 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 32 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 implementin , 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.[8] Under the revised classification plan, however, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, it is desirable, nevertheless, that fluid cream products, when in bulk form, continue to be treated in the same manner as fluid milk products for purposes of applying the other source milk definition.

Other source milk should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the revised classification plan.

Producers and handlers proposed that Class II products received at a pool plant in packaged form and then disposed of from the plant without further processing be treated as "pass-through" products. Under this treatment such "pass-

[8] The terms "pool plant" and "nonpool plant" will be used occasionally throughout this decision. Most of the 32 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.

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.

The orders should provide that products manufactured in a pool plant during the month and then reprocessed, converted into, or combined with another product in the same plant during the same month not be defined as other source milk. A typical processing operation would be for a handler to make condensed skim milk from producer milk and then use the condensed product in making ice cream. It is intended under this situation that the producer milk be considered as having been used to produce ice cream. The condensing operation is merely one of the steps performed by the handler in processing ice cream from raw milk.

Other source milk should include any disappearance of manufactured milk products for which the handler fails to establish a disposition. Fourteen of the 32 orders now have a provision concerning the unaccounted for disappearance of such products. The other 18 orders do not specify such disappearance as other source milk.

It is reasonable that each handler be required to account fully for all milk and milk products received or processed at his plant. Otherwise, a handler with inadequate records may have an opportunity to gain a competitive advantage over his competitors who properly account for all milk. Specifying any unexplained disappearance of manufactured milk products as other source milk will contribute to a uniform application of the regulatory plan to all handlers.

(b) *Accounting for nonfat milk solids added to milk and milk products.* Except for two orders, no change should be made in the present method of classifying the skim milk equivalent of nonfat milk solids added to a fluid milk product.

Currently, all but two of the orders under consideration provide that a modified fluid milk product shall be classified as Class I in the amount of the weight of an equal volume of an unmodified product of the same nature and butterfat content. The remaining skim milk equivalent of the nonfat milk solids in such product is classified in the lowest class.

The Neosho Valley and Fort Smith orders presently do not set forth a specific procedure for accounting for nonfat milk solids added to milk and milk products. As proposed by producers, such orders should be made uniform in this respect with the other orders under consideration.

Cooperatives proposed that the amount of a modified fluid milk product that is classified as Class I milk be the actual weight of the modified product rather than the weight of a like unmodified product. Proponents stated that the use of the weight of the modified product would accommodate some of the technical problems of laboratory analysis when this procedure is used in verifying the amount of nonfat milk solids added to natural milk or skim milk. They indicated that since the results of laboratory tests are expressed as a percentage of the weight of the product being tested, using the actual product weight factor would simplify the accurate accountability of modified products.

There was no showing of the extent to which laboratory analysis of modified products is used in verification by market administrators in these markets. Also, there is no indication that modified products are not being accounted for in an accurate manner. Thus, it is not clear from this record that the proposed procedure is necessary for more accurate product accounting or that it would result in any net saving in administrative cost.

Proponents did not attempt to demonstrate any economic basis for making the slightly greater charge for nonfat milk solids used to modify fluid milk products that would result from their proposal. Their proposed procedure would increase slightly the quantity of a modified product priced in Class I. A gallon of modified skim milk containing 11 percent nonfat milk solids, for example, would be classified in Class I on an 8.7 pounds weight factor as compared to the present basis of an 8.63 pounds weight factor.

The present method of classifying modified fluid milk products increases total Class I sales only to the extent of the volume of the unmodified product that the added nonfat milk solids replaces. In the absence of evidence that the present procedure is inappropriate, 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. Each order should provide in this case that the entire weight of the skim milk equivalent of the solids added be classified in Class II. This procedure would differ from that applicable to modified fluid milk products in that no part of the skim milk equivalent of the added solids would be classified in the lowest class. As described in detail later, nonfat dry milk or condensed milk that is added to a Class II product would be allocated directly to the handler's Class II use. Thus, classification of the entire skim milk equivalent in Class II would not affect adversely the handler's pool obligation under this allocation procedure.

(c) *Classification of milk transferred or diverted to other plants.* Certain changes should be made in the provisions of each order that prescribe the classification of fluid milk products that are transferred or diverted from a pool plant to another plant. Several of the changes become necessary with the adoption of three classes of utilization in place of the present two classes. Other changes are appropriate for purposes of uniformity among orders and clarity in the classification of milk.

Under the adopted classification plan, fluid cream products would be classified as Class II products. If such products are transferred to another plant in packaged form, the skim milk and butterfat contained therein should be classified as Class II milk since these items are moved in final form. The classification of fluid cream products when disposed of in bulk form, however, is determinable only by following the movement of the bulk product to its subsequent use. Thus, it is necessary that fluid cream products that are transferred in bulk form from a pool plant to another plant be classified in a manner similar to that now used in classifying transfers of bulk fluid milk products.

Each order now prescribes a procedure for classifying transfers of bulk fluid milk products from a pool plant to a nonpool plant that is not another order plant or a producer-handler plant. To determine such classification, the nonpool plant's utilization must be assigned to it receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the marketing area of a Federal order, and any transfers of packaged fluid milk products from the nonpool plant to plants fully

regulated under such order, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under such order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first, to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, second, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

Certain changes should be made in each order concerning the classification of products transferred from a pool plant to a producer-handler. Under the revised classification plan, bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

As in the case of all other fluid milk products, such transfers of cream are now classified as Class I milk. Such classification tends to assure that producers do not carry for producer-handlers the burden of maintaining reserve supplies for the Class I sales of producer-handlers. With the removal of cream from the Class I classification, as adopted herein, a mandatory Class I classification of cream transfers to producer-handlers would not be necessary for this purpose.

Each order should provide that fluid milk products transferred from a pool plant to a producer-handler under another order be classified as Class I milk. With one exception, this classification now applies under these orders with respect to such transfers made on an intramarket basis. The San Antonio order has no provisions for classifying such transfers since it does not contain a producer-handler definition.

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 32 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 32 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 32 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 32 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 10 of these orders now, each handler usually has some adjustment each month in his obligation for Class I inventory. The cooperatives' proposed classification of ending inventory was supported by handlers.

In the interest of establishing uniform classification provisions among the orders, the same procedure for classifying end-of-month inventory should be adopted for each of the orders. Either type of inventory classification procedure now being used in these markets results over the long run in essentially the same pool obligation for handlers and the same returns to producers. In this circumstance, the substantial support among the industry for classifying all ending inventories of fluid milk products in the lowest class suggests that this procedure be used under all orders. Under this procedure, such inventories would be subject in the following month to reclassification in a higher class, as determined through the allocation of a handler's receipts to his utilization. A charge to the handler at the difference between the Class III price for the preceding month and the Class I or Class II price, as applicable, for the current month would apply to any reclassified inventory. This is the same reclassification procedure that now applies under the orders to inventories of fluid milk products in bulk form.

Fluid cream products in bulk form that are on hand at the end of the month likewise should be classified in Class III. As in the case of bulk milk, the final use of cream being held in bulk form is not necessarily apparent from that form. The cream must be followed to its ultimate use, which may be in any class. Accordingly, it is reasonable to classify any closing inventory of bulk cream in Class III and then apply a reclassification charge should the cream, as beginning inventory the following month, be allocated to a higher class.

Fluid cream products, yogurt, and eggnog that are on hand in packaged form at the end of the month should be classified in Class II, the class of expected ultimate use, rather than in Class III as would be the case for ending inventories of such products in bulk form. The higher classification will accommodate the treatment adopted herein whereby such products that are received at a pool plant in packaged form and disposed of in the same packages would be permitted to "pass through" the plant without any pool obligation or down-allocation. In this connection, the ending Class II inventory, as Class II inventory on hand at the beginning of the following month, would be allocated in the following month directly to the handler's Class II utilization.

Cooperatives proposed that for classification purposes ending inventory include only those products that are actually on the premises of a pool plant. Under their proposal, the premises of a plant would be limited to a location having equipment for receiving, cooling, processing, and storing milk. However, products being held in trucks parked at that location would not be a part of the handler's closing inventory. Also, a storage facility at a distributing point for packaged products in transit to wholesale and retail outlets would not be considered under their proposal as an extension of the premises of a plant. Cooperatives proposed also that ending inventory include any bulk milk that is in transit from a pool plant to another plant at the end of the month. Proponents claimed that defining ending inventory in this manner would facilitate the administration of the order.

The present orders do not specify at what point in a handler's distribution system fluid milk products shall be or shall not be considered for classification purposes as being in a handler's closing inventory. This is a matter that has been left to the accounting guidelines established by market administrators in their administration of the orders. It is recognized that at the close of the monthly accounting period fluid milk products that have been packaged but not yet delivered to the place of sale may be at any one of several places in a handler's distribution system. Depending on the handler's method of operation, such places could include the cold storage room within his processing plant, trucks parked on or near the plant's premises, distributing points, or trucks in transit to distributing points or places of sale. No significant problems concerning the determination of what constitutes closing inventory were brought to light at the hearing. Therefore, the cooperatives' proposal in this regard need not be adopted at this time.

For the first month that the revised classification plan is effective, certain transitional provisions relating to inventory should apply. Such provisions are necessary to assure that all handlers under an order will be subject to the same pricing for milk used in packaged fluid milk products and fluid cream products whether such products enter into the month's accounting as beginning inventory or are made from current receipts of producer milk.

As indicated, 22 of the orders under consideration presently classify ending inventories of fluid milk products, including cream items, in the lowest class. Thus, in the last month that the present classification plan is effective, handlers under these orders will have paid the corresponding class price for these products. In the first month under the new plan, such inventories that had been held over in the form of a fluid milk product or a bulk fluid cream product would be allocated to the extent possible to the handler's Class III utilization. Should such inventories be allocated to a higher class, the appropriate reclassification charge would apply.

Under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new amendments, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

Under the remaining 32 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 27 of the 32 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 32 orders is presently limited with respect to receipts of producer milk and certain interplant transfers. In 31 of the orders, 2 percent is the maximum shrinkage allowed in the lowest class in the case of such receipts. One and one-half percent is the rate usually applicable to bulk receipts of interplant transfers, but generally no limit applies in the case of receipts of other source milk requested for lowest class use. These allowances are adopted for each order in the new uniform provisions.

Also adopted is the commonly used method of prorating total plant shrinkage to (1) those kinds of receipts on which the shrinkage limitations apply, and (2) other receipts of fluid milk products in bulk form, such as milk from other order plants or unregulated supply plants for which a Class II or Class III classification is requested. To the extent that the quantity of shrinkage prorated to the first category exceeds the established limit, the excess would be classified in Class I.

The adopted provisions recognize that shrinkage normally experienced varies with the type of handling involved. More loss is usually experienced in plant processing than in merely receiving milk for delivery to another handler. Thus, with respect to delivery of milk by a cooperative association handler from farms to plants in tank trucks, a Class III shrinkage allowance of 0.5 percent of such milk is provided. Any excess shrinkage over 0.5 percent is classified as Class I milk.

The Class III shrinkage allowance to the processing plant receiving the milk from the cooperative would be 1.5 percent. This maintains a total of 2 percent Class III shinkage allowance for such milk from producers in the receiving and processing operations.

The provisions adopted herein are designed to carry out the appropriate division of shrinkage whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if he buys the milk on the basis of weights determined from its measurement at the farm 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. Such a reduction would not apply, however, in the case of cream or skim milk transferred from the pool plant. This recognizes the fact that a handler normally experiences more shrinkage when he runs milk through a separator than when the milk is merely received and then transferred in whole form.

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 32 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 the processing of certain products culturing processes may break down, thereby making the milk unusable for further processing.

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.

The products covered by the dumpage and animal feed provisions should be limited to fluid milk products, fluid cream products, eggnog, yogurt and similar filled products. Because of their relatively limited shelf life, it is these products that are commonly found in route returns and for which handlers realize little, if any, monetary value. Such provisions also would apply to skim milk being used in the manufacture of cottage cheese but which must be dumped because of a failure in the culturing process.

Dumping, unlike other dispositions, involves no sales records that could aid in verification of a handler's records. Thus, advance notice to the market administrator and opportunity for verification should be required. Also, in the case of animal feed disposition, a plant operator should maintain sufficient records to establish in every instance the quantities of skim milk and butterfat involved, and show a written receipt for every disposition.

The several changes herein adopted with respect to the classification of shrinkage, dumpage and animal feed disposition will have relatively minor effect on producer returns or on handlers' costs. The quantities of milk classified in these categories are normally a very small percentage of an individual handler's total utilization. The uniform provisions adopted are similar to existing provisions found practical from experience in the majority of markets here involved. The standardization of terminology in the provisions described should result in provisions more easily understood.

Whether there may be some merit in a more general revision of the provisions for classifying shrinkage, dumpage, and animal feed disposition than is set forth herein cannot be decided on this record. If more extensive changes are in any way desirable, such matters should be considered on the basis of a thorough exploration of the issue at another hearing.

A handler proposal for a single "loss" classification including shrinkage, animal feed, and dumped products is not adopted. The proposal was not explored by interested parties on the record as to how it would affect handler and producer equities. There is no substantial basis on which to judge its merit and the proposal therefore is denied.

(f) *Allocation of receipts to utilization.* In adopting a revised classification plan under each of the 32 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 32 orders, all but 7 provide for only two classes of utilization. Thus, changes in most of the orders are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes. Also, all orders must be changed with respect to the allocation of beginning inventories, as previously described.

The adoption of three use classes requires a new consideration of how other source milk shall be allocated to a handler's utilization of milk. Under the present orders, other source milk is allocated in most cases to a handler's surplus uses to the extent possible, regardless of how it actually may have been used. The producers who are relied upon for a regular supply of milk for the local fluid market thus receive the highest possible classification of their milk. Depending on the supply conditions, milk from unregulated supply plants and other Federal order plants is permitted to share in varying degrees with local producer milk in the higher value of the handler's Class I sales.

In conjunction with the revised classification plan, however, handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products should be permitted to have such other source milk allocated directly to their Class II uses. Under the plan adopted herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

The national associations of fluid milk and ice cream processors proposed that if a three-class system is adopted handlers should have the option of having other source milk allocated to their Class II utilization rather than allocated to the extent possible to the lowest class. It was their position that the Class II price for producer milk should not be set at a level that is any higher than the cost to handlers of obtaining alternative supplies of milk or milk products for Class II use. These groups contended that with such pricing there is no justification for "down-allocating" to Class III any receipts of other source milk which actually may have been used in Class II.

Handlers indicated further that with optional allocation a handler could choose to use other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk for Class II use. Also, these groups stated that down-allocation of other source milk would imply an intent to provide undue protection of the Class II market for producers. They maintained that such protection is not justified, or apparently intended by producers in view of no producer proposal for a compensatory payment on other source milk used in Class II.

Cooperative associations, on the other hand, urged in connection with their proposal for three classes that producers have first claim on a handler's Class II use as well as on his Class I use.

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 to any greater extent than presently 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.

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 32 orders, certain changes should be made in the orders to effect a uniform application of the allocation provisions to multiple-plant handlers. Presently, the 32 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 six of the 32 orders. Two other orders require that allocation be on an individual-plant basis unless there are receipts of other source milk at any one of the handler's pool plants to be allocated pro rata with producer milk to the plant's Class I utilization. In this case, all allocations of the handler's receipts to utilization are done on the basis of the handler's total system. The remaining orders provide that allocation be on a system basis in all cases.

Conditions in the individual markets do not require continuance of the several allocation methods now provided in the orders under consideration. Handlers are often subject at different times to the regulatory provisions of different orders. Applying the allocation provisions uniformly among all orders will reduce unnecessary regulatory differences being experienced by these handlers. There would be little, if any, change in a handler's total obligation under the order, or in producer returns, from applying the adopted allocation procedure in those orders not now providing for allocation on an individual-plant basis.

All the orders now provide that certain receipts of milk from unregulated supply plants and other Federal order plants shall share in varying degrees with local producer milk in the receiving handler's Class I utilization at all of his pool plants combined. This procedure, which resulted from the 1964 "compensatory payment" decisions referred to earlier, should be continued. To implement this procedure in those orders being changed from system allocation to individual-plant 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, 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 market-wide 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 alloca-

[4] Official notice is taken of the Assistant Secretary's decisions issued on June 19, 1964 (29 FR 9002, 9110, and 9213) with respect to all milk orders then in effect.

tion 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 32 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 32 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 19 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. Eight 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 22 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 32 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, how-

ever, there is every indication that the use of butterfat in Class I in these markets is following the national trend.[4]

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 32 markets will be affected differently from lowering the Class I butterfat differential. An analysis of 1970 data for 30 of the 32 markets will serve to illustrate the general change in handlers' costs under the revised classification plan. Data for the Ft. Smith and Austin-Waco markets are not available.

It is estimated that in 18 of the 19 markets now using a Class I butterfat differential factor of 0.120 the average butterfat test of Class I products distributed by handers (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 2.98 percent, the Class I price at test would have been increased 1.8 cents per hundredweight. For 10 of the 11 markets now using a Class I butterfat differential factor of 0.125, the average test of Class I milk would have ranged from 3.25 percent to 2.81 percent. Based on an average test of 3.01 percent, using a factor of 0.115 in these markets would have increased the Class I price at test by 3.4 cents. The price increases would have been slightly greater in the Duluth-Superior and Central Arizona markets, where factors of 0.130 and 0.135, respectively, are used. Based on estimated Class I butterfat tests of 2.73 percent and 3.10 percent, the Class I price at test would have been increased 8.0 cents per hundredweight in the Duluth-Superior market and 5.6 cents in the Central Arizona market.

Handlers opposed any change in the Class I butterfat differentials on the basis that the relationship of skim milk and butterfat values had already been altered by a change on April 1, 1971, in the purchase prices for dairy products under the Department's price support program. They pointed out that this change, as reflected in order prices, increased handlers' cost of skim milk about 10 cents per hundredweight. Handlers argued that in view of this any further increase in the value of skim milk should be delayed until there has been an opportunity to observe the market response to the effects of the price support change.

There is no evidence to suggest that Class I sales of skim milk and lowfat products were affected adversely by the price support action. Data for 58 Federal order markets indicate that average daily sales of these products in 1971 increased 2.1 million pounds over such sales in 1970. Monthly data show no drop in sales following the support price change in the early part of 1971. Adopting a lower Class I butterfat differential at this time gives recognition to the lower market value now associated with butterfat in Class I products.

Using a single factor of 0.115 for computing Class II and Class III butterfat differentials will result in a uniform adjustment of class prices for butterfat content among the markets under consideration. Continuation of the several butterfat differential factors now in use would offset to some extent the benefits to be gained through the adoption of a uniform classification plan.

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 32 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 22 of the 32 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 differential 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 for 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 associations of fluid milk and ice cream processors proposed that the class prices to be applicable in a particular month to surplus milk be announced 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 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

[4] 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.

manufactured products. As indicated earlier, the surplus prices under the revised classification plan generally 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 32 markets have a very definite interest in the relationship of the applicable class price with prices being paid currently for manufacturing grade milk. Accordingly, the prices paid by regulated handlers for Class III milk should correspond very closely with the pay prices during the month of delivery for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products. The influence of the manufacturing milk price level on the competitive relationship of producer milk for Class II uses is similar to that for producer milk used in the proposed Class III products. Therefore, the prices for Class II milk should be announced on the same basis as the price for Class III milk.

In connection with the announcement of surplus prices, a comment should be made concerning the transition from the present pricing provisions to the new ones adopted herein. It is intended that the present surplus prices apply to producer milk delivered to handlers during the last month under the present classification and pricing scheme. Clarification of this point is pertinent since such prices would be announced following the effective date of the new pricing provisions.

7. *Treatment of filled milk under the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders.* The Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders should be changed to provide that the skim milk ingredient of "filled milk" shall be classified and priced as Class I milk.

The provisions provided herein are substantially those which were proposed for consideration at the hearing by a cooperative association operating in these markets.

In 1968, proposals to classify and price the skim milk component of filled milk were considered for most orders at a hearing held in Memphis, Tennessee. The decision resulting from the hearing classified the skim milk component of filled milk in the same way as the skim milk component of natural milk. It provided a means of equating the cost of skim milk in filled milk if it originates from sources other than producer milk with the cost if derived from producer milk.

At the time of the 1968 hearing, the Southeastern Minnesota-Northern Iowa order had not been issued, and the Minneapolis-St. Paul order could not be amended in this respect because of a marketing area expansion to which the filled milk hearing did not apply. As a result, these orders do not contain the uniform provisions dealing with filled milk provided in all other Federal milk orders.

Filled milk is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milk fat in whole milk. Well over 90 percent of the product is skim milk. In most filled milk, the skim milk portion is fresh fluid skim milk separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk or any combination of the two, filled milk resembles whole milk in appearance.

Regulated handlers disposing of filled milk make a substantial savings in cost by substituting vegetable fat or oil for butterfat. This is the main incentive for the marketing of filled milk. While the difference in cost between vegetable fat and butterfat is not an issue at this hearing, it is relevant to the extent that it explains the profit motivation for marketing the product relative to the marketing of natural milk.

At the present time, no filled milk is distributed in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas. In those regulated markets where filled milk is distributed, it moves in the same channels as whole milk. It is distributed by the same handlers in the course of their regular business through the same outlets for natural milk and in the same types of containers.

Filled milk, if disposed of in either the Minneapolis-St. Paul or the Southeastern Minnesota-Northern Iowa marketing area, would directly burden, obstruct, or affect interstate commerce in milk and milk products. It previously has been determined (at the time of the promulgation of each of these orders) that all milk marketed in each marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and milk products.

Filled milk is in content substantially a product of milk and competes for the same sales outlets as milk. It follows, therefore, that the marketing of the milk ingredients in filled milk in either of the two markets would burden, obstruct, or affect interstate commerce in milk and milk products. This would be equally true whether the marketing of filled milk were by a fully regulated plant or by a plant not fully regulated because both would compete for similar outlets in the market.

Also, manufactured milk products are sometimes used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market, regardless of where the milk is produced. Therefore, manufactured milk products, if used in the production of filled milk for disposition in either the Minneapolis-St. Paul or Southeastern Minnesota-Northern Iowa market, likewise would burden, obstruct, or affect interstate commerce in milk and its products.

The 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 FR 9010. The regulatory treatment of reconstituted products that is described in the compensatory payment decisions and reiterated in the later filled milk decision is appropriately applicable to any reconstituted skim milk used in filled milk that may be disposed of in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas.

It should be noted that these two orders now provide that a producer-handler would lose his status as such and become a fully regulated handler if he disposes of fluid milk products made from reconstituted skim milk. Since the fluid milk products definition would include filled milk under the amendments adopted herein, loss of producer-handler status would result also from the sale of reconstituted filled milk.

A definition of filled milk should be provided in the two orders to meet the specific needs of order regulation, and for such purpose only. This definition, which would be identical to the filled milk definition in all other orders, should be as follows:

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

The term "filled milk" is not intended to include skim milk marketed in a form or for a purpose specifically excluded from the fluid milk product definition of either order. For example, evaporated milk is a use of skim milk and butterfat not treated as a fluid milk product in either order. If a product containing skim milk and any amount of vegetable fat were marketed in the same form and manner as evaporated milk, it would be excluded from the term "filled milk".

The regulatory treatment of filled milk adopted herein requires numerous conforming changes throughout the order. Accordingly, all the conforming changes found necessary on the basis of the Memphis hearing to implement the filled milk amendments are incorporated herein wherever applicable.

8. *A uniform "equivalent price" provision.* Each of the 32 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 32 orders except the Minnesota-North Dakota order provide for computing an equivalent price as needed. Such provisions are not identical, however, among the orders. A Dairy Division proposal for a uniform equivalent price provision under each order was supported by a witness for the National Milk Producers Federation.

An equivalent price provision is necessary in each of the orders to provide a price, or price constituent, in cases where published prices, indexes, quotations or other pricing constituents as prescribed by the order are not available. It insures that basic formula prices, class prices and butterfat differentials can be computed, as prescribed, in emergency situations without interruption.

All the orders now rely on butter price quotations for computing butterfat differentials. All rely on the Minnesota-Wisconsin price series for computing the basic formula price and Class I prices. As proposed herein, this price series would be used also in establishing Class II and Class III prices under each order.

Under unusual circumstances, these published prices and price constituents might not be available for use in computing order prices. If there were insufficient trading during the month in butter, for example, or if the specific butter price quotations were discontinued, the prescribed butterfat differentials could not be computed without an equivalent price provision. By providing for the determination of an equivalent price as needed, the Department is in a position to draw on comprehensive resource data to assure that the computation of the basic formula price, the class prices, or the butterfat differentials is not interrupted by the contingencies cited.

For these reasons, it is concluded that the Minnesota-North Dakota order should provide for the determination of an equivalent price in the same manner as the other orders included in this proceeding.

In providing for a determination of equivalent price, the same objective is sought for each order. It is appropriate, therefore, to provide for identical provisions in each order. Then, if a determination had to be made for more than one order simultaneously, there would be no question as to the applicability of the determination to each order.

Accordingly, the equivalent price provision in each order should be stated as follows:

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

A corollary change should be made in the Class I price provisions of the Neosho Valley order. This order provides that the Class I price shall be based in part on the Class I price "under Part 1067 of this chapter regulating the handling of milk in the Ozarks marketing area." At the time the Ozarks order was merged with the St. Louis order, a determination of equivalent price was issued for the Neosho Valley order (33 F.R. 15107) which stated in part that:

For the purpose of computing the Neosho Valley Class I price, the Class I price announced for Zone 1 under the St. Louis-Ozarks milk order (Part 1062) will be equivalent to the price specified in § 1071.51(a)(2) of the Neosho Valley order and should be used in lieu thereof in computation of the Class I price of the Neosho Valley order until such time as the Neosho Valley order may be amended.

This determination of equivalent price, which was issued in October 1968, is still in effect. This proceeding affords an opportunity to amend the Neosho Valley order as prescribed in the determination. Thus, the order language quoted earlier should be revised to read "under Part

1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area."

RULINGS ON PROPOSED FINDINGS AND CONCLUSIONS

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

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

The following findings are hereby made with respect to each of the aforesaid tentative marketing agreements and orders:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

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

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the aforesaid marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. It is the same as the order amending the orders set forth in the aforementioned recommended decision issued by the Deputy Administrator, Regulatory Programs, on August 28, 1972, except for modifications in the following sections of each order. The modifications noted do not include those that have been made in each order to reflect the new FEDERAL REGISTER style for "references" within a section of the order.

PART 1007—MILK IN GEORGIA MARKETING AREA

Sections 1007.7, 1007.12(b)(2), 1007.14, 1007.15(a)(2), 1007.16, 1007.30(a)(3), 1007.40, 1007.41(b)(2), and (3), and (c), 1007.42(d)(2)(vi), 1007.44(a), 1007.50(b), 1007.76(b)(2)(i) and (ii).

PART 1071—MILK IN NEOSHO VALLEY MARKETING AREA

The Index and §§ 1071.12(b)(2), 1071.14, 1071.15(a)(2), 1071.16, 1071.30(a)(3), 1071.40, 1071.41(b)(2), and (3), and (c), 1071.42(d)(2)(vi), 1071.44(a), 1071.50(b), 1071.61, 1071.71(a)(2)(ii), 1071.75(b), 1071.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1071.110 through 1071.122 are added.

PART 1073—MILK IN WICHITA, KANSAS, MARKETING AREA

The Index and §§ 1073.7, 1073.12(b)(2), 1073.14, 1073.15(a)(2), 1073.16, 1073.30(a)(3), 1073.40, 1073.41(b)(2), and (3), and (c), 1073.42(d)(2)(vi), 1073.44(a), 1073.50(b) and (c), 1073.61, 1073.71(a)(2)(ii), 1073.75(b), 1073.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1073.110 through 1073.122 are added.

PART 1090—MILK IN CHATTANOOGA, TENNESSEE, MARKETING AREA

Sections 1090.7, 1090.12(b)(2), 1090.14, 1090.15(a)(2), 1090.16, 1090.30(a)(3), 1090.40, 1090.41(b)(3) and (c), 1090.42(d)(2)(vi), 1090.44(a), 1090.50(b), 1090.76(b)(2)(i) and (ii).

PART 1094—MILK IN NEW ORLEANS, LOUISIANA, MARKETING AREA

Sections 1094.7, 1094.12(b)(2), 1094.14, 1094.15(a)(2), 1094.16, 1094.30(a)(3), 1094.40, 1094.41(b)(2), and (3), and (c), 1094.42(d)(2)(vi), 1094.44(a), 1094.50(b) and (c), 1094.76(b)(2)(i) and (ii).

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Sections 1096.7, 1096.12(b)(2), 1096.14, 1096.15(a)(2), 1096.16, 1096.30(a)(3), 1096.40, 1096.41(b)(2), and (3), and (c), 1096.42(d)(2)(vi), 1096.44(a), 1096.50(b) and (c), 1096.76(b)(2)(i) and (ii).

PART 1097—MILK IN MEMPHIS, TENNESSEE, MARKETING AREA

The Index and §§ 1097.7, 1097.12(b)(2), 1097.14, 1097.15(a)(2), 1097.16, 1097.30(a)(3), 1097.40, 1097.41(b)(2), and (3), and (c), 1097.42(d)(2)(vi), 1097.44(a), 1097.50(b), 1097.61, and new §§ 1097.110 through 1097.122 are added.

PART 1098—MILK IN NASHVILLE, TENNESSEE, MARKETING AREA

Sections 1098.7, 1098.12(b)(2), 1098.14, 1098.15(a)(2), 1098.16, 1098.30(a)(3), 1098.40, 1098.41(b)(2), and (3), and (c), 1098.42(d)(2)(vi), 1098.44(a), 1098.50(b), 1098.76(b)(2)(i) and (ii).

PART 1102—MILK IN FORT SMITH, ARKANSAS, MARKETING AREA

The Index and §§ 1102.7, 1102.12(b)(2), 1102.14, 1102.15(a)(2), 1102.16, 1102.30(a)(3), 1102.40, 1102.41(b)(3) and (c), 1102.42(d)(2)(vi), 1102.44(a), 1102.50(b), 1102.61, and new §§ 1102.110 through 1102.123 are added.

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

The Index and §§ 1108.12(b)(2), 1108.14, 1108.15(a)(2), 1108.16, 1108.30(a)(3), 1108.40, 1108.41(b), (2) and (3), and (c), 1108.42(d)(2)(vi), 1108.44(a), 1108.50(b), 1108.52(a), 1108.61, 1108.71(a)(2)(ii), 1108.75, 1108.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1108.110 through 1108.122 are added.

PART 1007—MILK IN GEORGIA MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

DEFINITIONS

HANDLER REPORTS

CLASSIFICATION OF MILK

CLASS PRICES

UNIFORM PRICES

PAYMENTS FOR MILK

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

CLASS I BASE PLAN

AUTHORITY: The provisions of this Part 1007 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1007.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1007.2 Georgia marketing area.

The "Georgia marketing area", hereinafter called the "marketing area", means all the territory, including all waterfront facilities connected therewith, geographically within the boundaries of the State of Georgia except the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Rabun, Walker, and Whitfield. The marketing area shall include all territory that is occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part of such territory is within the designated geographical limits of the marketing area.

§ 1007.3 Route disposition.

"Route disposition" means a delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility (including disposition from a plant store, vendor or vending machine) of a fluid milk product classified as Class I milk.

§ 1007.4 [Reserved]

§ 1007.5 Distributing plant.

"Distributing plant" means a plant in which milk approved by a duly constituted health authority for fluid consumption or filled milk is processed or packaged and which has route disposition in the marketing area during the month.

§ 1007.6 Supply plant.

"Supply plant" means a plant from which a fluid milk product acceptable to a duly constituted health authority for fluid consumption or filled milk is shipped during the month to a pool plant.

§ 1007.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant that has route disposition, except filled milk, during the month of not less than 50 percent of the fluid milk products, except filled milk, approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 and that has route disposition, except filled milk, in the marketing area during the month of not less than 15 percent of it total Class I disposition, except filled milk, during the month.

(b) A supply plant from which not less than 50 percent of the total quantity of milk approved by a duly constituted health authority for fluid consumption that is physically received from dairy farmers at such plant or diverted as producer milk to a nonpool plant pursuant to § 1007.13 during the month is shipped as fluid milk products, except filled milk, to pool plants pursuant to paragraph (a) of this section. A plant that was a pool plant pursuant to this paragraph in each of the immediately preceding months of August through February shall be a pool plant for the months of March through July unless the milk received at the plant does not continue to meet the requirements of a duly constituted health authority or a written application is filed by the plant operator with the market administrator on or before the first day of any such month requesting that the plant be designated as a nonpool plant for such month and each subsequent month through July during which it would not otherwise qualify as a pool plant.

(c) For the purpose of qualifying a supply plant under paragraph (b) of this section, a cooperative association supplying pool distributing plants during the month at least two-thirds of the producer milk of its members (including both milk delivered directly from their farms and that transferred from the supply plant(s) of the cooperative) may count (irrespective of other requirements of § 1007.9(c)) as shipments from the plant to pool distributing plants the milk delivered to pool distributing plants under § 1007.9(c); in the event the cooperative operates more than one supply plant, all such deliveries shall be assigned, for this purpose, to the supply plant nearest Atlanta, Ga.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt distributing plant; and

(3) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (a) or (b) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is disposed of from such plant in the marketing area regulated pursuant to the other order as route disposition and to plants qualified as fully regulated plants under such other order on the basis of route disposition in its marketing area.

§ 1007.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing, or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is a distributing plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is not an other order plant, a producer-handler plant, or an exempt distributing plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1007.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1007.13 for the account of such cooperative association;

(c) A cooperative association with respect to milk of its producer-members which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association. The milk for which a cooperative association is the handler pursuant to this paragraph shall be deemed to have been received at the location of the pool plant to which it was delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant.

§ 1007.10 Producer-handler.

"Producer-handler" means any person who:

(a) Operates a dairy farm and a distributing plant;

(b) Receives no Class I milk from sources other than his own farm production and pool plants;

(c) Disposes of no other source milk as Class I milk;

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from pool plants) and the operation of the processing and packaging business are his personal enterprise and risk; and

(e) If such person had been a producer to whom a Class I base had been assigned pursuant to § 1007.94, has forfeited such Class I base in accordance with the requirement of § 1007.96(c).

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the inspection requirements of a duly constituted health authority, which milk is physically received at a pool plant or diverted pursuant to § 1007.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act or the operator of an exempt distributing plant;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1007.44(a)(8)(iii) and the corresponding step of § 1007.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1007.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from such producer or from a handler described in § 1007.9(c): *Provided*, That if the milk received at a pool plant from a handler described in § 1007.9(c) is purchased on a basis other than farm weights as determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the volume by which the farm weights and butterfat as determined from the farm bulk tank samples of such milk exceed the weights and butterfat on which the pool plant's purchases are based shall be producer milk received by the handler pursuant to § 1007.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant to which diverted;

(2) Not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant;

(3) To the extent that it would result in nonpool plant status for the pool plant from which diverted, milk diverted for the account of a cooperative association from the pool plant of another handler shall not be producer milk;

(4) A cooperative association may divert for its account only the milk of member producers: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received from member producers at all pool plants during the month shall not be producer milk;

(5) The operator of a pool plant other than a cooperative association may divert for his account only the milk of producers who are not members of a cooperative association: *Provided*, That the total quantity of milk so diverted that exceeds 25 percent of the milk physically received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk; and

(6) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraph (b) (4) and (5) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1007.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1007.40(b)(1) from any source other than producers, handlers described in § 1007.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1007.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1007.40(b)(1), and products produced at the plant during the some month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1007.40(b)(1)) for which the handler fails to establish a disposition.

§ 1007.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1007.40 (b) or (c)(1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1007.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1007.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1007.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and be engaged in making collective sales of, or marketing milk or milk products for, its members.

§ 1007.19 Reload point.

"Reload point" means a location at which milk moved from a farm in a tank truck is transferred to another tank truck and commingled with other milk before entering a plant. A reload point shall not be considered a plant except that a reload operation on the premises of a plant shall be considered a part of the plant operation.

HANDLER REPORTS

§ 1007.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1007.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1007.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1007.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1007.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) Each handler described in § 1007.9 (a), (b), and (c) shall report to the market administrator on or before the seventh day after the end of the month:

(1) The total pounds of base milk and the total pounds of excess milk; and

(2) The days for which milk was received from each producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1007.30 and 1007.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1007.40 Classes of utilization.

Except as provided in § 1007.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1007.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product cdntaining 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) In bulk fluild 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; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1007.15; and

(6) In shrinkage assigned pursuant to § 1007.41(a) to the receipts specified in § 1007.41(a)(2) and in shrinkage specified in § 1007.41 (b) and (c).

§ 1007.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1007.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1007.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1007.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm 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 from its measurement at the farm 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 paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to §1007.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1007.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1007.44(a)(7) or the corresponding step of § 1007.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1007.44(a) (11) or (12) or the corresponding steps of § 1007.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(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 paragraph (b) (3) of this section;

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1007.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt distributing plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section 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 paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1007.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid

milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk 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, prc rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1007.43 General classification rules.

In determining the classification of producer milk pursuant to § 1007.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1007.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1007.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1007.40, 1007.41, and 1007.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1007.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1007.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1007.9(a) for each of his pool plants separately and of each handler described in § 1007.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1007.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1007.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1007.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1007.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; 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 paragraph (a)(2) and (7)(v) of this section 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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. 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 paragraph (a)(7)(vi) of this section; 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 paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1007.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, 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 paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subtract in the manner specified below from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from an other plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1007.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section 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 paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section 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 receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1007.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1007.44(a)(14) and the corresponding step of § 1007.44(b).

§ 1007.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1007.44(a)(12) and the corresponding step of § 1007.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1007.44 on the basis of such report, and, thereafter any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1007.50 Class prices.

Subject to the provisions of § 1007.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.30.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1007.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1007.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Northern Zone" means all the territory in the following Georgia counties:

Banks.	Hall.
Bartow.	Hart.
Catoosa.	Jackson.
Chattooga.	Lumpkin.
Cherokee.	Madison.
Dade.	Murray.
Dawson.	Pickens.
Elbert.	Rabun.
Fannin.	Stephens.
Floyd.	Towns.
Forsyth.	Union.
Franklin.	Walker.
Gilmer.	White.
Gordon.	Whitfield.
Habersham.	

(2) "Southern Zone" means all the territory in the State of Georgia that is not within the Northern Zone.

(b) The Class I price for producer milk at a plant in the Northern Zone shall be reduced 15 cents and at a plant that is outside Georgia, north of an east-west line extending from the city hall in Atlanta and more than 100 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the nearer of the city halls in Atlanta and Augusta, Ga., shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 110 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) that such plant is from the nearer of the city halls in Atlanta and Augusta: *Provided*, That the location adjustment pursuant to this paragraph applicable at a plant in Alabama or South Carolina shall not be more than 15 cents.

(c) For the purpose of calculating location adjustments, receipts of fluid milk products from pool plants shall be assigned any remainder of Class I milk at the transferee-plant that is in excess of the sum of producer milk receipts at such plant and that assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment shall be made first to receipts from plants at which no location adjustment is applicable pursuant to this section and then in sequence beginning with receipts from the plant with the lowest applicable location adjustment.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1007.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1007.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1007.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1007.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1007.44(a)(14) and the corresponding step of § 1007.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1007.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1007.44(a)(9) and the corresponding step of § 1007.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (i) through (iv) and the corresponding step of § 1007.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(7) (v) and (vi) and the corresponding step of § 1007.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1007.44(a)(11) and the corresponding step of § 1007.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1007.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1007.61 Computation of uniform prices for base milk and excess milk.

(a) For each month, the market administrator shall compute a uniform price as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers who filed the reports pursuant to § 1007.30 for the month, except those in default of payments required pursuant to § 1007.71 for the preceding month;

(2) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to one-half the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1007.60 (f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The resulting figure, rounded to the nearest cent, shall be the uniform price.

(b) The market administrator shall compute uniform prices per hundredweight for base milk and excess milk each month, each of 3.5 percent butterfat content, as follows:

(1) Determine the aggregate amount of producer milk in each class included in the computation pursuant to paragraph (a) of this section and the hundredweight of such milk that is base milk and that is excess milk;

(2) Determine the value of the total hundredweight of milk of producers specified in § 1007.94 (c) and (d) to whom no base milk has been assigned by multiplying such volume by the Class III price;

(3) Determine the total value of excess milk by assigning such milk in series beginning with Class III to the hundredweight of milk in each class as determined pursuant to paragraph (b) (1) of this section, multiplying the quantities so assigned by the respective class prices and adding together the resulting amounts;

(4) Divide the total value of excess milk in paragraph (b) (3) of this section by the total hundredweight of such milk. The quotient, rounded to the nearest cent, shall be the uniform price for excess milk;

(5) Multiply the total hundredweight of excess milk by the uniform price for excess milk computed pursuant to paragraph (b) (4) of this section;

(6) Multiply the hundredweight of milk specified in paragraph (a) (4) (ii) of this section by the uniform price for the month;

(7) Subtract the total values arrived at in paragraph (b) (2), (5), and (6) of this section from the amount resulting from the computations pursuant to paragraph (a) (1) through (4) of this section; and

(8) Divide the amount obtained in paragraph (b) (7) of this section by the total hundredweight of base milk determined in paragraph (b) (1) of this section and subtract not less than 4 nor more than 5 cents per hundredweight. The resulting figure rounded to the nearest cent, shall be the uniform price for base milk.

§ 1007.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform prices for such month.

Payments for Milk

§ 1007.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund pursuant to §§ 1007.71 and 1007.76 and out of which he shall make all payments from such fund pursuant to § 1007.72: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1007.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a) (1) of this section exceeds the amount specified in paragraph (a) (2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1007.60.

(2) The sum of:

(i) The value at the uniform prices pursuant to § 1007.61(b), as adjusted pursuant to § 1007.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price pursuant to § 1007.61(a) applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60 (f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1007.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1007.71(a) (2) exceeds the amount computed pursuant to § 1007.71(a) (1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment for producer milk as follows:

(1) On or before the last day of the month to each producer who had not discontinued shipping milk to such handler before the 15th day of the month, not less than the Class III price for the preceding month per hundredweight of milk received during the first 15 days of the month less proper deductions authorized in writing by such producer;

(2) On or before the 15th day of each month at not less than the applicable uniform prices for the quantities of base milk and excess milk received adjusted by the butterfat differential computed pursuant to § 1007.74, and in the case of base milk by the location adjustment computed pursuant to § 1007.75, subject to the following:

(i) Less payments made pursuant to paragraph (a) (1) of this section;

(ii) Less proper deductions authorized by such producer;

(iii) Less deductions for marketing services made pursuant to § 1007.86; and

(iv) If by such date such handler has not received full payment from the market administrator pursuant to § 1007.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator; and

(3) On or before the 15th day of the month at not less than the Class III price adjusted by the butterfat differential computed pursuant to § 1007.74 for the quantity of milk received from producers described in § 1007.94 (c) and (d) for whom no base milk has been computed.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, together with a written promise of such association to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the association, such handler on or before the day prior to the date on which payments are due individual producers shall pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount not less than the total due such producer-members pursuant to paragraph (a) of this section, subject to the following:

(1) Payment pursuant to this paragraph shall be made for milk received from any producer beginning on the first day of the month following receipt from the cooperative association of its certification that such producer is a member, and continuing through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) Copies of the written request of the cooperative association to receive payments on behalf of its members, together with its promise to reimburse and its certified list of members, shall be submitted simultaneously both to the handler and to the market administrator and shall be subject to verification by the

market administrator at his discretion through audit of the records of the cooperative association. Exceptions, if any, to the accuracy of such certification claimed by any producer or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1007.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices for base and excess milk shall be increased, or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1007.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price and the uniform price for base milk shall be reduced according to the location of the pool plant at the rates set forth in § 1007.52(b); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1007.52(b) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1007.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1007.30(b) and 1007.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price pursuant to § 1007.61(a), both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1007.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1007.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1007.60 for such handler shall include, in lieu of the value of other source milk specified in § 1007.60(f) less the value of such other source milk specified in § 1007.71(a)(2)(ii), a value of milk determined pursuant to § 1007.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1007.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1007.30(b) and 1007.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1007.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1007.74, 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 paragraph (b)(1)(iii) of this section applies.

§ 1007.77 Adjustment of accounts.

When verification by the market administrator of reports or payments of a handler discloses errors resulting in moneys due the market administrator from such handler, such handler from the market administrator, or a producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1007.78 Charges on overdue accounts.

The unpaid obligation of a handler pursuant to §§ 1007.71, 1007.77, 1007.85, and 1007.86 shall be increased one-half of 1 percent for each month or portion thereof that such obligation is overdue.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1007.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1007.44(a)(7) and (11) and the corresponding steps of § 1007.44(b), except such other source milk that is excluded from the computations pursuant to § 1007.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1007.76(a)(2).

§ 1007.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments for producer milk received during the month shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe (except on such handler's own farm production) and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) If the Secretary determines that a cooperative association is performing for its members the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such members and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

CLASS I BASE PLAN

§ 1007.90 Definition of terms relating to the Class I base plan.

For purposes of determination and assignment of the Class I base of each producer the following terms are defined:

(a) "Production history" means the average daily marketings of a producer during the production history period used for the determination of bases or the future updating of bases.

(b) "Production history base" means a quantity of milk in pounds per day as computed pursuant to § 1007.91.

(c) "Production history period" means the days or months to be used for the computation of the production history base of a producer.

(d) "Average daily producer milk deliveries" of any producer in any specified period used for computing a production history base means the total pounds of producer milk delivered by the producer divided by the number of days' production represented by such deliveries: *Provided*, That for any September–January period, the divisor shall be the actual days of production, or 145 whichever is greater.

(e) "Class I base" means a quantity of milk in pounds per day computed pursuant to § 1007.94 for which a producer may receive the base milk price.

(f) "Base milk" means:

(1) Milk received from a producer which is not in excess of his Class I base multiplied by the number of days of production of producer milk delivered during the month; and

(2) Milk received from a producer to whom no Class I base has been issued in the amount determined for such producer pursuant to § 1007.94 (c) and (d).

(g) "Excess milk" means milk received in excess of base milk from a producer who is delivering base milk during such month.

§ 1007.91 Computation of production history base.

A "production history base" shall be determined by the market administrator for each producer eligible for such base on the effective date of this provision and on March 1 of each year thereafter. The computation of production history base shall be subject to adjustments due to acquisition or disposition by transfer of Class I base or other modifications of Class I base due to hardship or loss of Class I base because of underdelivery of base. For purposes of computation of his production history base, a producer shall be considered as having been on the market during any specified period if: As a producer he delivered milk of his own production during the designated period without interruption sufficient to cause forfeiture of base pursuant to § 1007.96(a); and during such period (after the effective date of this provision) did not dispose of all his Class I base by transfer. The production history base for each producer on the effective date of this provision shall be determined by the market administrator as follows:

(a) The market administrator shall determine a production history base for each producer who delivered at least 100 days' production during the immediately preceding period of September–January by computing his average daily producer milk deliveries as defined in § 1007.90 (d) during such period.

(b) For producers who delivered milk on less than 100 days during the immediately preceding period of September–January, but at least 90 days prior to March 1, the market administrator shall determine a production history base by multiplying such producer's average daily producer milk deliveries during the months in which milk was delivered prior to March 1, by .80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September–January period by the average daily producer milk deliveries during the same months used for such producer.

(c) Producers who have delivered milk for less than 90 days prior to March 1 shall have no initial production history base but shall be assigned a history of production in accordance with the provisions applicable for new producers.

(d) For each producer not subject to § 1007.94(d) who became a producer for this market subsequent to September 1, 1971, because the plant to which he regularly delivered milk became a fully regulated plant pursuant to this order, a production history base shall be determined, if possible pursuant to paragraph (a) or (b) of this section based on his deliveries of milk as if the nonpool plant to which he delivered had been a pool plant during the representative period.

(e) A producer not described pursuant to paragraph (d) of this section who delivered milk to a nonpool plant(s) prior to becoming a producer and who is not subject to the provisions of § 1007.94(c) shall have a production history base effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant if a production history base can be computed pursuant to paragraph (a) or (b) of this section based on deliveries of milk from the same farm on which he is now a producer as if the plant(s) to which he delivered had been a pool plant(s) during the preceding 12 months.

(f) For a producer who held producer-handler status at any time subsequent to September 1, 1971, a production history base shall be calculated as prescribed in paragraph (a) of this section as if the milk of his own production received at his producer-handler plant had been received at a pool plant.

(g) With respect to the computation of production history base pursuant to this section, the following rules shall apply:

(1) If a producer operated more than one farm at the same time, a separate computation shall be made with respect to the average daily producer milk deliveries from each farm except that only one computation shall be made with respect to milk production resources and facilities of a producer-handler.

(2) Only one production history base shall be allowed with respect to milk produced by one or more persons where the land, buildings, and equipment are jointly used, owned or operated.

§ 1007.92 Updating of production history bases.

The production history base for each producer who has neither disposed of his entire base by transfer nor forfeited his base pursuant to § 1007.96(a) or after having disposed of his entire base by transfer or forfeiture, has met the delivery requirements prescribed in § 1007.93 shall be determined by the market administrator on March 1 of each year as follows:

(a) Effective March 1, 1973, the market administrator shall update the pro-

duction history base for each producer as follows:

(1) Subject to the provisions of paragraph (a)(1) (i) and (ii) of this section for a producer who is assigned an initial history of production pursuant to § 1007.91 (a) or (b) on the effective date of this order, add the average daily milk deliveries of such producer during the period September 1972 through January 1973 to the production history bases computed for such producer on the effective date of this order and divide the result by 2. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his avarage daily deliveries during the immediately preceding September through January period but in no event, shall such producer's production history base be reduced by more than 25 percent.

(2) For producers who had not previously been assigned a production history base, a history of production shall be determined by calculating such producer's average daily producer milk deliveries during the period September 1972 through January 1973 and multiplying the result by 0.80.

(b) Effective March 1, 1974, the market administrator shall update the production history base for each producer as follows:

(1) Subject to the provisions of paragraph (b)(1) (i) and (ii) of this section for a producer who had a production history base for the 2 most recent years, determine the average daily producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base determined for each of the 2 most recent years and divide the result by 3: (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) Subject to the provisions of paragraph (b)(2) (i) and (ii) of this section for a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by 2: (i) If during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced: (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base, then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I based exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80.

(c) Effective March 1, 1975, and on March 1 of each year thereafter the market administrator shall update the history of production for each producer as follows:

(1) Subject to the provisions of paragraph (c)(1) (i) and (ii) of this section for producers who have a production history base covering 3 or more years, the market administrator shall compute the average daily producer milk deliveries for such producer during the immediately preceding period of September through January and shall add such figure to the average daily producer milk deliveries of the preceding two years and divide the result by 3. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding September through January period the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his average daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(2) Subject to the provisions of paragraph (c)(2) (i) and (ii) of this section for a producer who had a production history base for the two most recent periods, determine the average producer milk deliveries during the immediately preceding period September through January. Add the resulting amount to the production history base determined for each of the two most recent periods and divide the result by 3. (i) If during the immediately preceding September through January period a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(3) Subject to the provisions of paragraph (c)(3) (i) and (ii) of this section for a producer who had a production history base for 1 year, the market administrator shall determine his average daily producer milk deliveries during the immediately preceding period of September through January and add such amount to the producer's previous production history base and divide the result by 2. (i) If during the immediately preceding period of September through January a producer delivered not less than his daily Class I base multiplied by the number of days in such period, then his production history base shall not be reduced. (ii) If during the immediately preceding period of September through January the producer's average daily producer milk deliveries were less than his daily Class I base then such producer's production history base shall be reduced in an amount proportionate to the amount that his daily Class I base exceeds his daily deliveries during the immediately preceding September through January period, but in no event shall such producer's production history base be reduced by more than 25 percent.

(4) For producers who have not previously been assigned a production history base, the market administrator shall assign a production history equal to such producer's average daily producer milk deliveries during the immediately preceding period of September through January and multiply the result by 0.80.

(5) On March 1 of each year of which this plan is in effect, the market administrator shall determine a production history base for producers who delivered milk for less than 100 days in the immediately preceding period of September through January but who delivered milk for at least 90 days prior to March 1 by determining such producers average daily producer milk deliveries during the first 3 months in which the producer delivered milk to the market, multiplying the result by 0.80 and adjusting by a ratio obtained by dividing the average daily deliveries per producer during the most recent September–January period by the average daily deliveries per producer during the same months used for such producer.

§ 1007.93 New producers.

The market administrator shall determine a history of production for each producer for whom a production history base was not determined pursuant to § 1007.91 as follows:

(a) Any producer who during the immediately preceding September through January period delivered his milk to a nonpool plant which became a pool plant shall be assigned a history of production on the same basis as other producers under the order as though the deliveries to the nonpool plant had been deliveries to a pool plant.

(b) Effective on the first day of the second month following the month in which he began deliveries of producer milk to a pool plant a producer who delivered milk to a nonpool plant prior to becoming a producer as defined in this order shall be assigned a production history base on the same basis as if he had been a producer under the order and his deliveries to the nonpool plant had been deliveries to a pool plant provided that in no event shall the production history base exceed the amount of milk actually delivered by such producer under this order.

(c) A producer who delivered no milk to a nonpool plant or who delivered milk to a pool plant for less than 90 days prior to March 1 of any year and who has not acquired a history of production by transfer shall be assigned Class I base milk pursuant to the provisions of § 1007.94(c).

§ 1007.94 Computation of Class I base or base milk for each producer.

On the effective date of this provision and on March 1 of each subsequent year the market administrator shall assign a Class I base to each producer who has a production history base. Class I bases shall be assigned to producers described in § 1007.93 when they are issued production history bases. Class I bases shall be computed as follows:

(a) Compute a "Class I base percentage" as follows:

(1) Determine the sum of Class I dispositions during the preceding period of September through January:

(i) Class I producer milk pursuant to § 1007.44(c);

(ii) The Class I disposition of plants during the period when they were nonpool plants, if such plants were pool plants in the preceding January; and

(iii) The Class I disposition of his own production of a person who was a producer-handler during a portion of the year and who held producer status in the preceding January.

Multiply the sum by 1.15 and divide the result by 153:

(2) Divide the quantity computed pursuant to paragraph (a)(1) of this section by a quantity which is the total of production history bases computed pursuant to § 1007.91 or § 1007.92, whichever is applicable. The result shall be converted to a percentage by multiplying by 100 and rounding to the third decimal place. Such percentage shall be known as the "Class I base percentage."

(b) The Class I base of each producer with a production history base shall be determined by multiplying his production history base by the "Class I base percentage." For each of the months of June, July, and August the Class I base so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the preceding months of September through May.

(c) A producer, other than a producer pursuant to paragraph (d) of this section, who has no production history base shall be assigned base milk each month until the first March 1 on which he is eligible for a Class I base in an amount equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month (1) effective with his first delivery of producer milk if he begins deliveries in the months of September through January, and (2) effective on the first day of the second month following the month in which he began delivery if he begins deliveries in the months of February through August. For each of the months of June, July, and August the base milk so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the immediately preceding months of September through May.

(d)(1) A producer who, after having forfeited or disposed of all of his Class I base, either continues as a producer on the market or discontinues deliveries to the market and returns to the market as a producer, shall be assigned base milk equal to 50 percent of his average daily deliveries of producer milk in such month multiplied by the number of days' production delivered by such producer during the month, such assignment to be effective on the later of the following dates: the first day of the third month following the month in which he recommences deliveries of producer milk on the market, or the first day of the twelfth month following the month in which a producer who forfeits his base ceases deliveries or a producer disposes of his Class I base. For each of the months of June, July, and August the base milk so computed shall be reduced by the percentage that the average daily pounds of producer milk classified as Class I in June, July, and August of the preceding year were less than the average daily pounds of producer milk classified as Class I in the immediately preceding months of September through May. The production history period of such producer shall begin on the later of the following dates: The date on which he first received payment for base milk or the first day of the first month eligible for use in a production history period pursuant to § 1007.93.

(2) In the application of this provision, use of the same production facilities by another person (or the same person under a different name) to produce milk after the above described forfeiture or transfer of base shall be considered as a continuation of the operation by the previous operator if the new operator is a member of the immediate family of the previous operator. It shall be applied also to any production facility to which a Class I base has not been assigned, wherever located, operated by a person

(i) With respect to requests pursuant to paragraph (a) (1), (3), (4), or (5) of this section, grant or adjust production history bases and average daily producer milk deliveries for prior years where it appears appropriate, delay forfeiture of Class I base, restore forfeited base or reduced average daily producer milk deliveries where appropriate, and permit transfer of base not otherwise possible under the order provisions.

(ii) With respect to requests pursuant to paragraph (a) (2) of this section, either reject the request or provide adjustment in the form of additional production history base and average daily producer milk deliveries for prior years where it appears appropriate and the effective date thereof of such adjustment. In considering such requests the loss of milk production due to the following shall not be considered a basis for hardship adjustment:

(a) Loss of milk due to mechanical failure of farm tank or other farm equipment; and

(b) Inability to obtain adequate labor to maintain milk production, except that hardship adjustment may be granted in the case of a producer or the son of a producer who entered into military service directly from employment in milk production.

(4) Recommendation of the Producer Base Committee shall:

(i) If to deny the request, be final upon notification to the producer, subject only to appeal by the producer to the Director, Dairy Division, within 45 days after such notification; or

(ii) If to grant the request in whole or in part, be transmitted to the Director, Dairy Division, and shall become final unless vetoed by such Director within 15 days after transmitted.

(5) Committee members shall be reimbursed by the market administrator from the funds collected under § 1007.85 for their services at $30 per day or portion thereof, plus necessary travel and subsistence expenses incurred in the performance of their duties as committee members.

(d) The market administrator shall maintain files of all requests for alleviation of hardship and the disposition of such requests. These files shall be open to the inspection of any interested person during the regular office hours of the market administrator.

In which the producer who forfeited or transferred his base has a financial interest if such facility commences production on or after the effective date of the transfer or forfeiture, or such producer acquired his financial interest in

such person later than 3 months prior to the effective date of the base transfer or forfeiture.

§ 1007.95 Transfer of bases.

Production history and Class I base may be transferred pursuant to the following rules and conditions:

(a) A transfer of base means the transfer of both the production history base and the Class I base associated with it at the time of transfer. The percentage of Class I base transferred shall be applied to the total production history base held at the time of transfer to determine the corresponding amount of production history transferred.

(b) The market administrator must be notified in writing by the holder of Class I base of the name of the person to whom the Class I base is to be transferred, the effective date of the transfer, and the amount of base to be transferred. Application for transfer must be made to the market administrator on forms approved by the market administrator and signed by the base holder(s), his heirs, executor, or trustees and by the person to whom such base is to be transferred.

(c) A transfer of an entire base may be made effective on any day of the month if application for such transfer is filed with the market administrator within 5 days thereafter. Otherwise, such transfer shall be effective on the first day of the month following that in which application is made.

(d) A transfer of a portion of a base shall be effective the first day of the month following that in which application for which such transfer is made to the market administrator, except that a portion of a base may be transferred to be effective on March 1 of any year if application for such transfer is filed with the market administrator no later than March 15.

(e) A producer who has received base by transfer on or after March 1 of any year may not transfer any portion of the base for 3 full months following the effective date of such transfer.

(f) A producer who has transferred base on or after March 1 of any year may not receive additional base by transfer for 3 full months from the effective date of such transfer.

(g) A base which is jointly held or in a partnership may be transferred in part or in its entirety only upon application signed by each joint holder or partner, his heirs, executors, or trustee and by the person to whom such base is to be transferred.

(h) A base which has been established by two or more persons operating a dairy farm jointly or as a partnership may be divided among the joint holders or partners if written notification of the agreed division of base signed by each joint holder or partner, his heirs, executor, or trustee, is received by the market administrator prior to the first day of the month on which such division is to be effective.

(i) It must be established to the satisfaction of the market administrator that the conveyance of such base is bona fide and not for the purpose of evading any provision of this order, and comes within the remaining provisions of this section.

(j) A transfer may be made only to a producer (a person who is currently a producer on the market or who will become a producer under the terms of the order by the last day of the month of transfer).

(k) In the case of an intrafamily transfer (including transfers to an estate and from an estate to a member of the immediate family) all restrictions on transferring base applicable to the transferor producer shall also apply to the transferee.

(l) A producer who receives a base pursuant to § 1007.91 (c) or (d) may not transfer such base, other than pursuant to paragraph (k) of this section, for 1 year from the date of receipt.

(m) A producer-handler who becomes a producer and receives a base may not transfer that base for a period of 1 year from the date of receipt, except to a member of the immediate family pursuant to paragraph (k) of this section.

(n) A base which has been computed from less than a full production history period may not be transferred, except as an intrafamily transfer pursuant to paragraph (k) of this section.

(o) If a base is held by a corporation, a change in ownership of the stock which transfers control to a new person or persons other than a member of the immediate family of the person transferring such stock will require a transfer of bases and compliance with all base rules therein.

§ 1007.96 Miscellaneous base rules.

The following base rules shall be observed in the determination of bases:

(a) A person who discontinues delivery of producer milk for a period of 90 consecutive days after a Class I base is issued to him shall forfeit his production history, together with any Class I base and production history base held pursuant to the provisions of this order, except that a person entering the military service may retain them until 1 year after being released from active military service.

(b) As soon as production history bases and Class I bases are computed by the market administrator, notice of the amount of each producer's production history base and Class I base shall be given by the market administrator to the producer, to the handler receiving such producer's milk, and to the cooperative association of which the producer is a member. Each handler, following receipt of such notice, shall promptly post in a conspicuous place in his plant a list or lists showing the Class I base of each producer whose milk is received at such plant.

(c) As a condition for designation as a producer-handler pursuant to § 1007.10, any person (including any member of the immediate family of such a person, any affiliate of such a person, or any business of which such a person is a part) who has held Class I base any time during the 12-month period prior to such designation shall forfeit the maximum amount of Class I and production history base held at any time during such 12-month period.

§ 1007.97 Hardship provisions.

Requests of producers for relief from hardship or inequity arising under the provisions of §§ 1007.91 through 1007.96 will be subject to the following:

(a) After bases are first issued under this plan and after bases are issued on each succeeding March 1, a producer may request review of the following circumstances because of alleged hardship or inequity:

(1) He was not issued a Class I base;

(2) His production history base is not appropriate because of unusual conditions during the base-earning period such as loss of buildings, herds, or other facilities by fire, flood, or storms, official quarantine, disease, pesticide residue, condemnation of milk, or military service of the producer or his son;

(3) Loss or potential loss of Class I base pursuant to § 1007.96(a);

(4) Loss or potential loss of Class I base because of underdeliveries pursuant to § 1007.92; and

(5) Inability to transfer base due to the provisions of § 1007.95 (l), (m), and (n).

(b) The producer shall file with the market administrator a request in writing for review of hardship or inequity not later than 45 days after notice pursuant to § 1007.96 with respect to requests pursuant to paragraph (a) (1) or (2) of this section, or not later than 45 days after the occurrence with respect to requests pursuant to paragraph (a) (3), (4), or (5) of this section, setting forth:

(1) Conditions that caused the alleged hardship or inequity;

(2) The extent of the relief or adjustment requested;

(3) The basis upon which the amount of adjustment requested was determined; and

(4) Reasons why the relief or adjustment should be granted.

(c) One or more Producer Base Committees shall be established and function as follows:

(1) Each Producer Base Committee shall consist of five producers appointed by the market administrator.

(2) Each committee shall review the requests for relief from hardship or inequity referred to it by the market administrator at a meeting in which the market administrator or his representative serves as recording secretary and at which the applicant may appear in person if he so requests.

(3) Recommendations with respect to each such request shall be endorsed at the meeting by at least three committee members and shall:

PART 1071—MILK IN NEOSHO VALLEY MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

DEFINITIONS

HANDLER REPORTS

CLASSIFICATION OF MILK

CLASS PRICES

UNIFORM PRICE

PAYMENTS FOR MILK

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

ADVERTISING AND PROMOTION PROGRAM

AUTHORITY: The provisions of this Part 1071 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1071.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1071.2 Neosho Valley marketing area.

"Neosho Valley marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Allen, Bourbon, Chautauqua, Cherokee, Crawford, Labette, Montgomery, Neosho, and Wilson, all in the State of Kansas, and the counties of Barton, Jasper, Newton, and Vernon, all in the State of Missouri.

§ 1071.3 Route disposition.

"Route disposition" means a delivery (including delivery by a vendor or sale from a plant or plant store) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1071.4 [Reserved]

§ 1071.5 [Reserved]

§ 1071.6 [Reserved]

§ 1071.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means any milk plant described in paragraph (a) or (b) of this section, which is approved by the appropriate health authority having jurisdiction in the marketing area.

(a) Any plant, hereinafter referred to as a "distributing pool plant," from which:

(1) During the current delivery period there is route disposition, except filled milk, in the marketing area equal to 10 percent or more of such plant's Grade A receipts from dairy farmers as specified in paragraph (a)(2) of this section; and

(i) During the current delivery period there is disposed of as Class I milk, except filled milk, an amount not less than an applicable percentage of such plant's Grade A receipts as specified in paragraph (a)(2) of this section as follows: (*a*) April through August, 30 percent; and (*b*) September through March, 45 percent; or

(ii) During five of the six immediately preceding delivery periods, such plant was a pool plant by virtue of meeting the specifications pursuant to paragraph (a)(1)(i) of this section; and

(2) The Grade A receipts from dairy farmers to be used in calculating the percentages specified in paragraph (a)(1) of this section, for each plant shall include all receipts of Grade A milk from dairy farmers and handlers described in § 1071.9(c) subject to the following provisions:

(i) Milk diverted to another plant for the account of the operator of the plant from which the milk was diverted shall be included in the receipts of the plant from which diverted for the purposes of this section, if the milk is claimed as diverted on the report of the diverting handler filed for the month pursuant to § 1071.30 (if such claim is made by the diverting handler, milk so diverted shall be excluded from the receipts of the plant to which diverted); and

(ii) Milk received at a plant operated by a cooperative association from a handler described in § 1071.9(c)(2) shall be excluded from the cooperative association's plant receipts for the purposes of this section.

(b) Any plant, hereinafter referred to as a "supply pool plant", from which during the delivery period no less than 50 percent of the Grade A milk received from dairy farmers is shipped to a plant(s) described in paragraph (a) of this section: *Provided*, That if such plant is a pool plant during each of the months of September through March it shall be designated as a pool plant in the next succeeding months of April through August, unless the market administrator is requested by means of written application on or before the 7th day after the end of the month that the plant should not be a pool plant. All plants described in this paragraph which are operated by one handler may be considered as a unit, upon written notice to the market administrator specifying the plants to be considered as a unit and the period during which such consideration shall apply. Such notice, and the notice of any change in designation, shall be furnished on or before the 7th day following the month to which the notice applies. In any of the months of April through August a unit shall not contain plants which were not qualified as pool plants either individually or as members of another unit, during each of the previous months of September through March.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) A plant that either the Secretary determines disposed of a greater portion of its milk as Class I milk, except filled milk, in another marketing area regulated by another milk marketing agreement or order issued pursuant to the Act or is otherwise determined pursuant to the provisions of another milk marketing agreement or order to be subject to the pricing and payment provisions of such agreement or order.

§ 1071.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing

and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1071.7 and which is neither an other order plant nor a producer-handler plant.

§ 1071.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association, with respect to milk of its member producers which it causes to be diverted pursuant to § 1071.13 for the account of such association;

(c) Any cooperative association, with respect to milk of its member producers:

(1) For which it elects to report as a handler and which is delivered to the pool plant(s) of another handler in a tank truck owned, operated, or controlled, by such association; or

(2) Delivered for its account to the pool plant of another cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1071.7(c).

§ 1071.10 Producer-handler.

"Producer-handler" means any person who, with the approval of any health authority having jurisdiction in the marketing area, processes milk from his own farm production and disposes of all or a portion of such milk as Class I milk within the marketing area, who receives no milk from producers, and who disposes of no fluid milk products in excess of those (a) received from a pool plant, (b) received from an other order plant that are classified and priced as Class I milk under the other order, and (c) from milk of his own production.

§ 1071.11 [Reserved]

§ 1071.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk under a dairy farm permit or rating issued by the appropriate health authority having jurisdiction in the marketing area over the production of milk disposed of for consumption as Grade A milk whose milk is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1071.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1071.44(a)(8)(iii) and the corresponding step of § 1071.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1071.13 Producer milk.

"Producer milk" shall be that skim milk and butterfat for each handler's account in milk received from producers pursuant to paragraphs (a) and (b) of this section as follows:

(a) For a handler operating a pool plant, producer milk shall include:

(1) Milk received directly from producers' farms (including such handler's own farm production) at such pool plant, except milk received from a handler described in § 1071.9(c); and

(2) Milk diverted by such pool plant operator pursuant to paragraph (c) of this section.

(b) For a handler described in § 1071.9 (b) or (c), producer milk shall include:

(1) Milk received directly from producers' farms for its account at pool plants (such milk shall be considered as having been received by the handler at the plant to which it is delivered and then transferred to the plant operator); and

(2) Milk diverted for its account pursuant to paragraph (c) of this section.

(c) Milk diverted for the account of a pool plant operator or the account of a cooperative association from producers' farms to a nonpool plant that is not a producer-handler plant shall be considered as diverted by the handler for whose account it was diverted, if the diverting handler claimed the diversion on his report for the month filed pursuant to § 1071.30. Milk diverted shall be considered as received at the pool plant from which it was diverted for the purpose of determining applicable location adjustments.

§ 1071.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1071.40 (b)(1) source other than producers, handlers described in § 1071.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1071.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1071.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined, with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1071.40(b)(1)) for which the handler fails to establish a disposition.

§ 1071.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1071.40 (b) or (c)(1) (i) through (iv) if it contains by weight at least 30 percent water and 6.5 percent nonfat milk solids and less than 9-percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1071.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1071.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1071.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and,

(b) Is authorized by its members to make collective sales or to market milk or its products for its members.

§ 1071.19 Delivery period.

"Delivery period" means a calendar month, or any portion thereof during which this part is in effect.

HANDLER REPORTS

§ 1071.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1071.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1071.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1071.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1071.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1071.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1071.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1071.32 Other reports.

(a) Each handler who causes milk to be diverted shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1071.30 and 1071.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1071.40 Classes of utilization.

Except as provided in § 1071.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1071.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products and products specified in paragraph (b)(1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1071.15; and

(6) In shrinkage assigned pursuant to § 1071.41(a) to the receipts specified in § 107.41(a)(2) and in shrinkage specified in § 1071.41(b) and (c).

§ 1071.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1071.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent (5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim

milk and butterfat, respectively, in milk received from a handler described in §1071.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent (5 percent with respect to skim milk during the months of April, May, and June);

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent (4.5 percent with respect to skim milk during the months of April, May, and June) of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1071.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1071.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1071.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1071.44(a)(12) and the corresponding step of § 1071.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1071.44(a)(7) or the corresponding step of § 1071.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1071.44(a) (11) or (12) or the corresponding steps of § 1071.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(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 paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1071.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i)(*a*) and (*b*) of this section 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 paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1071.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1071.43 General classification rules.

In determining the classification of producer milk pursuant to § 1071.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1071.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1071.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1071.40, 1071.41, and 1071.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1071.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1071.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1071.9(a) for each of his pool plants separately and of each handler described in § 1071.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1071.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1071.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1071.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1071.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1071.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(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 paragraph (a)(2) of this section; 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 paragraph (a)(2) and (7)(v) of this section 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 un-

regulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1071.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from another order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7), (vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1071.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, 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 paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section 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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1071.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section 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 paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section 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 receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1071.9(c) according to the classification of such products pursuant to § 1071.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1071.44(a)(14) and the corresponding step of § 1071.44(b).

§ 1071.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1071.44(a)(12) and the corresponding step of § 1071.44 (b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1071.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk

products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each delivery period, report to each cooperative association which so requests, the amount and class utilization of the milk caused to be delivered to each handler by such cooperative association, either directly or from producers who are members of such cooperative association. For purposes of this report, the milk so delivered by a cooperative association shall be prorated to each class in the proportion that the total quantity of producer milk received by such handler was to the quantity of milk in each class.

CLASS PRICES

§ 1071.50 Class prices.

Subject to the provisions of §1071.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.54: *Provided,* That the price so determined shall be further adjusted by subtracting any amount by which such price exceeds the higher of, or adding any amount by which such price is less than, the lower of the following:

(1) The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period pursuant to Part 1106 of this chapter regulating the handling of milk in the Oklahoma Metropolitan marketing area less 33 cents; or

(2) The price for Class I milk of 3.5 percent butterfat content established for the same month or delivery period for Zone 1 under Part 1062 of this chapter regulating the handling of milk in the St. Louis-Ozarks marketing area, plus 15 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1071.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1071.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 50 miles by shortest highway distance as measured by the market administrator, from the nearest of the city halls in Joplin or Nevada, Mo., or Chanute or Independence, Kans., and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1071.50(a) shall be reduced by 10 cents if such plant is located more than 50 miles but not more than 60 miles from such city hall and by an additional 2 cents for each 15 miles or fraction thereof that such distance exceeds 60 miles;

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant in a volume not in excess of that by which 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1071.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply; and

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1071.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1071.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1071.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1071.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1071.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1071.44(a)(14) and the corresponding step of § 1071.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1071.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1071.44(a)(9) and the corresponding step of § 1071.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(7) (i) through (iv) and the corresponding step of § 1071.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(7) (v) and (vi) and the corresponding step of § 1071.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1071.44(a)(11) and the corresponding step of § 1071.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1071.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1071.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5

percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1071.60 for all handlers who filed the reports prescribed by § 1071.30 for the month and who made the payments pursuant to §§ 1071.71 and 1071.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1071.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(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 § 1071.60 (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.

§ 1071.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments For Milk

§ 1071.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit payments made by handlers pursuant to §§ 1071.71, 1071.76, and 1071.77 and out of which he shall make payments to handlers pursuant to §§ 1071.72 and 1071.77: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

§ 1071.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1071.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1071.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1071.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1071.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1071.71(a)(2) exceeds the amount computed pursuant to § 1071.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1071.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the last day of each delivery period to each producer for milk received from him during the first 15 days of such delivery period at not less than the Class III price for the preceding delivery period: *Provided*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payments for such milk, the handler shall, if the cooperative association so requests, pay such cooperative association at least 2 days before the end of the delivery period, an amount equal to the sum of the individual payments otherwise payable to such producers in accordance with this paragraph.

(b) On or before the 17th day after the end of each delivery period, for all milk received during such delivery period from such producer at not less than the uniform price for such delivery period computed pursuant to § 1071.61 subject to the following adjustments: (1) The butterfat and location differentials pursuant to §§ 1071.74 and 1071.75; (2) payment made pursuant to paragraph (a) of this section; (3) deductions for marketing services pursuant to § 1071.86, (4) deductions authorized by the producer; and (5) any error in payments to such producer for past delivery periods: *Provided*, That if by such date such handler has not received full payment for milk for such delivery period pursuant to § 1071.72, he may reduce uniformly per hundredweight, for all producers his payments pursuant to this paragraph, by an amount not in excess of the per hundredweight reduction in payments from the market administrator: *Provided further*, That the handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments, pursuant to this paragraph, next following that on which such balance of payment is received from the market administrator: *And provided further*, That with respect to producers whose milk was caused to be delivered to such handler by a cooperative association which is authorized to collect payment for such milk, the handler shall, if the cooperative association so requests, pay such cooperative association, on or before the 15th day after the end of each delivery period an amount equal to the sum of the individual payments otherwise payable to such producer in accordance with this paragraph; and

(c) On or before the 17th day after the end of each delivery period, to each handler described in § 1071.9(c) for milk received from such handler, not less than the value of such milk as is classified pursuant to § 1071.42(a) at the class prices, as adjusted by the butterfat differential specified in § 1071.74, that are applicable at the location of the handler's pool plant.

§ 1071.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1-percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1071.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rates set forth in § 1071.52.

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1071.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of

the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1071.30(b) and 1071.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1071.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1071.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1071.60 for such handler shall include, in lieu of the value of other source milk specified in § 1071.60(f) less the value of such other source milk specified in § 1071.71(a)(2)(ii), a value of milk determined pursuant to § 1071.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during this month equivalent to the requirements of § 1071.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1071.30(b) and 1071.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1071.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1071.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1071.74, 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 paragraph (b)(1)(iii) of this section applies.

§ 1071.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1071.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk received by a pool plant operator (including such handler's own production);

(b) Milk received from a handler described in § 1071.9(c);

(c) Producer milk of a handler described in § 1071.9(b);

(d) Other source milk allocated to Class I pursuant to § 1071.44(a) (7) and (11) and the corresponding step of § 1071.44(b), except such other source milk that is excluded from the computations pursuant to § 1071.60 (d) and (f); and

(e) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1071.76(a)(2).

§ 1071.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1071.73 shall deduct 6 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to all milk received by such handler from producers during the delivery period, and shall pay such deductions to the market administrator on or before the 15th day after the end of such delivery period. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received from producers and to provide producers with market information.

(b) *Deductions with respect to members of a cooperative association.* In the

case of producers who are members of a cooperative association, or who have given written authorization for the rendering of marketing services and the taking of deductions therefor by a cooperative association, and for whom the Secretary determines such a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by such producers and on or before the 15th day after the end of such delivery period pay over such deduction to the cooperative association rendering such services.

ADVERTISING AND PROMOTION PROGRAM

§ 1071.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1071.121 (b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1071.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1071.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1071.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1071.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1071.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1071.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1071.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmembers producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1071.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1071.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1071.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1071.110 and 1071.117.

§ 1071.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1071.110 and 1071.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1071.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1071.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1071.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1071.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performapce of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1071.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1071.121 Duties of the market administrator.

Except as specified in § 1071.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1071.113(c).

(b) Set aside the amounts subtracted under § 1071.61(d) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1071.61(d).

(3) After the end of each calendar quarter make a refund to each producer who has made application for such refund pursuant to § 1071.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1071.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1071.110 through 1071.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1071.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1071.70.

PART 1073—MILK IN WICHITA, KANS., MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1073.119 Personal liability.
1073.120 Procedure for requesting refunds.
1073.121 Duties of the market administrator.
1073.122 Liquidation.

AUTHORITY: The provisions of this Part 1073 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1073.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1073.2 Wichita, Kans., marketing area.

"Wichita, Kans., marketing area", hereinafter called the marketing area, means all the territory within the counties enumerated below, all within the State of Kansas, together with all territory within the boundaries so designated which is occupied by government (municipal, State or Federal) reservations or installations:

ZONE I

Barber.
Barton.
Butler.
Comanche.
Cowley.
Edwards.
Ellis.
Harper.
Harvey.
Kingman.
Kiowa.
Marion.
McPherson.
Pawnee.
Pratt.
Reno.
Rice.
Rush.
Russell.
Sedgwick.
Stafford.
Sumner.

ZONE II

Clark.
Finney.
Ford.
Gove.
Grant.
Gray.
Greeley.
Hamilton.
Haskell.
Hodgeman.
Kearny.
Lane.
Meade.
Morton.
Ness.
Scott.
Seward.
Stanton.
Stevens.
Trego.
Wichita.

§ 1073.3 Route disposition.

"Route disposition" means a delivery from a distributing plant (including a delivery by a vendor, from a plant store or through a vending machine) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1073.4 [Reserved]

§ 1073.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which during the month route disposition is made in the marketing area.

§ 1073.6 Supply plant.

"Supply plant" means a plant from which fluid milk products, acceptable to an appropriate health authority for distribution under a Grade A label, are shipped during the month to and physically received at a distributing plant.

§ 1073.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any distributing plant:

(1) From which route disposition, except filled milk, is an amount equal to 25 percent or more during the months of March through July and 35 percent during all other months of such plant's total receipts of Grade A milk direct from dairy farmers, supply plants, and handlers, described in § 1073.9(c) and route disposition in the marketing area is an amount equal to 10 percent or more of such receipts. In any case in which the entire quantity of fluid milk products, except filled milk, disposed of in packages in a particular size and form is received in such packages from other plants, all such disposition shall be credited to the plant from which such packages were received and shall be deducted from the appropriate disposition of the receiving plant; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in paragraph (a)(1) of this section;

(b) Any supply plant from which during the month 50 percent or more of the Grade A milk received from dairy farmers and handlers described in § 1073.9(c) is shipped to a plant(s) described in paragraph (a) of this section. Any supply plant which has shipped to a plant(s) described in paragraph (a) of this section the required percentages of its receipts during each of the months of August through November shall be designated a pool plant in each of the following months of December through July unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments; and

(c) Any plant which is operated by a cooperative association and 60 percent or more of the milk delivered during the current month by producers who are members of such association is delivered directly or is transferred by the association to pool plants as described in paragraphs (a) and (b) of this section, unless such a plant qualifies for the month as a "pool plant" under another order issued pursuant to the Act by delivering 50 percent or more of its Grade A receipts from dairy farmers to plants which qualified as "pool plants" under such other order.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than was so disposed of in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless, notwithstanding the provisions of this paragraph, it is regulated under such other order;

(3) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in this marketing area is greater than was so disposed of in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of December through July, if such plant retains automatic pooling status under this part.

§ 1073.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act;

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act;

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant which has route disposition in consumer-type packages or dispenser units in the marketing area during the month; and

(d) "Unregulated supply plant" means a nonpool plant that is a supply plant and is neither an other order plant nor a producer-handler plant from which fluid milk products are shipped to a pool plant.

§ 1073.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of its member producers which is diverted pursuant to § 1073.13 for the account of such association;

(c) A cooperative association with respect to milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing prior to the

first day of the month in which the milk is delivered, that it wishes to be the handler for the milk. In this case, the milk is received from producers by the cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1073.7(d).

§ 1073.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets the qualifications specified in paragraphs (a) and (b) of this section:

(a) His disposition of fluid milk products does not exceed his own farm production, receipts of fluid milk products from pool plants and receipts of packaged fluid milk products from other order plants; and

(b) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

§ 1073.11 [Reserved]

§ 1073.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is:

(1) Received at a pool plant; or

(2) Diverted as producer milk pursuant to § 1073.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1073.44(a)(8)(iii) and the corresponding step of § 1073.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1073.13 Producer milk.

"Producer milk" shall be that skim milk and butterfat for each handler's account in the following milk from producers:

(a) With respect to the operations of a pool plant:

(1) Received directly from such producers;

(2) Diverted by the operator of such pool plant to a nonpool plant that is not a producer-handler plant, subject to the condition of paragraph (c) of this section; and

(3) Which is received at such pool plant from a handler described in § 1073.9(c), for all purposes other than those specified in paragraph (b)(2)(i) of this section;

(b) With respect to receipts by a cooperative association in addition to those pursuant to paragraph (a) of this section:

(1) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant by a cooperative association acting as a handler as described in § 1073.9(b), subject to the condition of paragraph (c) of this section; and

(2) For which the cooperative association is the handler as described in § 1073.9(c) to the following extent:

(i) For purposes of reporting pursuant to §§ 1073.30(c) and 1073.31(a) and making payments to producers pursuant to § 1073.73(a); and

(ii) For all purposes, with respect to any such milk which is not delivered to the pool plant of another handler; and

(c) For the purposes of location adjustments pursuant to §§ 1073.52 and 1073.75, milk diverted shall be priced at the location of the pool plant from which diverted.

§ 1073.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1073.40(b)(1) from any source other than producers, handlers described in § 1073.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1073.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1073.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1073.40(b)(1)) for which the handler fails to establish a disposition.

§ 1073.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1073.40 (b) or (c)(1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1073.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1073.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1073.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

Handler Reports

§ 1073.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1073.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1073.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products re-

quired to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1073.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1073.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1073.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1073.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1073.32 Other reports.

In addition to the reports required pursuant to §§ 1073.30 and 1073.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1073.40 Classes of utilization.

Except as provided in § 1073.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1073.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b) (1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1073.15; and

(6) In shrinkage assigned pursuant to § 1073.41(a) to the receipts specified in § 1073.41(a)(2) and in shrinkage specified in § 1073.41 (b) and (c).

§ 1073.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1073.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1073.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1073.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm 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 from its measurement at the farm 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 paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of

milk from producers for which a cooperative association is the handler pursuant to § 1073.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1073.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1073.44(a)(12) and the corresponding step of § 1073.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1073.44(a)(7) or the corresponding step of § 1073.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1073.44(a)(11) or (12) or the corresponding steps of § 1073.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(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 paragraph (b)(3) of this section;

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1073.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section 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 paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1073.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1073.43 General classification rules.

In determining the classification of producer milk pursuant to § 1073.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1073.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1073.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1073.40, 1073.41, and 1073.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1073.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1073.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1073.9(a) for each of his pool plants separately and of each handler described in § 1073.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1073.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1073.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1073.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1073.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1073.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(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 paragraph (a)(2) of this section; 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 paragraph (a)(2) and (7)(v) of this section 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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. 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 paragraph (a)(7)(vi) of this section; 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 paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1073.40(b)(1) in inventory at the beginning of the month

that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, 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 paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section 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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1073.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section 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 paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section 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 receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1073.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1073.44(a)(14) and the corresponding step of § 1073.44(b).

§ 1073.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1073.44(a)(12) and the corresponding step of § 1073.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1073.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 13th day of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers or from a handler described in § 1073.9(c) in each class by each handler who in the previous month received milk from members of such cooperative association.

Class Prices

§ 1073.50 Class prices.

Subject to the provisions of § 1073.52, the class prices for the month per hundredweight of milk containing 3.5-percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.80. Such price shall not be less than the Class I price established for the same month pursuant to Part 1064 (Greater Kansas City) of this chapter, nor more than the Greater Kansas City Class I price plus 60 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows:

(1) Multiply by 4.2 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;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the amounts computed pursuant to paragraph (c) (1) and (2) of this section subtract 48 cents and round to the nearest cent.

§ 1073.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported

by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1-percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1073.52 Plant location adjustments for handlers.

(a) For milk received from producers or from a handler described in § 1073.9 (c) at a pool plant and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (a)(4) of this section, the price at such pool plant when located:

(1) In Zone I of the marketing area, shall be that computed pursuant to § 1073.50(a);

(2) In Zone II of the marketing area, shall be 5 cents more than the Zone I price;

(3) Outside the marketing area, shall be the Class I price applicable at the nearest of the city halls in Garden City, Hays, Pratt, or Wichita, Kan., subject to a reduction of 12 cents if the distance to such city hall is 70 miles or more, but less than 80 miles, plus an additional 1.5 cents for each 10 miles or fraction thereof in excess of 79 miles (all distances to be by shortest hard-surfaced highway, as determined by the market administrator); and

(4) For purposes of calculating such location adjustments, transfers of fluid milk products between pool plants shall be assigned Class I milk disposition at the receiving plant, in excess of the sum of receipts at such plant from producers (including receipts from a handler described in § 1073.9(c)) and the pounds assigned as Class I milk to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to shipping plants priced at the same zone price, next to plants priced at the other zone price, and then in sequence beginning with the plant at which the least location adjustment credit would apply.

(b) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1073.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1073.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1073.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1073.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1073.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1073.44(a)(14) and the corresponding step of § 1073.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1073.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(9) and the corresponding step of § 1073.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1073.44(a)(9) and the corresponding step of § 1073.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1073.44 (a)(12) and the corresponding step of § 1073.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(7) (i) through (iv) and the corresponding step of § 1073.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(7) (v) and (vi) and the corresponding step of § 1073.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1073.44(a)(11) and the corresponding step of § 1073.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1073.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1073.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5-percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1073.60 for all handlers who filed the reports prescribed by § 1073.30 for the month and who made the payments pursuant to §§ 1073.71 and 1073.73 for the preceding month;

(b) Deduct the amount of the plus adjustments and add the amount of the minus adjustments, which are applicable pursuant to § 1073.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(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 § 1073.60(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.

§ 1073.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1073.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1073.71, 1073.76, and 1073.77, and out of which he shall make all payments to handlers pursuant to §§ 1073.72 and 1073.77.

§ 1073.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1073.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1073.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1073.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1073.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any (for each pool plant, if applicable), by which the amount computed pursuant to § 1073.71(a)(2) exceeds the amount computed pursuant to § 1073.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler. If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the markct administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1073.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the second working day following the 12th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price computed pursuant to § 1073.61 for such producer's deliveries of milk, adjusted by the butterfat differential and location adjustments computed pursuant to §§ 1073.74 and 1073.75, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment pursuant to § 1073.72, he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the 27th day of each month, to each producer:

(1) To whom payment is not made pursuant to paragraph (c) of this section; and

(2) Who is still delivering Grade A milk to such handler, a partial payment with respect to milk received from him during the first 15 days of such month computed at not less than 110 percent of the Class III price for 3.5 percent milk for the preceding month, without deduction for hauling;

(c) On or before the 14th day after the end of each month and on or before the 24th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which it caused to be delivered to such handler from producers, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payments due on or before the 14th day after the end of the month shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1073.31, and payments due on or before the 24th day of the month shall be accompanied by a statement of the amount of money for each producer; and

(d) Each handler who receives milk from a handler described in § 1073.9(c), shall, on or before the second day prior to the date payments are due individual producers, pay such handler for such milk as follows:

(1) A partial payment for milk received during the first 15 days of the month at not less than the amount prescribed in paragraph (b)(2) of this section; and

(2) In making final settlement, the value of such milk at the uniform price, adjusted pursuant to §§ 1073.74 and 1073.75, less payment made pursuant to paragraph (d)(1) of this section.

§ 1073.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1073.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located outside Zone 1, there shall be added or deducted, as the case may be, an adjustment for each such plant for all milk at the rates specified in § 1073.52(a).

(b) For purposes of computations pursuant to §§ 1073.71(a)(2)(ii) and 1073.72, the uniform price shall be adjusted at the rates set forth in § 1073.52, applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1073.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1073.30(b) and 1073.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the uniform price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1073.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1073.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1073.60 for such handler shall include, in lieu of the value of other source milk specified in § 1073.50(f) less the value of such other source milk specified in § 1073.71(a)(2)(ii), a value of milk determined pursuant to § 1073.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1073.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1073.30 (b) and 1073.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1073.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1073.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1073.74, 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 paragraph (b)(1)(iii) of this section applies.

§ 1073.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 1073.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 5 days of such billing, make payment to the market administrator of the amount so billed;

(b) Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1073.72, the market administrator shall, within 5 days, make payment to such handler;

(c) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure; and

(d) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation, payment to such producer was in an amount more than was required to be paid pursuant to § 1073.73, no handler shall be deemed to be in violation of § 1073.73 if he reduces his next payment to such producer following discovery of such error by not more than such overpayment.

§ 1073.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1073.71, § 1073.77(a), or § 1073.85 shall be increased one-half of 1 percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

Administrative Assessment and Marketing Service Deduction

§ 1073.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 14th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1073.13(a)(3)) and such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1073.44(a) (7) and (11) and the corresponding steps of § 1073.44(b), except such other source milk that is excluded from the computations pursuant to § 1073.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1073.76(a)(2).

§ 1073.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 1073.73(a) with respect to all milk of such producer received by such handler during the month and shall pay such deductions to the market administrator on or before the 14th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract

with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services; and

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 1073.73(a) as are authorized by such producers, and on or before the 14th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

ADVERTISING AND PROMOTION PROGRAM

§ 1073.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1073.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1073.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1073.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1073.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1073.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1073.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1073.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperative shall be eligible to select a representative(s) to the Agency under the rules of § 1073.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1073.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1073.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1073.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1073.110 and 1073.117.

§ 1073.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following.

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1073.110 and 1073.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1073.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1073.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1073.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1073.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1073.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1073.121 Duties of the market administrator.

Except as specified in § 1073.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1073.113(c).

(b) Set aside the amounts subtracted under § 1073.61(d) into an advertising and promotion fund, separately accounted for from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1073.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1073.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1073.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1073.110 through 1073.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1073.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1073.70.

PART 1090—MILK IN THE CHATTANOOGA, TENN., MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1090 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1090.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1090.2 Chattanooga, Tenn., marketing area.

The Chattanooga, Tenn., marketing area, hereinafter called the "marketing area", means all the territory within the boundaries of the following counties:

IN TENNESSEE

Bradley.
Hamilton.
Marion.
McMinn.
Meigs.
Monroe.
Polk.
Rhea.
Sequatchie.

IN GEORGIA

Catoosa.
Chattooga.
Dade.
Fannin.
Murray.
Walker.
Whitfield.

§ 1090.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk product classified as Class I milk other than a delivery to any milk or filled milk processing plant.

§ 1090.4 [Reserved]

§ 1090.5 [Reserved]

§ 1090.6 [Reserved]

§ 1090.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant approved or recognized by a duly constituted health authority for the receiving or processing of Grade A milk which during the month has route disposition, except filled milk, equal to not less than 50 percent of its receipts of milk from other pool plants and from approved dairy farmers and which has route disposition within the marketing area equal to at least 15 percent of its total Class I disposition.

(b) A supply plant which, during the month, ships fluid milk products, except filled milk, approved or recognized by a duly constituted health authority as eligible for distribution under a Grade A label in a volume equal to not less than 50 percent of its receipts of milk from approved dairy farmers to a plant specified in paragraph (a) of this section: *Provided*, That any plant which qualifies as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July unless the operator of such plant files with the market administrator prior to the first day of any of the months of March–July a written request for withdrawal.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk delivered to other pool plants by approved dairy farmers who are members of such cooperative association plus the milk which is transferred thereto from the plant operated by the cooperative association is equal to not less than 50 percent of the total volume of milk delivered to all plants by approved dairy farmers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; or

(2) Upon application to the market administrator for nonpool status and a subsequent determination by the Secretary, a plant specified in paragraph (d) (2) (i) or (ii) of this section:

(i) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless a greater volume of Class I milk, except filled milk, is disposed of from such plant to retail or wholesale outlets (except pool plants or nonpool plants) in the Chattanooga, Tenn., marketing area than in the marketing area regulated pursuant to such order; or

(ii) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the act, unless such plant qualified as a pool plant for each of the preceding months of August through February.

§ 1090.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1090.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to milk of producers diverted for the account of such association pursuant to § 1090.13;

(c) [Reserved]

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1090.7(d).

§ 1090.10 Producer-handler.

"Producer-handler" means an approved dairy farmer who:

(a) Operates a plant from which there is route disposition in the marketing area;

(b) Receives no fluid milk products from other dairy farmers or from sources other than pool plants;

(c) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary for his own farm production and the operation of the processing, packaging, and distribution business are the personal enterprise and risk of such person.

§ 1090.11 Approved dairy farmer.

"Approved dairy farmer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority.

§ 1090.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any approved dairy farmer whose milk is physically received at a pool plant or diverted pursuant to § 1090.13.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1090.44(a) (8) (iii) and the corresponding step of § 1090.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1090.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer which is:

(a) Received at a pool plant directly from a producer; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Such milk shall be deemed to have been received by the diverting handler at the plant from which diverted;

(2) In any month of September through November that less than 4 days' production of a producer is delivered to pool plants, the quantity of milk of the producer diverted during the month that

exceeds that delivered to pool plants shall not be deemed to have been received at a pool plant and shall not be producer milk;

(3) A cooperative association may divert for its account the milk of any member-producer: *Provided*, That in any month of September through November the total quantity of milk so diverted that exceeds 35 percent of the milk physically received from member-producers at all pool plants during the month shall not be deemed to have been received at a pool plant and shall not be producer milk;

(4) The operator of a pool plant, other than a cooperative association, may divert for his account the milk of any producer other than a member of a cooperative association: *Provided*, That in any month of September through November the total quantity of milk so diverted that exceeds 35 percent of the milk physically received at such pool plant during the month from producers who are not members of a cooperative association shall not be deemed to have been received at a pool plant and shall not be producer milk; and

(5) The diverting handler shall designate the dairy farmers whose milk is not producer milk pursuant to paragraphs (b) (3) and (4) of this section. If the handler fails to make such designation, no milk diverted by him shall be producer milk.

§ 1090.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1090.40 (b) (1) from any source other than producers, pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1090.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1090.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1090.40(b) (1)) for which the handler fails to establish a disposition.

§ 1090.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1090.40(b) or (c) (1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1090.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1090.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1090.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1090.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1090.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1090.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1090.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1090.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1090.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1090.32 Other reports.

(a) Each handler who receives milk from producers shall report to the market administrator:

(1) On or before the date prior to diverting producer milk pursuant to § 1090.13 his intention to divert such milk, the date or dates of such diversions, and the nonpool plant to which such milk is to be diverted.

(2) On or before the sixth day after the end of each of the months of March through July, the aggregate quantity of base milk received during the month at each of his pool plants, and on or before the 20th day after the end of each of the months of March through July the pounds of base milk received during the month from each producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1090.30 and 1090.31, each handler shall report such other information as the market administrator deems necessary to verify or establish each handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1090.40 Classes of utilization.

Except as provided in § 1090.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1090.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph(b) (1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1090.15; and

(6) In shrinkage assigned pursuant to § 1090.41(a) to the receipts specified in § 1090.41(a)(2) and in shrinkage specified in § 1090.41 (b) and (c).

§ 1090.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1090.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section 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 from its measurement at the farm 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 paragraphs (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1090.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests, determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1090.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1090.44(a)(12) and the corresponding step of § 1090.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1090.44(a)(7) or the corresponding step of § 1090.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1090.44(a)(11) or (12) or the corresponding steps of § 1090.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat

that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(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 paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1090.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(*a*) and (*b*) of this section 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 paragraph (d)(2)(ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1090.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of fluid bulk milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1090.43 General classification rules.

In determining the classification of producer milk pursuant to § 1090.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1090.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1090.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1090.40, 1090.41, and 1090.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1090.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1090.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1090.9(a) for each of his

pool plants separately and of each handler described in § 1090.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1090.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1090.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1090.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1090.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(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 paragraph (a)(2) of this section; 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 paragraph (a)(2) and (7)(v) of this section 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 paragraphs (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. 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 paragraph (a)(7)(vi) of this section; 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 paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1090.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, 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 paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section 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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii) and (iii) of this section, such subtraction shall be pro rata

to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1090.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of his section 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 paragraph (a)(12)(ii) of this section, should the computation pursuant to paragraph (a)(12)(i) or (ii) of this section 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 receipts of fluid milk products and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1090.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1090.44(a)(14) and the corresponding step of § 1090.44(b).

§ 1090.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1090.44(a)(12) and the corresponding step of § 1090.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1090.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1090.50 Class prices.

Subject to the provisions of § 1090.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.15.

(b) *Class II price.* The Class II price shall be the basic formula price for the months plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1090.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1090.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk (for which a location adjustment is applicable) at a plant that is north of either the southern boundary of the State of Tennessee or the northern boundary of the State of South Carolina and more than 65 miles (by the shortest hard-surfaced highway distance as determined by the market administrator) from the city hall in Chattanooga shall be reduced 15 cents and an additional 1.5 cents for each 10 miles or fraction thereof in excess of 75 miles (by the shortest hard-surface highway distance as determined by the market administrator) that such plant is from the city hall in Chattanooga.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant, which is in excess of the sum of receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1090.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1090.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Prices

§ 1090.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator

shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1090.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1090.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1090.44(a)(14) and the corresponding step of § 1090.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1090.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1090.44(a)(9) and the corresponding step of § 1090.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(7) (i) through (iv) and the corresponding step of § 1090.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(7) (v) and (vi) and the corresponding step of § 1090.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1090.44(a)(11) and the corresponding step of § 1090.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1090.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February, the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1090.60 for all handlers who filed the reports prescribed by § 1090.30 for the month and who made the payments pursuant to §§ 1090.71 and 1090.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1090.75;

(3) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included in paragraph (a)(1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to § 1090.60(f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers in each of the months of August through February.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, f.o.b. market, as follows:

(1) Compute the total value of excess milk for all handlers included in the computations pursuant to paragraph (a)(1) of this section as follows:

(i) Multiply the hundredweight quantity of such milk which does not exceed the total quantity of producer milk assigned to Class III milk in the pool plants of such handlers by the Class III price;

(ii) Multiply the remaining hundredweight quantity of excess milk which does not exceed the total quantity of producer milk assigned to Class II milk in the pool plants of such handlers by the Class II price;

(iii) Multiply the remaining hundredweight quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b)(1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations pursuant to paragraph (a) (1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a)(4)(ii) of this section by the weighted average price;

(4) Subtract the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b)(2) of this section times the hundredweight of excess milk from the amount computed pursuant to paragraph (b)(3) of this section;

(5) Divide the amount calculated pursuant to paragraph (b)(4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1090.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1090.61 for such month.

PAYMENTS FOR MILK

§ 1090.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1090.71, 1090.76, and 1090.77, and out of which he shall make all payments pursuant to §§ 1090.72 and 1090.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1090.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1090.60.

(2) The sum of:

(i) The value of the uniform prices, as adjusted pursuant to § 1090.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1090.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated

to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1090.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1090.71(a)(2) exceeds the amount computed pursuant to § 1090.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1090.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s), as adjusted pursuant to §§ 1090.74 and 1090.75, multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1090.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producers; and

(iv) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1090.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section; and

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) for the months of March through July the total pounds of base milk received, (iii) the amount or rate and nature of any deductions to be made from payments, and (iv) the amount and nature of payments due pursuant to § 1090.77.

§ 1090.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1090.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices computed pursuant to § 1090.61 to be paid for producer milk received at a pool plant shall be reduced according to the location of the pool plant where such milk was received each at the rates set forth in § 1090.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1090.52 (a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1090.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1090.30(b) and 1090.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1090.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from

the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1090.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1090.60 for such handler shall include, in lieu of the value of other source milk specified in § 1090.60(f) less the value of such other source milk specified in § 1090.71(a)(2)(ii), a value of milk determined pursuant to § 1090.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1090.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1090.30 (b) and 1090.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1090.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1090.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1090.74, 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 paragraph (b)(1)(iii) of this section applies.

§ 1090.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1090.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1090.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1090.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

Administrative Assessment and Marketing Service Deduction

§ 1090.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to skim milk and butterfat contained in:

(a) Producer milk;

(b) Other source milk allocated to Class I pursuant to § 1090.44(a) (7) and (11) and the corresponding steps of § 1090.44(b), except such other source milk that is excluded from the computations pursuant to § 1090.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1090.76(a)(2).

§ 1090.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1090.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1090.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months of March through July which is not in excess of such producer's daily average base computed pursuant to § 1090.92, multiplied by the number of days in such month.

§ 1090.91 Excess milk.

"Excess milk" means milk received at pool plants from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk received during such months from a producer for whom no daily average base can be computed pursuant to § 1090.92.

§ 1090.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1090.93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of milk received from such producer at all pool plants during the months of September through January immediately preceding, by the number of days from the first day of delivery by such producer during such months to the last day of January, inclusive, or by 120, whichever is more: *Provided*, That any producer who, during the preceding months of September through January, delivered his milk to a nonpool plant which became a pool plant after the beginning of such period shall be assigned a base in the same manner as if he had been a producer during such period, calculated from his deliveries during such September–January period to such plant.

§ 1090.93 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraph (b) of this section, the market administrator shall assign a base calculated pursuant to § 1090.92 to each person for whose account producer milk was delivered to pool plants during the months of September through January;

(b) A base which is assigned pursuant to the proviso of § 1090.92 shall be nontransferable. An entire base which is otherwise assigned shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to transferred: *Provided*, That if a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred; and

(c) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month on which such division is to be effective.

§ 1090.94 Announcement of established bases.

On or before March 1 of each year, the market administrator shall notify each producer, and the handler receiving milk from such producer, of the daily average base established by such producer, and shall notify a cooperative association of which such producer is a member of such daily average base if the cooperative association so requests.

PART 1094—MILK IN NEW ORLEANS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

AUTHORITY: The provisions of this Part 1094 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1094.1 General provisions.

The terms, definitions, and provisions, in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1094.2 New Orleans marketing area.

New Orleans marketing area, hereinafter referred to as the marketing area, means all territory, including incorporated municipalities, within Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, and Terrebonne Parishes, all in the State of Louisiana.

§ 1094.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a milk processing plant to wholesale or retail outlets (including any delivery by a vendor and from a plant store or through a vending machine) other than a delivery to any milk or filled milk receiving and/or processing plant.

§ 1094.4 [Reserved]

§ 1094.5 Distributing plant.

Distributing plant means any plant at which fluid milk products, eligible for distribution in the marketing area under a Grade A label, are processed and packaged and from which there is route disposition of fluid milk products in the marketing area.

§ 1094.6 Supply plant.

Supply plant means any plant at which milk eligible for distribution in the marketing area under a Grade A label is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1094.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month:

(1) Route disposition in the marketing area of fluid milk products, except filled milk, is at least the lesser of a daily average of 1,500 pounds or 20 percent of receipts from dairy farmers, handlers described in § 1094.9(c), and supply plants; and

(2) Total route disposition of fluid milk products, except filled milk, is 50 percent or more of receipts from dairy farmers, handlers described in § 1094.9 (c), and supply plants.

(b) A supply plant from which not less than 45 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to and received at plants qualifying for the month pursuant to paragraph (a) of this section. Any supply plant meeting such shipping standard for each of the months of August through November shall continue to be a pool plant the following months of December through July unless the operator notifies the market administrator in writing before the first day of any such month of his intent to withdraw such plant as a plant qualified under this paragraph, in which case such plant thereafter shall be a nonpool plant except in any month it meets the above 45 percent shipping standard.

(c) For the purpose of meeting the minimum 45 percent shipping standard of paragraph (b) of this section by a supply plant operated by a cooperative association, all member-dairy farmer milk delivered directly from farms pursuant to § 1094.9(c), to distributing plant(s) qualified under paragraph (a) of this section will be considered to have been first received at that supply plant of the cooperative located nearest New Orleans, La., and then shipped therefrom to such distributing plant(s). The cooperative association may withdraw such supply plant from qualification under this section:

(1) If the cooperative notifies the market administrator in writing prior to or during the month of its intention not to qualify the plant under this section during that month; and

(2) The milk actually shipped during the month from such plant to plant(s)

qualified under paragraph (a) of this section is less than 45 percent of the Grade A milk actually received from dairy farmers at such supply plant during the month.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would be subject to the classification and pricing provisions of another order issued pursuant to the act unless there is greater route disposition, except filled milk, during the month in the New Orleans marketing area than in the marketing area defined in such other order; and

(3) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to paragraph (b) of this section.

§ 1094.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1094.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant(s);

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with § 1094.13;

(c) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm to the pool plant of another person in a tank truck owned and operated by, under contract to, or under the control of such association (unless the association and the person operating the pool plant both notify the market administrator, in writing, prior to the time of delivery that the pool plant operator is to be held responsible to the pool for such milk). For purposes of pricing, such milk shall be deemed to have been received by the association from producers at the location of the pool plant at which such milk is physically received;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1094.7(d).

§ 1094.10 Producer-handler.

"Producer-handler" means a dairy farmer who operates a distributing plant at which no fluid milk or fluid milk products are received during the month except his own production or transfers from a pool plant(s) and which has no receipts of milk products other than fluid milk products disposed of as Class I milk.

§ 1094.11 [Reserved]

§ 1094.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which is received at a pool plant or by a handler described in § 1094.9(c) or is diverted pursuant to § 1094.13(d).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1094.44(a)(8)(iii) and the corresponding step of § 1094.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1094.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in Grade A milk of a producer which is:

(a) Received at a pool plant directly from a producer;

(b) Received at a pool plant from a handler described in § 1094.9(c);

(c) Diverted from a pool plant to the pool plant of another handler. Milk so diverted shall be deemed to have been received at the location of the plant to which diverted; and

(d) Diverted by the operator of a pool plant or a cooperative association to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) During December through July such diversions may be made without limit;

(2) During August through November such diversions shall be limited to the amounts specified in paragraph (d)(2)(i), (ii), and (iii) of this section:

(i) A cooperative association may divert the milk of any eligible member-dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of the cooperative's total member producer milk during that month;

(ii) The operator of a pool plant may divert from such plant the milk of any eligible nonmember dairy farmer without limit during the month if the total volume of milk so diverted does not exceed 35 percent of his nonmember producer milk during that month; and

(iii) If the 35 percent limitation described in paragraph (d)(2)(i) and (ii) of this section is exceeded, the diversion of any eligible dairy farmer's milk shall be limited to 15 days' production during any such month. If this 15-day limitation is exceeded for any such dairy farmer, he shall be eligible for pooling only with respect to that milk physically received at pool plants during the month; and

(3) Diverted milk shall be deemed to have been received at the location of the plant to which diverted.

§ 1094.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1094.40(b)(1) from any source other than producers, handlers described in § 1094.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1094.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1094.40(b)(1), and products produced at the plant during the some month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1094.40(b)(1)) for which the handler fails to establish a disposition.

§ 1094.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1094.40 (b) or (c) (1)(i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5-percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the

quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1094.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1094.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1094.18 Cooperative association.

Cooperative association means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1932, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1094.30 Reports of receipts and utilization.

On or before the 5th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1094.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1094.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1094.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1094.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1094.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1094.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1094.32 Other reports.

(a) Each handler who operates an other order plant with route disposition in the marketing area shall report such disposition to the market administrator on or before the seventh day after the end of each month.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1094.30 and 1094.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1094.40 Classes of utilization.

Except as provided in § 1094.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1094.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, and Creole cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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, dry curd cottage cheese, and Creole cheese);

(ii) Butter;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1094.15; and

(6) In shrinkage assigned pursuant to § 1094.41(a) to the receipts specified in § 1094.41(a)(2) and in shrinkage specified in § 1094.41 (b) and (c).

§ 1094.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1094.30, the mar-

ket 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 paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1094.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm 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 from its measurement at the farm 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 paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1094.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1094.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1094.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1094.44 (a) (12) and the corresponding step of § 1094.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1094.44(a) (7) or the corresponding step of § 1094.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1094.44(a) (11) or (12) or the corresponding steps of § 1094.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant; and

(4) Unless a different utilization is claimed by both handlers, skim milk or butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as the operator of a pool plant or as a handler described in § 1094.9(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1094.44(a) (13) (i) and the corresponding step of § 1094.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(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 paragraph (b) (3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1094.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section 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 paragraph (d)(2) (ii) through (ix) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1094.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Except as provided in paragraph (d)(2) (ix) of this section, 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 bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant;

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph; and

(ix) Transfers of bulk fluid milk products from a nonpool plant to a pool plant that are not in excess of bulk receipts during the month at such nonpool plant from pool plants shall be classified pursuant to paragraph (a) of this section as if moved directly from the first pool plant to the second pool plant with Class II or Class III utilization indicated. If the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers unless at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

§ 1094.43 General classification rules.

In determining the classification of producer milk pursuant to § 1094.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1094.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1094.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1094.40, 1094.41, and 1094.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1094.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1094.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1094.9(a) for each of his pool plants separately and of each handler described in § 1094.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1094.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant 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 paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1094.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1094.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1094.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1094.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(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 paragraph (a)(2) of this section; 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 paragraphs (a)(2) and (7)(v) of this section 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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1094.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; 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 paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1094.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, 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 paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section 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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1094.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section 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 paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section 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 receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant or a handler described in § 1094.9(c) according to the

classification of such products pursuant to § 1094.42(a); and

(ii) A handler described in § 1094.9 (c) according to the classification of such products pursuant to § 1094.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1094.44(a)(14) and the corresponding step of § 1094.44(b).

§ 1094.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1094.44(a)(12) and the corresponding step of § 1094.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1094.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1094.50 Class prices.

Subject to the provisions of § 1094.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.85.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows:

(1) Multiply by 4.2 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;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the amounts computed pursuant to paragraph (c) (1) and (2) of this section subtract 48 cents and round to the nearest cent.

§ 1094.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1094.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers or from a handler described in § 1094.9(c) at a pool plant more than 50 miles by shortest toll-free highway distance, as determined by the market administrator, from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, La., and utilized as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price specified in § 1094.50 (a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

	Rate per hundredweight (cents)
Zones measured from the nearer of the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma, La. (miles):	
More than 50 but not more than 60	13.5
Each additional 10 miles or fraction thereof	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The market administrator shall determine and publicly announce the zone location of each plant of each handler according to the shortest toll-free highway distance between such plant and the City Hall in New Orleans or the Terrebonne Parish Courthouse in Houma. The market administrator shall notify the handler on or before the first day of any month in which a change in a plant location zone will apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1094.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1094.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1094.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1094.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage sub-

tracted from each class pursuant to § 1094.44(a)(14) and the corresponding step of § 1094.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1094.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1094.44(a)(9) and the corresponding step of § 1094.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1094.44(a)(7) (i) through (iv) and the corresponding step of § 1094.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1094.44(a)(7) (v) and (vi) and the corresponding step of § 1094.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1094.44(a)(11) and the corresponding step of § 1094.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1094.61 Computation of uniform price.

For each month, the market administrator shall compute the 3.5 percent value of all milk as follows:

(a) Combine into one total the individual values of milk of all handlers computed pursuant to § 1094.60 except those of handlers who failed to make payments required pursuant to §§ 1094.71 and 1094.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1094.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the produce-settlement fund;

(d) Divide the amount computed pursuant to paragraphs (a) through (c) of this section by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk included pursuant to paragraph (a) of this section; and

(2) The total hundredweight for which a value is computed pursuant to § 1094.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers.

§ 1094.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1094.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1094.71, 1094.76, and 1094.77, and out of which he shall make all payments pursuant to §§ 1094.72 and 1094.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1094.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1094.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1094.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1094.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1094.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1094.71(a)(2) exceeds the amount computed pursuant to § 1094.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1094.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer, who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, each handler shall make payment to each producer for milk which was received from him during the month at not less than the uniform price, as adjusted pursuant to §§ 1094.74 and 1094.75, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1094.86;

(iii) Plus or minus adjustments for errors made in previous payments to such producer;

(iv) Less deductions authorized in writing by such producer; and

(v) If by such date such handler has not received full payment from the market administrator pursuant to § 1094.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) Each handler shall furnish to the producer the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer during the first 15 days of such month;

(2) On or before the 15th day of the following month (i) the pounds of milk received from the producer each day and the total for the month, together with the butterfat content of such milk, (ii) the amount (or rate) and nature of deductions made from payments, and (iii) the amount and nature of payments due pursuant to § 1094.77.

(c) Upon receipt of a written request from a cooperative association which the Secretary determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any claim on the part of the association, each handler:

(1) Shall pay to the cooperative association, in lieu of payments pursuant to paragraph (a) of this section, on or before the 2d day prior to the date on which payments are due individual producers, an amount equal to not less than the amount due such certified members as determined pursuant to paragraph (a) of this section;

(2) Report to the cooperative association on or before the 25th day of the month, the pounds of milk received from each member of the cooperative association during the first 15 days of such month and on or before the 7th day of the following month to the cooperative association for its individual members the following information: (i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount (or rate) and nature of deductions made from payments and (iii) the amount and nature of payments due pursuant to § 1094.77. The foregoing payment and submission of information shall be made with respect to milk of each producer whom the cooperative association certifies is a member, which is received on and after the first day of the month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(3) A copy of each such request, promise to reimburse, and a certified list of members shall be filed simultaneously with the market administrator by the association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) Each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler pursuant to § 1094.9(a) and § 1094.9(c) as follows:

(1) On or before the 22d day of each month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from any cooperative association during the first 15 days of the current month; and

(2) On or before the 12th day after the end of each month in which it was received at not less than the class prices, as adjusted by the butterfat differential specified in § 1094.74, that are applicable at the location of the receiving handler's pool plant, plus the amount due the market administrator from the cooperative association on such milk pursuant to § 1094.85, less amounts paid pursuant to paragraph (d)(1) of this section.

§ 1094.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1094.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, each at the rates set forth in § 1094.52(a); and

(b) The uniform price applicable to other source milk shall be adjusted at the rates set forth in § 1094.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the uniform price shall not be less than the Class III price.

§ 1094.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1094.30(b) and 1094.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1094.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1094.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1094.60 for such handler shall include, in lieu of the value of other source milk specified in § 1094.60(f) less the

value of such other source milk specified in § 1094.71(a)(2)(ii), a value of milk determined pursuant to § 1094.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1094.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1094.30(b) and 1094.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1094.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1094.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1094.74, 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 paragraph (b)(1)(iii) of this section applies.

§ 1094.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1094.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may, from time to time, prescribe, to be announced by the market administrator on or before the 11th day after the end of such month, with respect to all skim milk and butterfat received by such handler in:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1094.44(a) (7) and (11) and the corresponding steps of § 1094.44(b), except such other source milk that is excluded from the computations pursuant to § 1094.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1094.76(a)(2).

§ 1094.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1094.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1096—MILK IN NORTHERN LOUISIANA MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Definitions

Handler Reports

Classification of Milk

Class Prices

Uniform Price

Payments for Milk

Administrative Assessment and Marketing Service Deduction

Authority: The provisions of this Part 1096 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1096.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1096.2 Northern Louisiana marketing area.

"Northern Louisiana marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the Parishes of Bossier, Caddo, Claiborne, De Soto, Lincoln, Morehouse, Ouachita, Red River, Union, and Webster, all in the State of Louisiana.

§ 1096.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product(s) classified as Class I milk from a plant to wholesale or retail outlets (including any disposition by a vendor, from a plant store, or through a vending machine) other than a delivery to another plant.

§ 1096.4 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received and/or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distributing depot for fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1096.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of Grade A fluid milk products during the month in the marketing area.

§ 1096.6 Supply plant.

"Supply plant" means a plant from which fluid milk products eligible for distribution in the marketing area under a Grade A label are moved to a distributing plant during the month.

§ 1096.7 Pool plant.

Except as provided in paragraph (d) of this section, pool plant" means:

(a) A distributing plant from which during the month there is route disposition, except filled milk, of not less than 50 percent of the Grade A milk received at such plant from dairy farmers and a handler described in § 1096.9(c) unless the volume so disposed of in the marketing area is less than 10 percent of such receipts or less than 1,500 pounds on a daily average;

(b) A supply plant from which a volume of fluid milk products not less than 50 percent of its Grade A receipts from dairy farmers and from a handler described in § 1096.9(c) is transferred during the month to a distributing plant(s) from which there is route disposition, except filled milk, of not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants during the month and the volume so disposed of in the marketing area is at least 10 percent of such receipts or a daily average of 1,500 pounds whichever is less: *Provided*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through January shall be a pool plant in each of the following months of February through August in which it does not meet the shipping requirements, unless written request is filed with the market administrator prior to the beginning of any such month for nonpool status for the remaining months through August; and

(c) A nondistributing plant, which is operated by a cooperative association and which did not meet the shipping requirements of paragraph (b) of this section, shall be a pool plant in any month in which the volume of milk received at pool distributing plants directly from member producers or a handler described in § 1096.9(c) is not less than 60 percent of the total pounds of member producer milk pooled during the month, except that on written request for nonpool status for any month, made to the market administrator prior to the beginning of such month, the plant shall be a nonpool plant for the month and for each of the succeeding 11 months in which it does not qualify as a pool plant pursuant to paragraph (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant operated by a governmental agency;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which the Secretary determines route disposition, except filled milk, during the month in such other Federal order marketing area was greater than route disposition in this marketing area, and which was fully subject to the classification and pooling provisions of such other order; and

(4) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines route disposition, except filled milk, during the month in this marketing area is greater than route disposition in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order.

§ 1096.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is not an other order plant, a producer-handler plant, or an exempt plant.

(e) "Exempt plant" means a plant operated by a governmental agency.

§ 1096.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to the milk of any member producer which it causes to be diverted pursuant to § 1096.12 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of any member producer which it causes to be delivered to a pool plant in a tank truck owned and operated by or under contract to such cooperative association for the account of such cooperative association, if the cooperative association, prior to delivery, furnishes written notice to the market administrator and to the handler to whose plant the milk is delivered that it will be the handler for such milk. The milk so delivered shall be considered to have been received by such cooperative association at a pool plant at the location of the pool plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1096.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1096.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided*, That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of Class I milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risk of such person.

§ 1096.11 [Reserved]

§ 1096.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority which milk is received at a pool plant or by a handler described in

§ 1096.9(c), or is diverted from a pool plant to a nonpool plant that is not a producer-handler plant during any month(s) of February through August or in accordance with the provisions of paragraph (a) (1), (2), or (3) of this section during any month of September through January: *Provided*, That the milk so diverted shall be deemed to have been received at the location of the pool plant from which diverted: *Provided further*, That if a handler diverting milk pursuant to paragraph (a) (2) or (3) of this section diverts in excess of the limits prescribed, all diversions by such handler during the month shall be pursuant to paragraph (a) (1) of this section: *And provided further*, That if a handler diverting milk pursuant to paragraph (a) (1) of this section diverts milk of any dairy farmer in excess of the limits prescribed, such dairy farmer shall be a producer only with respect to that milk physically received at a pool plant:

(1) Not more than 10 days' production during the month unless (i) in the case of a cooperative association, all of the diversions of milk of member producers by the cooperative association during the month fall within the limits prescribed in paragraph (a) (2) of this section, or (ii) in the case of a pool handler (other than a cooperative association) diverting milk of nonmember producers, all of such diversions from such plant fall within the limits prescribed in paragraph (a) (3) of this section.

(2) The diversion is the milk of a member of a cooperative association diverted for the account of such association and the amount of member milk so diverted does not exceed 15 percent of the volume of milk from all producer members of such cooperative association received at pool plants during such month.

(3) The diversion is the milk of a producer not a member of a cooperative association, diverted by a handler in his capacity as the operator of a pool plant from which the quantity of nonmember milk so diverted does not exceed 15 percent of the total nonmember producer milk delivered to such handler during the month.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1096.44(a) (8) (iii) and the corresponding step of § 1096.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1096.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in (a) milk received at a pool plant directly from producers, (b) milk from producers diverted in accordance with the conditions set forth in § 1096.12, or (c) milk received by a handler described in § 1096.9(c).

§ 1096.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1096.40 (b) (1) from any source other than producers, handlers described in § 1096.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1096.40(b) (1);

(c) Products (other than fluid milk products, products specified in § 1096.40 (b) (1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1096.40(b) (1)) for which the handler fails to establish a disposition.

§ 1096.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a) (1) of this section or in § 1096.40 (b) or (c) (1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1096.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1096.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1096.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1096.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1096.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1096.40(b) (1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1096.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products, in such manner as the market administrator may prescribe.

§ 1096.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1096.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and addess;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1096.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1096.32 Other reports.

(a) Each handler, who causes milk to be diverted for his account directly from a producer's farm to a nonpool plant, shall prior to such diversion report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the name of the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1096.30 and 1096.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1096.40 Classes of utilization.

Except as provided in § 1096.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1096.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1096.15; and

(6) In shrinkage assigned pursuant to § 1096.41(a) to the receipts specified in § 1096.41(a)(2) and in shrinkage specified in § 1096.41(b) and (c).

§ 1096.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1096.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1096.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm 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 from its measurement at the farm 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 paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quality of skim milk and butterfat, respectively, in shrinkage of milk

from producers for which a cooperative association is the handler pursuant to § 1096.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1096.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1096.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classificaiton in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1096.44(a)(12) and the corresponding step of § 1096.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1096.44(a)(7) or the corresponding step of § 1096.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1096.44(a)(11) or (12) or the corresponding steps of § 1096.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(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 paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1096.40.

(c) *Transfers to producer-handlers and transfers and diversions to exempt plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to an exempt plant shall be classified:

(1) As Class I milk, if moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section 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 paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1096.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Except as provided in paragraph (d)(2)(ix) of this section, 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 bulk fluid milk products at the nonpool plant from pool plants and other

order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant;

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph; and

(ix) Transfers of bulk fluid milk products from a nonpool plant to a pool plant shall be classified as if they were a direct transfer pursuant to paragraph (a) of this section from one pool plant to another pool plant with Class II or Class III utilization indicated: *Provided*, That if the classification limitations provided in paragraph (a) of this section result in any skim milk or butterfat covered by this subdivision being classified as Class I from pool plants of two or more handlers, such classification shall be shared pro rata between such handlers according to the respective quantities of fluid milk products each handler transferred to the nonpool plant unless, at or before the time of reporting, signed statements by operators of such plants indicate agreement on a different sharing of such Class I classification.

§ 1096.43 General classification rules.

In determining the classification of producer milk pursuant to § 1096.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1096.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1096.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1096.40, 1096.41, and 1096.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1096.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1096.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1096.9(a) for each of his pool plants separately and of each handler described in § 1096.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1096.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1096.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1096.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1096.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1096.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2) of this section; 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 paragraph (a)(2) and (7)(v) of this section 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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, fluid milk products from pool plants of other handlers, milk from

a handler described in § 1096.9(c), and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; 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 paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1096.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, 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 paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section 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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1096.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section 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 paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12) (i) or (ii) of this section 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 receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1096.9(c) according to the classification of such products pursuant to § 1096.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1096.44(a)(14) and the corresponding step of § 1096.44(b).

§ 1096.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1096.44(a)(12) and the corresponding step of § 1096.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1096.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 11th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1096.50 Class prices.

Subject to the provisions of § 1096.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.47.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month, but not to exceed an amount computed as follows:

(1) Multiply by 4.2 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;

(2) Multiply by 8.2 the weighted average of carlot prices per pound of spray process nonfat dry milk for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department; and

(3) From the sum of the amounts computed pursuant to paragraph (c)(1) and (2) of this section subtract 48 cents and round to the nearest cent.

§ 1096.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1096.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 50 but not more than 60 miles by shortest hard-surfaced highway distance as determined by the market administrator, from the nearer of the city halls in Minden or Monroe, La., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1096.50(a) shall be reduced by 12 cents, plus 1 cent for each 10 miles or fraction thereof that such distance exceeds 60 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1096.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1096.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1096.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1096.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1096.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1096.44(a)(14) and the corresponding step of § 1096.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1096.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1096.44(a)(9) and the corresponding step of § 1096.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(7) (i) through (iv) and the corresponding step of § 1096.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(7) (v) and (vi) and the corresponding step of § 1096.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1096.44(a)(11) and the corresponding step of § 1096.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1096.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1096.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1096.60 for all pool handlers who made reports prescribed in § 1096.30 for such month and who have made payments for the previous month pursuant to § 1096.71 and § 1096.73;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1096.75;

(c) Add an amount equal to not less than one-half of the unobligated balance on hand in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1096.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for producer milk.

§ 1096.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1096.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1096.71,

1096.76, and 1096.77 and out of which he shall make payments to handlers pursuant to §§ 1096.72 and 1096.77: *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

§ 1096.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1096.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1096.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1096.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1096.72 Payments from the producer-seulement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1096.71(a)(2) exceeds the amount computed pursuant to § 1096.71(a)(1). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1096.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month;

(b) On or before the 15th day after the end of each month for milk received during the month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1096.61, subject to the butterfat differentials and location adjustments computed pursuant to §§ 1096.74 and 1096.75, respectively; and

(1) Less payment made pursuant to paragraph (a) of this section;

(2) Less deductions for marketing services pursuant to § 1096.86;

(3) Plus or minus adjustments pursuant to § 1096.77 for errors in previous payments made to such producers; and

(4) Less proper deductions authorized by such producer;

(c) On or before the 25th and 13th days of each month, in lieu of the payment pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association which so requests, with respect to producers for whose milk the market administrator determines such cooperative association is authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers;

(d) In making the payments to producers pursuant to paragraph (b) or (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer; and

(e) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association in its capacity as a handler as follows:

(1) On or before the 25th day of each month for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month an amount equal to not less than the applicable class prices adjusted pursuant to § 1096.74, (i) less the amounts paid pursuant to paragraph (e)(1) of this section, and (ii) plus or minus adjustments pursuant to § 1096.77 for errors in previous payments made to such cooperative association.

§ 1096.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1096.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at or diverted from a pool plant shall be reduced according to the location of the pool plant, at the rates set forth in § 1096.52.

(b) For purposes of computations pursuant to §§ 1096.71 and 1096.72 the uniform price shall be adjusted at the rates set forth in § 1096.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price shall not be less than the Class III price.

§ 1096.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1096.30(b) and 1096.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations;

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under an order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1096.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1096.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1096.60 for such handler shall include, in lieu of the value of other source milk specified in § 1096.60(f) less the value of such other source milk specified in § 1096.71(a)(2)(ii), a value of milk determined pursuant to § 1096.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1096.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1096.30 (b) and 1096.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1096.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1096.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterbasis by the butterfat differential specified in § 1096.74, 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 paragraph (b)(1)(iii) of this section applies.

§ 1096.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, discloses errors resulting in moneys due (a) the market administrator from such handler; (b) such handler from the market administrator; or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1096.85 Assessment for order administration.

As his pro rata share of the expense of administration of this part each handler, except a producer-handler, shall pay to the market administrator on or before the 15th day after the end of the month, 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as the Secretary may prescribe, as follows:

(a) Each pool handler with respect to (1) all receipts of producer milk including such handler's own production, and (2) other source milk allocated to Class I pursuant to § 1096.44(a)(7) and (11) and the corresponding steps of § 1096.44(b), except such other source milk that is excluded from the computations pursuant to § 1096.60(d) and (f);

(b) Each cooperative association on producer milk diverted to a nonpool plant for the account of such association or received by such association as a handler described in § 1096.9(c); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1096.76(a)(2).

§ 1096.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1096.73 shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the service set forth in paragraph (a) of this section and for whom a cooperative association is authorized to receive payment for marketing services as set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payment to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and shall pay such deductions to the cooperative association entitled to receive it, on or before the 15th day after the end of the month during which such milk was received. Such deductions shall be accompanied by a statement showing the quantity of milk for which such deduction was computed for each producer. In lieu of such statement, the handler may request the market administrator to furnish such cooperative association the information reported for such producers pursuant to § 1096.31.

PART 1097—MILK IN MEMPHIS, TENNESSEE, MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1097.1 General provisions.

Definitions

1097.2 Memphis, Tennessee, marketing area.
1097.3 Route disposition.
1097.4 [Reserved]
1097.5 [Reserved]
1097.6 [Reserved]

AUTHORITY: The provisions of this Part 1097 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–67).

GENERAL PROVISIONS

§ 1097.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1097.2 Memphis, Tennessee, marketing area.

"Memphis, Tennessee, marketing area" means all the territory, including incorporated municipalities and military reservations, within the Tennessee counties of Fayette, Hardeman (except Civil Districts 5 and 6), Haywood, Lauderdale, Madison (except Civil Districts 4 and 9), Shelby and Tipton; the Mississippi counties of De Soto, Tate, Panola (except the village of Crowder), Tunica, Lafayette, and Marshall (exclusive of Beat 5); and the townships of Mississippi and Proctor in Crittenden County, Arkansas.

§ 1097.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a delivery to a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets, without intermediate movement to another milk or filled milk plant.

§ 1097.4 [Reserved]

§ 1097.5 [Reserved]

§ 1097.6 [Reserved]

§ 1097.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, "fluid milk plant" means:

(a) Any milk processing or packaging plant from which a volume of Class I milk, except filled milk, equal to an average of 1,000 pounds or more per day, or not less than 5.0 percent of the Class I milk, except filled milk, of such plant, is disposed of during the month as route disposition in the marketing area.

(b) Any plant from which during the month fluid milk products (bulk or packaged), except filled milk, in excess of 70,000 pounds are moved to and received at a plant(s) described pursuant to paragraph (a) of this section.

(c) The term "fluid milk plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) or (b) of this section which would be fully regulated pursuant to the provisions of another order issued pursuant to the Act and from which the market administrator determines that a greater volume of fluid milk products, except filled milk, was disposed of during the month from such plant as route disposition in the marketing area regulated by the other order and as fluid milk products transferred as Class I milk to plants fully regulated by such other order than as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants: *Provided*, That a plant which was a fluid milk plant pursuant to paragraph (a) or (b) of this section in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of fluid milk products, except filled milk, is disposed of as route disposition in such other marketing area or to plants fully subject to such other order, unless the other order requires regulation of the plant without regard to its qualifying as a fluid milk plant for regulation under this order subject to the proviso of this subparagraph; and

(3) A plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements for fully regulated plants under another Federal order and from which the market administrator determines a greater volume of fluid milk products, except filled milk, is disposed of during the month as route disposition in the Memphis, Tenn., marketing area and as fluid milk products transferred as Class I milk to other fluid milk plants than as route disposition in the other marketing area and fluid milk products transferred as Class I milk to plants fully regulated by such other order, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation under the particular circumstances described herein of having greater route disposition under the Memphis, Tenn., order.

§ 1097.8 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk manufacturing, processing, or packaging plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant from which fluid milk products are moved during the month to a fluid milk plant and which

is not an other order plant nor a producer-handler plant.

§ 1097.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more fluid milk plants;

(b) Any cooperative association with respect to milk of its member producers diverted by it pursuant to § 1097.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of its member-producers which it causes to be delivered directly from the farm to the fluid milk plant(s) of another handler in a bulk tank truck owned and operated by, or under contract to, or under control of such cooperative, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it wishes to become the handler for such milk. The cooperative association shall be considered the handler for such bulk tank milk, effective the first day of the month following receipt of such notice, and shall account for the actual receipts from each producer as determined at the farm at prices applicable to receipts from producers at plants to which the cooperative association delivers the milk. The cooperative association, once it becomes the handler for such bulk tank milk, shall remain the handler for such bulk tank milk from month to month until the cooperative association notifies the market administrator and handler that such status is to be discontinued, effective the first day of the month following receipt of such notice;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1097.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1097.10 Producer-handler.

"Producer-handler" means any person who operates an approved plant from which Class I milk is disposed of in the marketing area but who receives no milk from other dairy farmers.

§ 1097.11 [Reserved]

§ 1097.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is:

(1) Received at a fluid milk plant; or

(2) Diverted from a fluid milk plant to a nonfluid milk plant that is not a producer-handler plant for the account of the handler. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the plant from which it was diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1097.44 (a)(8)(iii) and the corresponding step of § 1097.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a fluid milk plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1097.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk from producers (in an amount determined by weights and measurements for individual producers, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is:

(a) Received directly from producers at a fluid milk plant;

(b) Diverted pursuant to § 1097.12; or

(c) Received by a handler described in § 1097.9(c).

§ 1097.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1097.40 (b)(1) from any source other than producers, handlers described in § 1097.9(c), fluid milk plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1097.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1097.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1097.40(b)(1)) for which the handler fails to establish a disposition.

§ 1097.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1097.40 (b) or (c)(1) (i) through (viii) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1097.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1097.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1097.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1097.30 Reports of receipts and utilization.

By mailing on or before the sixth day after the end of each month or by delivery not later than the eighth day after the end of such month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1097.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other fluid milk plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1097.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products

required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk.

(c) Each handler described in § 1097.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1097.31 Payroll reports.

(a) By mailing on or before the sixth day after the end of the month, or by delivery not later than the eighth day after the end of such month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information showing for each producer:

(1) His name and address;

(2) The number of days on which milk was received from such producer;

(3) The total pounds of milk received from such producer;

(4) The average butterfat content of such milk;

(5) The location at which such milk was received; and

(6) The amount of any deductions authorized in writing by the producer to be made in making payments to such producer.

(b) On or before the 21st day of each month, each handler described in § 1097.9 (a), (b), and (c) shall report to the market administrator, in detail and on forms prescribed by him, the name and address or appropriate identification of each producer from whom milk was received during the first 15 days of such month, the total pounds of milk received from each producer, the location at which such milk was received, the amount of any deductions authorized in writing by producers from whom such handler received milk, the total pounds of milk received from each handler described in § 1097.9(c), and the name and address of each such cooperative association.

§ 1097.32 Other reports.

(a) Each handler operating a partially regulated distributing plant shall report on or before the seventh day after the end of the month, the respective amounts of skim milk and butterfat in route disposition in the marketing area.

(c) In addition to the reports required pursuant to §§ 1097.30 and 1097.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1097.40 Classes of utilization.

Except as provided in § 1097.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1097.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b) (1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b) (1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b) (1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quanity of swim milk in such product that was included within the fluid milk product definition pursuant to § 1097.15; and

(6) In shrinkage assigned pursuant to § 1097.41(a) to the receipts specified in § 1097.41(a) (2) and in shrinkage specified in § 1097.41 (b) and (c).

§ 1097.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1097.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1097.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm 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 from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other fluid milk plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1097.42 Classification of transfers and diversions.

(a) *Transfers to fluid milk plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the conditions set forth in paragraph (a) (1), (2), and (3) of this section. For purposes of this paragraph, skim milk and butterfat transferred as bulk milk to the fluid milk plant of another handler by a handler described in § 1097.9(c) shall be considered a receipt of producer milk in the transferee plant.

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1097.44(a)(12) and the corresponding step of § 1097.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1097.44(a)(7) or the corresponding step of § 1097.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1097.44(a) (11) or (12) or the corresponding steps of § 1097.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the fluid milk plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(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 paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1097.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a fluid milk plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonfluid milk plants.* Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if tranferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonfluid milk plant's utilization to its receipts as set forth in paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1097.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the

extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(a) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant; and

(b) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonfluid milk plant;

(vii) Receipts of bulk fluid cream products at the nonfluid milk plant from fluid milk plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonfluid milk plant; and

(viii) In determining the nonfluid milk plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonfluid milk plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1097.43 General classification rules.

In determining the classification of producer milk pursuant to § 1097.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1097.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1097.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1097.40, 1097.41, and 1097.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1097.9 (b) or (c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1097.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1097.9(a) for each of his fluid milk plants separately and of each handler described in § 1097.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1097.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1097.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1097.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1097.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(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 paragraph (a)(2) of this section;

(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 paragraph (a)(2) and (7)(v) of this section 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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other fluid milk plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other fluid milk plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all fluid milk plants of the handler;

(b) Substract from the above result the sum of the pounds of skim milk in receipts at all fluid milk plants of the handler of producer milk, milk from a handler described in § 1097.9(c), fluid milk products from fluid milk plants of

other handlers, and bulk fluid milk products from other order plants; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1097.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other fluid milk plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subject to the provisions of paragraph (a)(12)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all fluid milk plants of the handler, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section that are in excess of bulk fluid milk products transferred or diverted to such plant:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other fluid milk plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another fluid milk plant according to the classification of such products pursuant to § 1097.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1097.44(a)(14) and the corresponding step of § 1097.44(b).

§ 1097.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1097.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each andler operating a fluid milk plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 11th day after the end of each month, report to each cooperative association which so requests, the percentage of milk delivered by such association or by its members which was allocated to each class by each handler receiving such milk.

Class Prices

§ 1097.50 Class prices.

Subject to the provisions of § 1097.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.94.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1097.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1-percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1097.52 Plant location adjustments for handlers.

For that milk which is received at a fluid milk plant (from producers or from a handler described in § 1097.9(c)), located 50 miles or more from the city hall in Memphis, Tenn., by shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred in the form of products designated as Class I milk in § 1097.40(a) to another fluid milk plant and assigned to Class I pursuant to the calculation provided in this section, or otherwise classified as Class I milk, the price specified in § 1097.50(a) shall be adjusted at the rate set forth in the following schedule according to the location of the fluid milk plant where such milk is received:

Location of plant	*Rate per hundredweight*
In the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Add 9 cents.
For each additional 10 miles in excess of 50 miles	Add an additional 1.5 cents.
Outside the State of Mississippi and 50 but less than 60 miles from the city hall in Memphis.	Subtract 9 cents.
For each additional 10 miles in excess of 50 miles	Subtract an additional 1.5 cents.

For purposes of calculating such location adjustment, fluid milk products transferred in bulk between fluid milk plants shall be assigned to the Class I disposition at the transferee-plant in excess of the sum of receipts at such plant from producers and from handlers described in § 1097.9(c) times 1.05, and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment or a plus location adjustment is applicable and then in sequence beginning with the plant at which the smallest minus location adjustment would apply.

§ 1097.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1097.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1097.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1097.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1097.44(a)(14) and the corresponding step of § 1097.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1097.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1097.44(a)(9) and the corresponding step of § 1097.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III (exclusive of shrinkage) after the computations pursuant to § 1097.44(a)(11) and the corresponding step of § 1097.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section;

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months; and

(e) In computing, for the purposes of § 1097.61, the value of milk of a handler described in § 1097.9(c), the value of milk received by fluid milk plants of other handlers shall be the sum of the amounts assigned pursuant to § 1097.61(a)(2) with respect to such milk as adjusted pursuant to § 1097.75 for the location of the fluid milk plant to which delivered.

§ 1097.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

(a) For each of the months of August through February the market administrator shall compute for each handler a uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1097.60 by adding or subtracting, as the case may be, the total of the location adjustments applicable pursuant to § 1097.75;

(2) For each handler operating a fluid milk plant receiving milk from a handler described in § 1097.9(c), prorate the resulting amount between such milk and producer milk;

(3) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform prices for the preceding month;

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(5) Divide the resulting amount by the total hundredweight of producer milk received by the handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content f.o.b. market.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to producer milk, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a) (1), (2), (3), and (4) of this section;

(2) Compute the value of excess milk received by such handler as producer milk and bulk milk from a handler described in § 1097.9(c) as follows:

(i) Multiply the quantity of such milk, not in excess of the total Class III milk included in this computation, by the Class III price less 5 cents;

(ii) Multiply the remaining quantity of such milk, not in excess of the total Class II milk included in this computation, by the Class II price less 5 cents;

(iii) Multiply the remaining quantity of excess milk by the Class I price less 5 cents; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such excess milk and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for all excess milk of 3.5 percent butterfat content;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in paragraph (b)(3) of this section from the value of all milk obtained for such handler pursuant to paragraph (b)(1) of this section; and

(5) Divide the amount obtained in paragraph (b)(4) of this section by the total hundredweight of base milk received by such handler. The result, less any fraction of a cent per hundredweight, shall be the uniform price for such handler for base milk of 3.5 percent butterfat content.

§ 1097.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the applicable uniform prices for each handler pursuant to § 1097.61 for such month.

PAYMENTS FOR MILK

§ 1097.71 Payments to market administrator.

(a) On or before the 25th day of each month each handler operating a fluid milk plant shall pay to the market administrator a sum of money calculated by multiplying the hundredweight of milk received from producers and from a handler described in § 1097.9(c) during the first 15 days of such month by the Class III price for the preceding month, less proper deductions authorized in

writing by producers from whom such handler received milk.

(b) On or before the 12th day after the end of each month, each handler operating a fluid milk plant shall pay to the market administrator an amount of money equal to such handler's value of milk for such month as determined pursuant to § 1097.60, as adjusted pursuant to § 1097.74, less payments made pursuant to paragraph (a) of this section for such month and less proper deductions authorized in writing by producers from whom such handler received milk.

§ 1097.72 [Reserved]

§ 1097.73 Payments to producers and to cooperative associations.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments pursuant to § 1097.71(a) have been received at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer or cooperative association during the month by each handler from whom the appropriate payments have been received pursuant to § 1097.71(b), such payments by the market administrator to be at not less than the uniform price(s) computed pursuant to § 1097.61 (a) or (b), as applicable, subject to the following:

(1) Adjustment pursuant to §§ 1097.74 and 1097.75;

(2) Less payments made pursuant to paragraph (a) of this section;

(3) Less deductions for marketing services pursuant to § 1097.86;

(4) Less proper deductions authorized in writing by the producer;

(5) Adjusted for any error in calculating payment to such individual producer for past months; and

(6) If the market administrator has not received full payment from any handler for such month, pursuant to § 1097.71, he shall reduce uniformly per hundredweight his payments due for milk received by such handler by a total amount not in excess of the amount due from such handler. The market administrator shall make such balance of payment to such producers on or before the next date (for making payments pursuant to this paragraph) following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section the market administrator shall, on or before the second day prior to the date payments are due to individual producers, make payment to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payment has been received, and to a handler described in § 1097.9(c), a total amount equal to, but not less than, the sum of the individual payments otherwise payable to such producers pursuant to this section; and

(d) In making the payments pursuant to paragraphs (b) and (c) of this section, the market administrator shall furnish each producer or cooperative association with a statement, in such form that it may be retained by the producer or cooperative association which shall show:

(1) The delivery period and the identity of the handler and the producer;

(2) The total pounds of milk received from the producer, including for the months of March through July, such producer's deliveries of base and excess milk;

(3) The average butterfat content of the total pounds of milk received from the producer during the month;

(4) The minimum rates at which payment to the producer or cooperative association is required;

(5) The amount or rates per hundredweight of each deduction, together with a description of the respective deductions; and

(6) The net amount of payment to the producer or cooperative association.

§ 1097.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1097.75 Plant location adjustments for producers.

In making payment pursuant to § 1097.73, the applicable uniform prices for all milk received shall be adjusted according to the location of the fluid milk plant where such milk was received at the rate provided pursuant to § 1097.52.

§ 1097.76 [Reserved]

§ 1097.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due the market administrator from such handler, or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1097.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to (a) receipts of milk at fluid milk plants from producers (including receipts from a handler described in § 1097.9(c) and such handler's own production), (b) other source milk allocated to Class I pursuant to § 1097.44 (a) (7) and (11) and the corresponding steps of § 1097.44(b), (c) receipts of milk by a handler described in § 1097.9(c) in excess of that specified in paragraph (a) of this section, and (d) receipts of milk by a handler described in § 1097.9(b).

§ 1097.86 Deduction for marketing services.

(a) The market administrator in making payments to producers pursuant to § 1097.73 shall:

(1) Deduct 7 cents per hundredweight or such amount not exceeding 7 cents per hundredweight as may be prescribed by the Secretary, with respect to milk (other than milk of a handler's own production) of those producers for whom the marketing services set forth in paragraph (b) of this section are not being performed by a cooperative association; or

(2) If so requested in writing by a cooperative association, deduct such amount as may be authorized by the member producers of such association from the payment to be made to such producers for whom the cooperative is performing the services specified in paragraph (b) of this section and pay such amounts to the cooperative association on or before the date for making payment to producers.

(b) The monies received by the market administrator pursuant to paragraph (a)(1) of this section shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

BASE-EXCESS PLAN

§ 1097.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1097.93.

§ 1097.91 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July, which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1097.93.

§ 1097.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Mem-

phis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (this Part 1097 and Parts 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January, by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a handler's plant which first became a fluid milk plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the handler's plant had been a fluid milk plant during such period.

§ 1097.93 Determination of monthly base of each producer.

Subject to the rules set forth in § 1097.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Central Arkansas (Part 1108 of this chapter) or Fort Smith, Ark. (Part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1097.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1097.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1097.94 Base rules.

The following rules shall apply in connection with the establishment of bases for each producer computed pursuant to § 1097.92:

(a) An entire base or share of a joint holder shall be transferred from a person holding such base to other persons as of the end of the month during which an application for the transfer of such base is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base holder(s) or by the heirs and by the person to whom such base is to be transferred subject to the following conditions:

(1) If a base is held jointly and such joint holding is terminated, the entire base may be transferred to one of the joint holders;

(2) The share of a joint base holder may be transferred to a person other than a joint holder of the base only if all shares of the entire base are at the same time transferred to the same or other persons; and

(3) If one or more bases are transferred to a producer already holding a base, a new base shall be computed by adding together the total eligible deliveries during the period of September through January of all persons in whose names such bases were earned and dividing the total by the total number of days in such period beginning with the first day on which milk was received during the months of September through January from any of such persons but not less than 120 days.

§ 1097.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer, or shall notify the cooperative association of which such producer is a member of such daily average base.

ADVERTISING AND PROMOTION PROGRAM

§ 1097.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1097.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1097.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1097.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1097.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1097.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1097.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1097.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1097.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1097.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1097.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1097.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1097.110 and 1097.117.

§ 1097.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1097.110 and 1097.117;

(c) Keep minutes, books and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1097.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1097.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1097.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1097.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1097.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1097.121 Duties of the market administrator.

Except as specified in § 1097.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1097.113(c).

(b) Set aside the amounts substracted under § 1097.61(a)(4) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b) (2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1097.61(a)(4).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1097.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1097.61(a)(4) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1097.110 through 1097.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1097.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall be distributed in an equitable manner to producers by the market administrator.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

AUTHORITY: The provisions of this Part 1098 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1098.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1098.2 Nashville, Tennessee, marketing area.

"Nashville, Tennessee, marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the following:

(a) Tennessee counties of:

Bedford.	Maury.
Cannon.	Montgomery.
Cheatham.	Overton.
Clay.	Perry.
Coffee.	Pickett.
Davidson.	Putnam.
DeKalb.	Robertson.
Dickson.	Rutherford.
Fentress.	Smith.
Giles.	Stewart.
Hickman.	Sumner.
Houston.	Trousdale.
Humphreys.	Warren.
Jackson.	Wayne.
Lawrence.	White.
Lewis.	Williamson.
Macon.	Wilson.
Marshall.	

(b) Kentucky counties of:

Allen.	Monroe.
Barren.	Simpson.
Metcalf.	Warren.

(c) Fort Campbell military reservation.

§ 1098.3 Route disposition.

"Route disposition" means any delivery (including delivery by a vendor or a sale from a plant store) of any fluid milk product classified as Class I milk other than a delivery to a milk or filled milk processing plant.

§ 1098.4 [Reserved]

§ 1098.5 Approved plant.

"Approved plant" means the premises, buildings and facilities of any milk processing or packaging plant from which during the month Grade A milk is shipped to a pool plant, or from which there is route disposition in the marketing area.

§ 1098.6 [Reserved]

§ 1098.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any approved plant at which during the month fluid milk products are processed or packaged and from which (1) route disposition of fluid milk products, except filled milk, is at least 50 percent of total receipts of Grade A milk and (2) route disposition of fluid milk products, except filled milk, in the marketing area is at least 15 percent of its total route disposition of fluid milk products, except filled milk.

(b) Any approved plant from which during the month there has been delivered to plants described in paragraph (a) of this section fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk from approved dairy farmers: *Provided,* That any plant which qualified as a pool plant pursuant to this paragraph in each of the months of August through February shall be designated as a pool plant for the following months of March through July, unless the operator of such plant files with the market administrator a written request for withdrawal prior to the first day of the month for which nonpool status is requested, in which case the plant shall remain a nonpool plant until it again qualifies for pool status.

(c) A plant operated by a cooperative association if, during the month, the sum of the milk received at other pool plants from producers who are members of such cooperative association, plus the milk which was transferred thereto from the plant operated by the cooperative association, is not less than two-thirds of the total volume of milk delivered to all plants by producers who are members of the association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than as route disposition in the Nashville, Tenn., marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of its route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order, subject to the proviso of this paragraph: *And provided further,* On the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month in the Nashville,

Tenn., marketing area as route disposition than as route disposition in the other marketing area, and such other order which fully regulates the plant does not contain provision to exempt the plant from regulation, even though such plant has greater route disposition in the marketing area of the Nashville, Tenn., order; and

(4) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of paragraph (b) of this section during the preceding August through January period:

§ 1098.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1098.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plant(s);

(b) A cooperative association with respect to milk of its producer members diverted pursuant to § 1098.13 for the account of such association;

(c) A cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant(s) of another handler in a tank truck owned, operated by or under contract to, such cooperative association for the account of the cooperative association if the cooperative association has notified in writing, prior to delivery, both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received at the location of the plant to which it was delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1098.7(d).

§ 1098.10 Producer-handler.

"Producer-handler" means a person who:

(a) Produces milk and operates an approved plant;

(b) Uses no milk products other than fluid milk products for reconstitution into fluid milk products; and

(c) Receives no fluid milk products during the month except milk of his own production and transfers from pool plants.

§ 1098.11 [Reserved]

§ 1098.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority or produces milk acceptable for fluid consumption at Federal, State, or municipal establishments within the marketing area, which milk is received at a pool plant or diverted pursuant to § 1098.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1098.44(a)(8)(iii) and the corresponding step of § 1098.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1098.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk of a producer which is:

(a) Received at a pool plant directly from a dairy farmer or a handler described in § 1098.9(c): *Provided*, That if the milk received at a pool plant from a handler described in § 1098.9(c) is purchased on a basis other than weights determined by farm bulk tank calibrations and butterfat tests determined by farm bulk tank samples the amount by which the total of such farm weights of such milk exceed the weights on which the pool plant's purchases are based shall be producer milk received by the handler described in § 1098.9(c) at the location of the pool plant; or

(b) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant.

§ 1098.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1098.40(b)(1) from any source other than producers, handlers described in § 1098.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1098.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1098.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1098.40(b)(1)) for which the handler fails to establish a disposition.

§ 1098.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1098.40 (b) or (c)(1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1098.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1098.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1098.18 Cooperative Association.

"Cooperative Association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified pursuant to the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be authorized by its members to make collective sales of or to market milk or its products for its members.

HANDLER REPORTS

§ 1098.30 Reports of receipts and utilization.

On or before the sixth day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1098.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1098.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1098.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1098.31 Payroll reports.

(a) On or before the sixth day after the end of each month, each handler described in § 1098.9 (a), (b), and (c) shall report to the market administrator, in the detail prescribed by the market administrator, the following information for each producer for such month:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The total pounds of base milk and excess milk;

(4) The average butterfat content of such milk; and

(5) The amount of any deductions authorized in writing by such producer to be made from payments due for milk delivered.

(b) On or before the 21st day of each month, each handler described in § 1098.9 (a), (b), and (c) shall report to the market administrator, in the detail and on forms prescribed by him, the name and address of each producer from whom milk was received during the first 15 days of such month, and the pounds of milk so received during said period from such producer.

(c) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1098.76 (b) shall report on or before the 15th day after the end of the month for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section plus the amount paid each dairy farmer.

§ 1098.32 Other reports.

(a) On or before the third day after the end of the month:

(1) Each handler described in § 1098.9 (c) shall report to each pool plant operator purchasing producer milk from such handler, on a basis of weights determined by farm bulk tank calibrations and butterfat tests determined from farm bulk tank samples, the total pounds and butterfat content of such milk delivered to each pool plant operator during the month; and

(2) The operator of each pool plant purchasing producer milk from a handler described in § 1098.9(c), on a basis other than weights determined by farm bulk tank calibrations and butterfat tests determined from farm bulk tank samples, shall report to such handler the total pounds and butterfat content of such milk received by the pool plant during the month.

(b) On or before the 21st day of each month each handler described in § 1098.9(c) shall report to the market administrator the quantities of producer milk delivered to each pool plant for the first 15 days of such month.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1098.30 and 1098.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1098.40 Classes of utilization.

Except as provided in § 1098.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1098.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1098.15; and

(6) In shrinkage assigned pursuant to § 1098.41(a) to the receipts specified in

§ 1098.41(a)(2) and in shrinkage specified in § 1098.41 (b) and (c).

§ 1098.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1098.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant and milk received from a handler described in § 1098.9 (c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1098.9(c), except that, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm 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 from its measurement at the farm 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 paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1098.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1098.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1098.44(a)(12) and the corresponding step of § 1098.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1098.44(a)(7) or the corresponding step of § 1098.44 (b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1098.44(a) (11) or (12) or the corresponding steps of § 1098.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(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 paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market adminstrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1098.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2) (*a*) and (*b*) of this section 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

paragraph (d)(2) (ii) through (viii) of this section:

(a) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1098.30 for the month within which such transaction occurred; and

(b) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1098.43 General classification rules.

In determining the classification of producer milk pursuant to § 1098.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1098.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1098.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1098.40, 1098.41, and 1098.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1098.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1098.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1098.9(a) for each of his pool plants separately and of each handler described in § 1098.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1098.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1098.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1098.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1098.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1098.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(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 paragraph (a)(2) of this section; and

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Fed-

eral 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 paragraph (a)(2) and (7)(v) of this section 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 paragraph (a)(2), (7)(v) and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (c) of this section. 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 paragraph (a)(7)(vi) of this section; 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 paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1098.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, 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 paragraph (a)(2), (7)(v), and (8)(i) and (ii) of this section 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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12)(ii) and (iii) of this section, such subtraction shall be pro rata to the pounds of skim milk in Class I and in Class II and Class III combined, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(*a*) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1098.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section 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 paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section 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 receipts of fluid milk products and bulk fluid cream products from an other pool plant according to the classification of such products pursuant to § 1098.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1098.44(a)(14) and the corresponding step of § 1098.44(b).

§ 1098.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1098.44(a)(12) and the corresponding step of § 1098.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in pro-

ducer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1098.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 15th day after the end of each delivery period, the market administator shall report to each cooperative association, upon request by such association, the percentage of milk caused to be delivered by such association or by its members which was used in each class by each handler receiving any such milk. For the purpose of this report, any milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler are allocated to such class.

CLASS PRICES

§ 1098.50 Class prices.

Subject to the provisions of § 1098.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.58.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1098.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1098.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside the State of Tennessee and 50 miles or more by shortest hard-surfaced highway distance as determined by the market administrator, from the State Capitol at Nashville, Tennessee, and classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the price computed pursuant to § 1098.50(a) shall be reduced by 10.0 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 70 miles; and

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to that Class I disposition at the transferee-plant which is in excess of the sum of receipts at such plant from producers and handlers described in § 1098.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rate set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1098.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1098.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1098.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1098.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1098.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1098.44(a)(14) and the corresponding step of § 1098.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1098.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1098.44(a)(9) and the corresponding step of § 1098.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(7) (i) through (iv) and the corresponding step of § 1098.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(7) (v) and (vi) and the corresponding step of § 1098.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1098.44(a)(11) and the corresponding step of § 1098.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1098.61 Computation of uniform price (including weighted average price and uniform prices for base and excess milk).

(a) For each month the market administrator shall compute the weighted average price and for each of the months of August through February the uniform price per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1098.60 for all handlers who filed the reports prescribed by § 1098.30 for the month and who are not in default of payments pursuant to § 1098.71;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to § 1098.75;

(3) Add an amount equal to the unobligated balance on hand in the producer-settlement fund;

(4) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk included in paragraph (a) (1) of this section; and

(ii) The total hundredweight for which a value is computed pursuant to §1098.60 (f); and

(5) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and also the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers in the months of August through February.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Compute the aggregate value of excess milk for all handlers included in the computations pursuant to paragraph (a) (1) of this section as follows:

(i) Multiply the quantity of such milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class III milk by the Class III price;

(ii) Multiply the remaining quantity of excess milk which does not exceed the total quantity of producer milk received by such handlers assigned to Class II milk by the Class II price;

(iii) Multiply the remaining quantity of excess milk by the Class I price; and

(iv) Add together the resulting amounts;

(2) Divide the total value of excess milk obtained in paragraph (b) (1) of this section by the total hundredweight of such milk and adjust to the nearest cent. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(3) From the amount resulting from the computations in paragraph (a) (1) through (3) of this section subtract an amount computed by multiplying the hundredweight of milk specified in paragraph (a) (4) (ii) of this section by the weighted average price;

(4) Subtract from the value determined pursuant to paragraph (b) (3) of this section, the total value of excess milk determined by multiplying the uniform price obtained in paragraph (b) (2) of this section by the hundredweight of excess milk;

(5) Divide the amount calculated pursuant to paragraph (b) (4) of this section by the total hundredweight of base milk included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b) (5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1098.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the applicable uniform prices pursuant to § 1098.61 for such month.

Payments for Milk

§ 1098.70 Producer-settlement fund.

The market administrator shall maintain a producer-settlement fund into which he shall deposit the appropriate payments made by handlers pursuant to §§ 1098.71, 1098.76, and 1098.77, and out of which he shall make appropriate payments required pursuant to §§ 1098.73 and 1098.77.

§ 1098.71 Payments to the producer-settlement fund.

(a) On or before the 25th day of each month each handler receiving milk from producers or from a handler described in § 1098.9(c) (except for producers having made deliveries for less than 20 days during the month) shall pay to the market administrator for deposit into the producer-settlement fund an amount of money calculated by multiplying the hundredweight of producer milk received by him during the first 15 days of such month by the Class III price for the preceding month.

(b) On or before the 12th day after the end of each month, each person shall pay to the market administrator for deposit into the producer-settlement fund an amount of money equal to such handler's value of milk for such month as determined pursuant to § 1098.60(a), adjusted by the butterfat differential specified in § 1098.74, and § 1098.60 (b) through (f), less:

(1) Payments made pursuant to paragraph (a) of this section for such month;

(2) An amount computed by multiplying the quantities of receipts of other source milk for which a value is computed pursuant to § 1098.60(f) by the weighted average price computed pursuant to § 1098.61(a) as adjusted pursuant to § 1098.75; and

(3) Proper deductions authorized in writing by producers from whom such handler received milk.

(c) On or before the 25th day after the end of the month each handler who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (c) (1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1098.72 [Reserved]

§ 1098.73 Payments to producers and to cooperative associations.

(a) On or before the last day of each month, the market administrator shall make payment to each producer for milk received from such producer during the first 15 days of such month by handlers from whom the appropriate payments have been received pursuant to § 1098.71 (a) at not less than the Class III price per hundredweight for the preceding month;

(b) On or before the 15th day after the end of each month, the market administrator shall make payment to each producer for milk received from such producer during the month by handlers from whom the appropriate payments have been received pursuant to § 1098.71 (b), such payments by the market administrator to be at not less than the uniform price computed pursuant to § 1098.61(a) for the months for which such uniform prices are computed, and such payments to be for base and excess milk at not less than the uniform prices for base and excess milk, respectively, computed pursuant to § 1098.61(b) for the months for which such uniform prices for base and excess milk are computed subject to the following: (1) adjustments pursuant to §§ 1098.74 and 1098.75, (2) less payments made pursuant to paragraph (a) of this section, (3) less deductions for marketing services pursuant to § 1098.86, (4) less proper deductions authorized in writing by the producer, and (5) adjusted for any error in calculating payment to such individual producer for past months: *Provided*, That if the market administrator has not received full payment from any handler for such month, pursuant to § 1098.71, he shall reduce uniformly per hundredweight his payments to producers for milk received by such handler by a total amount not in excess of the amount due from such handler: *And provided further*, That the market administrator shall make such balance of payment to producers on or before the next date for making payments pursuant to this paragraph following that on which such balance of payment is received from such handler;

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the second day prior to the date payments are due to individual producers, to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payments has been received, a total amount equal to the sum of the individual payments otherwise payable to such producers pursuant to this section; and

(d) In making the payments required by paragraph (b) of this section, the market administrator shall furnish each producer or cooperative association with a supporting statement in such form that

it may be retained by the producer or cooperative association which shall show:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk delivered by the producer, including for the months in which base and excess prices apply, the pounds of base and excess milk;

(3) The minimum rate or rates at which payment to the producer or cooperative association is required;

(4) The amount or the rate per hundredweight of each deduction claimed by the handler including any deductions made pursuant to § 1098.86, together with a description of the respective deductions; and

(5) The net amount of payment to the producer or cooperative association.

§ 1098.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1098.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1098.73(b), the uniform price and the uniform price for base milk pursuant to § 1098.61 for producer milk received at a pool plant shall be reduced according to the location of the pool plant, each at the rates set forth in § 1098.52(a); and

(b) The weighted average price applicable to other source milk shall be adjusted at the rates set forth in § 1098.52 (a) applicable at the location of the nonpool plant from which the milk was received, except that the weighted average price shall not be less than the Class III price.

§ 1098.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1098.30(b) and 1098.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1098.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1098.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1098.60 for such handler shall include, in lieu of the value of other source milk specified in § 1098.60(f) less the value of such other source milk specified in § 1098.71(a)(2)(ii), a value of milk determined pursuant to § 1098.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1098.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1098.30(b) and 1098.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1098.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1098.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1098.74, 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 paragraph (b)(1)(iii) of this section applies.

§ 1098.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records or accounts or other verification discloses errors resulting in money due the market administrator from such handler, or due such handler from the

market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1098.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to receipts during the month of:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1098.44(a) (7) and (11) and the corresponding steps of § 1098.44(b), except such other source milk that is excluded from the computations pursuant to § 1098.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1098.76(a)(2).

§ 1098.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, the market administrator, in making payments to producers pursuant to § 1098.73, shall deduct an amount not exceeding 6 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk received by a handler(s) from producers during the month. Such moneys shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association. Such services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to him.

(b) In the case of producers who are members of a cooperative association which the Secretary determines is performing the services specified in paragraph (a) of this section for its members, the market administrator shall, in lieu of the deductions provided in paragraph (a) of this section, make such deductions as are authorized by such producers, and on or before the 15th day after the end of each month, pay the money so deducted to such cooperative association.

BASE-EXCESS PLAN

§ 1098.90 Base milk.

"Base milk" means milk received at pool plants from a producer during any of the months specified in § 1098.61 for the computation of uniform base and excess prices, which is not in excess of such producer's daily average base computed pursuant to § 1098.92, multiplied by the number of days in such month.

§ 1098.91 Excess milk.

"Excess milk" means milk received at pool plant from a producer during any of the months specified in § 1098.61 for the computation of uniform base and excess prices, which is in excess of the base milk of such producer for such month, and shall include all milk received during such month from a producer for whom no daily average base can be computed pursuant to § 1098.92.

§ 1098.92 Computation of daily average base for each producer.

Subject to the rules set forth in § 1098.93, the daily average base for each producer shall be an amount calculated by dividing the total pounds of producer milk received from such producer at all pool plants during the months of September through January immediately preceding by 153: *Provided*, That the base of a producer, who delivers milk during August and whose deliveries are temporarily discontinued during the base-forming period, shall be determined by dividing by the number of days for which deliveries are made or by 138, whichever is higher: *And provided further*, That in the case of producers delivering milk to a pool plant which was not a pool plant during all of the preceding months of September through January a daily average base for each such producer shall be computed pursuant to this paragraph on the basis of his verifiable deliveries of milk to such plant during the period September through January preceding the month in which the plant became a pool plant.

§ 1098.93 Base rules.

The following rules shall apply in connection with the establishment and assignment of bases:

(a) Subject to the provisions of paragraphs (b) and (c) of this section, the market administrator shall assign a base as calculated pursuant to § 1098.92 to each person for whose account producer milk was delivered to pool plants during the months specified in § 1098.92 for computation of base;

(b) A base which has been established by two or more persons operating a dairy farm as a partnership may be divided between the partners on any basis agreed to in writing by the partners provided written notification of the agreed division of base signed by each partner is received by the market administrator prior to the first day of the month in which such division is to be effective; and

(c) An entire base shall be transferred from a person holding such base to any other person, effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred: *Provided*, That an entire base or any portion thereof may be transferred from a producer to any other person upon adequate proof that such producer has discontinued marketing milk: *And provided further*, That if a base is held jointly, it shall be transferable only upon the receipt of such application signed by all joint holders or their heirs.

§ 1098.94 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer and the handler receiving milk from such producer of the daily average base established by such producer.

PART 1102—MILK IN FORT SMITH, ARKANSAS, MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

DEFINITIONS

HANDLER REPORTS

CLASSIFICATION OF MILK

CLASS PRICES

UNIFORM PRICES

PAYMENTS FOR MILK

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

BASE-EXCESS PLAN

ADVERTISING AND PROMOTION PROGRAM

AUTHORITY: The provisions of this Part 1102 issued under Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1102.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1102.2 Fort Smith, Ark., marketing area.

"Fort Smith, Ark., Marketing Area," called the marketing area in this part, means all territory within the corporate limits of Fort Smith, Ark. and Van Buren, Ark. and within the boundaries of the Camp Chaffee military reservation.

§ 1102.3 [Reserved]

§ 1102.4 [Reserved]

§ 1102.5 [Reserved]

§ 1102.6 [Reserved]

§ 1102.7 Approved plant.

Except as provided in paragraph (b) of this section, "approved plant" means:

(a) Any milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores).

(b) The term "approved plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) Any plant operated by a handler who the Secretary determines disposes of a greater portion of his fluid milk products, except filled milk, as Class I milk in another marketing area regulated by a milk marketing agreement or order issued pursuant to the Act.

§ 1102.8 Unapproved plant.

"Unapproved plant" means any milk or filled milk receiving, manufacturing, or processing plant other than an approved plant. The following categories of unapproved plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means and unapproved plant which is not an other order plant nor a producer-handler plant and from which fluid milk products eligible for distribution in the marketing area for fluid consumption are moved during the month to an approved plant.

§ 1102.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products other than filled milk are disposed of for fluid consumption in the marketing area on wholesale or retail routes (including plant stores); and

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted pursuant to § 1102.12 for the account of such cooperative association.

§ 1102.10 Producer-handler.

"Producer-handler" means any person who (a) produces milk, and (b) operates a milk plant approved by any health authority having jurisdiction in the marketing area from which fluid milk products for fluid consumption are disposed of in the marketing area on wholesale or retail routes (including plant stores), and (c) receives no milk from producers.

§ 1102.11 [Reserved]

§ 1102.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk which is received at an approved plant: *Provided*, That such milk is produced under a dairy farm inspection permit or inspection rating issued by any health authority having jurisdiction in the marketing area for the production of milk to be disposed of for consumption as fluid milk. "Producer" shall include any such person whose milk is caused to be diverted by a handler to an unapproved plant, and milk so diverted shall be deemed to have been received at an approved plant by the handler who causes it to be diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to an approved plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1102.44(a)(8) (iii) and the corresponding step of § 1102.44(b); and

(3) Any person with respect to milk produced by him which is diverted from an approved plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1102.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer which is received by a handler directly from producers.

§ 1102.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1102.40(b)(1) from any source other than producers, approved plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1102.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1102.40(b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1102.40(b)(1)) for which the handler fails to establish a dispositon.

§ 1102.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1102.40(b) or (c)(1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quality of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1102.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1102.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1102.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines (a) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act," (b) to have full authority in the sale of milk of its members and (c) to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1102.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his approved plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk; including producer milk diverted by the handler from the approved plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other approved plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1102.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler described in § 1102.9(b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1102.31 Payroll reports.

On or before the 20th day after the end of each month, each handler who operates an approved plant and each handler described in § 1102.9(b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(a) His name and address;

(b) The total pounds of milk received from such producer;

(c) The average butterfat content of such milk; and

(d) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

§ 1102.32 Other reports.

(a) Each handler who operates an approved plant and each handler described in § 1102.9(b) shall report to the market administrator in the detail and on forms prescribed by the market administrator on or before the seventh day of each month of April through August, for each producer for the preceding month:

(1) His name and address or other appropriate identification;

(2) The total pounds of milk and butterfat received from such producer;

(3) The location at which such milk was received; and

(4) The number of days on which milk was received from each producer.

(b) In addition to the reports required pursuant to §§ 1102.30 and 1102.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1102.40 Classes of utilization.

Except as provided in § 1102.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1102.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt, except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milkfat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1102.15; and

(6) In shrinkage assigned pursuant to § 1102.41(a) to the receipts specified in § 1102.41(a)(2) and in shrinkage specified in § 1102.41 (b) and (c).

§ 1102.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1102.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each approved plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section

on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a) (1) of this section 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 from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other approved plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1102.9(b), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1102.42 Classification of transfers and diversions.

(a) *Transfers to approved plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from an approved plant to another approved plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1102.44(a) (12) and the corresponding step of § 1102.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1102.44(a) (7) or the corresponding step of § 1102.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to §1102.44(a) (11) or (12) or the corresponding steps of § 1102.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from an approved plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the approved plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b) (1), (2), or (3) of this section:

(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 paragraph (b) (3) of this section);

(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 § 1102.40.

(c) *Transfers and diversions to producer-handlers.* Skim milk or butterfat transferred or diverted in the following forms from an approved plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred or diverted in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other unapproved plants.* Skim milk or butterfat transferred or diverted in the following forms from an approved plant to an unapproved plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d) (2) (i) (*a*) and (*b*) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the unapproved plant's utilization to its receipts as set forth in paragraph (d) (2) (ii) through (viii) of this section:

(*a*) The transferor-handler or divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1102.30 for the month within which such transaction occurred; and

(*b*) The unapproved plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the unapproved plant and transfers of packaged fluid milk products from such unapproved plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such unapproved plant from approved plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such unapproved plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such unapproved plant from approved plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such unapproved plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the unapproved plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such unapproved plant from approved plants and other order plants;

(iv) Transfers of bulk fluid milk products from the unapproved plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such unapproved plant from approved plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such unapproved plant from other order plants;

(v) Any remaining unassigned Class I disposition from the unapproved plant shall be assigned to the extent possible in the following sequence:

(a) To such unapproved plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such unapproved plant; and

(b) To such unapproved plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such unapproved plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the unapproved plant from approved plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such unapproved plant;

(vii) Receipts of bulk fluid cream products at the unapproved plant from approved plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such unapproved plant; and

(viii) In determining the unapproved plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such unapproved plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1102.43 General classification rules.

In determining the classification of producer milk pursuant to § 1102.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1102.30 and shall compute separately for each approved plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1102.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1102.40, 1102.41, and 1102.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1102.9(b) shall be determined separately from the operations of any approved plant operated by such cooperative association.

§ 1102.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1102.9(a) for each of his approved plants separately and of each handler described in § 1102.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1102.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1102.40(b)(1) that were received in packaged form from other plans, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1102.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1102.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1102.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(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 paragraph (a)(2) of this section;

(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 paragraph (a)(2) and (7)(v) of this section 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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (a) through (c) of this section. 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 utiliza-

tion at his other approved plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other approved plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all approved plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all approved plants of the handler of producer milk, fluid milk products from approved plants of other handlers, and bulk fluid milk products from other order plants; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this approved plant is of all such receipts remaining at this allocation step at all approved plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1102.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all approved plants of the handler, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section and that were not offset by transfers or diversions of fluid milk products to the same unregulated supply plant from which fluid milk products to be allocated at this step were received;

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other approved plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(12) Subject to the provisions of paragraph (a)(12)(i) of this section, subtract from the pounds of skim milk remaining in each class at the plant, pro rata to the total pounds of skim milk remaining in Class I and in Class II and Class III combined at this allocation step at all approved plants of the handler, with the quantity prorated to Class II and Class III combined being subtracted first from Class III and then from Class II, the pounds of skim milk in receipts of bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section that are in excess of bulk fluid milk products transferred or diverted to such plant:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other approved plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another approved plant according to the classification of such products pursuant to § 1102.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1102.44(a)(14) and the corresponding step of § 1102.44(b).

§ 1102.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1102.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating an approved plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1102.50 Class prices.

Subject to the provisions of § 1102.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.95.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class price shall be the basic formula price for the month.

§ 1102.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1102.52 Plant location adjustments for handlers.

(a) For milk received from producers at an approved plant located more than 50 miles by the shortest highway distance, as determined by the market administrator, from the county courthouse in Fort Smith, Ark., which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1102.50(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is distant from the county courthouse in Fort Smith, Ark.; and

(b) For purposes of calculating such adjustment, transfers of fluid milk products between approved plants shall be assigned to Class I disposition at the transferee-plant which is in excess of the sum of receipts as such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

§ 1102.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1102.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICES

§ 1102.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1102.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1102.44(a)(14) and the corresponding step of § 1102.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1102.74, that are applicable at the location of the approved plant; and

(c) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of his receipts and utilization of skim milk and butterfat for previous months.

§ 1102.61 Computation of uniform price for each handler (including uniform prices for base milk and excess milk).

(a) For each of the months of August through February, the market administrator shall compute for each handler a uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(1) Adjust the amount computed pursuant to § 1102.60 by adding the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(2) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1102.75;

(3) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(4) Divide the resulting amount by the total hundredweight of milk received from producers by such handler. The result, less any fraction of a cent per hundredweight, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content.

(b) For each of the months of March through July, the market administrator shall compute for each handler with respect to milk received from producers, a uniform price for base milk and for excess milk, each of 3.5 percent butterfat content, as follows:

(1) Follow the computations and adjustments provided for in paragraph (a) (1), (2), and (3) of this section;

(2) Compute the value of excess milk received by such handler from producers as follows:

(i) Multiply the quantity of such milk that is not in excess of the total Class III milk included in this computation by the Class III price less 5 cents;

(ii) Multiply the remaining quantity of such milk that is not in excess of the total Class II milk included in this computation by the Class II price less 5 cents;

(iii) Multiply the remaining quantity of excess milk by the Class I price less 5 cents; and

(iv) Add together the resulting amounts;

(3) Divide the total value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk, and adjust to the nearest cent. The resulting figure shall be the uniform price for such handler for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract, for each handler, the value of such handler's excess milk obtained in paragraph (b)(3) of this section from the value of all milk obtained for such handler pursuant to paragraph (b) (1), (2), and (3), of this section and adjust by any amount involved in adjusting the uniform price of excess milk to the nearest cent; and

(5) Divide the amount obtained in subparagraph (b)(4) of this section by the total hundredweight of such handler's base milk included in this computation. The result shall be such handler's uniform price for base milk of 3.5 percent content.

§ 1102.62 Announcement of uniform prices for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the applicable uniform prices for each handler pursuant to § 1102.61 for such month.

PAYMENTS FOR MILK

§ 1102.73 Payments to producers and to cooperative associations.

Each handler shall make payment to producers as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer except as provided in paragraph (c) of this section, at not less than the appropriate uniform price(s) as adjusted pursuant to §§ 1102.74 and 1102.75, for all milk received from such producer during the preceding month less the amount of payment made pursuant to paragraph (b) of this section.

(b) On or before the last day of each month, each handler shall make payment for milk received from producers during the first 15 days of the month to each producer, except as provided in paragraph (c) of this section, at not less than the Class III price for the preceding month.

(c) On or before the 13th and the third from the last day of each month, in lieu of payments pursuant to paragraphs (a) and (b) respectively of this section, each handler shall make payment to a cooperative association which so requests, with respect to producers for which such cooperative association is authorized to collect payment, in an amount equal to the sum of the individual payments otherwise payable to such producers.

§ 1102.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1102.75 Plant location adjustments for producers.

The uniform price for producer milk received at an approved plant shall be reduced according to the location of the approved plant at the rates set forth in § 1102.52.

§ 1102.76 [Reserved]

§ 1102.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler; (b) such handler from the market administrator; or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1102.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month four cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to (a) producer milk (including such handler's own production), and (b) other source milk allocated to Class I pursuant to § 1102.44(a) (7) and (11) and the corresponding steps of § 1102.44 (b).

§ 1102.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1102.73, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 15th day after the end of each month and pay such deduction to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions, and the amount and average butterfat test of milk for which such deduction was computed for each producer. In lieu of such statement a handler may authorize the market administrator to furnish such cooperative association the information with respect to such producers reported pursuant to § 1102.31.

BASE-EXCESS PLAN

§ 1102.90 Base milk.

"Base milk" means milk received by a handler from a producer during any of the months of March through July, which is not in excess of such producer's base computed pursuant to § 1102.93.

§ 1102.91 Excess milk.

"Excess milk" means milk received by a handler from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1102.93.

§ 1102.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tenn.; Fort Smith, Ark.; and Central Arkansas marketing areas (Parts 1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became an approved plant during or after the end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been an approved plant during such period.

§ 1102.93 Determination of monthly base for each producer.

Subject to the rules set forth in § 1102.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July as follows:

(a) If milk is received by a handler as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1102.92 by the number of days in such month.

(b) If milk is received as producer milk from the same farm by more than one handler and/or by handlers fully regulated under the terms of the Memphis, Tenn. (Part 1097 of this chapter), or Central Arkansas (Part 1108 of this chapter) orders during the month, multiply such producer's daily average base computed pursuant to § 1102.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1102.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1102.94 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1102.92.

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the base-holder, or his heirs, and by the person to whom such base is to be transferred.

(b) If a base is held jointly, the entire base shall be transferred only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1102.95 Announcement of established bases.

On or before February 25 of each year, the market administrator shall notify each producer of the daily average base established by such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1102.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1102.121(b) (1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1102.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1102.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1102.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as pro-

ducers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1102.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1102.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1102.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1102.111 and paragraph (a) of this section.

(c) Selection of agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1102.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1102.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1102.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1102.110 and 1102.117.

§ 1102.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1102.110 and 1102.117;

(c) Keep minutes, books, and records, and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1102.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1102.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1102.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1102.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence or those which are criminal in nature.

§ 1102.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section,

be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1102.121 Duties of the market administrator.

Except as specified in § 1102.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1102.113(c).

(b) Set aside the amounts subtracted under § 1102.61(a)(3) and received pursuant to § 1102.123 into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1102.61(a)(3).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1102.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1102.61(a)(3) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1102.110 through 1102.123).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1102.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall be distributed in an equitable manner to producers by the market administrator.

§ 1102.123 Payment of advertising and promotion funds.

On or before the 15th day after the end of each month during which producer milk was received, each handler shall turn over to the market administrator the advertising and promotion funds deducted pursuant to § 1102.61(a)(3).

PART 1108—MILK IN CENTRAL ARKANSAS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

DEFINITIONS

HANDLER REPORTS

CLASSIFICATION OF MILK

CLASS PRICES

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

BASE-EXCESS PLAN

ADVERTISING AND PROMOTION PROGRAM

AUTHORITY: The provisions of this Part 1108 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1108.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1108.2 Central Arkansas marketing area.

"Central Arkansas marketing area", called the "marketing area" in this part, means all the territory included within the boundaries of the counties of Clark, Conway, Craighead, Cross, Faulkner, Garland, Grant, Hot Spring, Jefferson, Lee, Lonoke, Monroe, Phillips, Poinsett, Pope, Prairie, Pulaski, Saline, St. Francis, White, and Woodruff, all in the State of Arkansas.

§ 1108.3 [Reserved]

§ 1108.4 [Reserved]

§ 1108.5 Distributing plant.

"Distributing plant" means an approved plant from which Class I milk, except filled milk, equal to not less than 50 percent of its receipts of producer milk, milk from a handler described in § 1108.9(c), and fluid milk products, except filled milk, from other pool plants is disposed of during the month, on routes or through plant stores, to wholesale or retail outlets (except pool plants) and from which Class I milk, except filled

milk, equal to not less than 10 percent of such receipts is disposed of during the month on routes or through plant stores, to wholesale or retail outlets (except pool plants) located in the marketing area.

§ 1108.6 Supply plant.

"Supply plant" means:

(a) An approved plant from which fluid milk products, except filled milk, in an amount not less than 50 percent of its receipts of producer milk and milk received from a handler described in § 1108.9(c) is moved during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months during the period October through January shall upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September; or

(b) An approved plant which is operated by a cooperative association having member producers which delivers 50 percent or more of its member milk to the pool plants of other handlers and from which fluid milk products in an amount not less than 25 percent of its receipts of producer milk during the month at such plant are shipped during such month to distributing plants: *Provided*, That any such plant which qualifies as a supply plant for each of the months October through January shall, upon written application to the market administrator, on or before the end of such period, be designated as a supply plant for the following months of February through September.

§ 1108.7 Pool plant.

(a) Except as provided in paragraph (b) of this section, "pool plant" means a distributing plant or a supply plant.

(b) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any distributing plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless a greater volume of Class I milk, except filled milk, was disposed of from such plant during the 6-month period immediately preceding to retail or wholesale outlets (except pool plants or nonpool plants) in the Central Arkansas marketing area than in the marketing area regulated pursuant to such other order; and

(3) Any supply plant which would otherwise be subject to the classification and pricing provisions of another order issued pursuant to the Act, unless such plant qualified as a pool plant for each of the preceding months of August through January.

§ 1108.7a Approved plant.

"Approved plant" means all of the buildings, premises and facilities of a plant (a) in which milk or skim milk is processed or packaged and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors and sales through plant stores) to wholesale or retail outlets (except pool plants) located in the marketing area, or (b) from which milk or skim milk is shipped during the month to a distributing plant.

§ 1108.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are shipped during the month to a pool plant qualified pursuant to § 1108.7, and which is not an other order plant nor a producer-handler plant.

§ 1108.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants.

(b) A cooperative association with respect to milk of producers diverted for the account of such association in accordance with the provisions of § 1108.12.

(c) Any cooperative association with respect to the milk of its producer members which is delivered to the pool plant of another handler in a tank truck owned or operated by or under contract to such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered, in writing, that it will be the handler for such milk for the month, such cooperative handler status to be effective the first day of the month following receipt by the market administrator of such notice and to continue until the first day of the month following receipt of a request to discontinue such cooperative handler status. Milk so delivered shall be considered to have been received by the cooperative association at the plant to which delivered and then transferred to the handler operating the plant.

(d) Any person who operates a partially regulated distributing plant.

§ 1108.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant which during the month has no other source milk, producer milk or milk received from a handler described in § 1108.9(c).

§ 1108.11 [Reserved]

§ 1108.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority which milk is received during the month at a pool plant: *Provided*, That if such milk is diverted by a handler for his account from a pool plant to a nonpool plant that is not a producer-handler plant any day during the months of February through August, or on not more than 10 days during any other month, the milk so diverted shall be deemed to have been received at a pool plant at the location of the plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1108.44(a)(8)(iii) and the corresponding step of § 1108.44(b); and

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1108.13 Producer milk.

"Producer milk" shall be that skim milk or butterfat for each handler's account in milk (in an amount determined by weights and measurements for individual producer's deliveries, as taken at the farm in the case of milk moved from the farm in a bulk tank truck) which is received pursuant to paragraphs (a) and (b) of this section and diverted pursuant to § 1108.12 as follows:

(a) Received directly from producers' farms at a pool plant by the operator of the pool plant (except that received from a handler described in § 1108.9(c)) or diverted by the pool plant operator pursuant to § 1108.12.

(b) Received directly from producers' farms for his account by a handler described in § 1108.9(c) or diverted for his account pursuant to § 1108.12.

§ 1108.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1108.40(b)(1) from any source other than producers, handlers described in § 1108.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1108.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1108.40 (b)(1), and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(d) Receipts of any milk product (other than a fluid milk product or a product specified in § 1108.40(b)(1)) for which the handler fails to establish a disposition.

§ 1108.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1108.40 (b) or (c)(1) (i) through (iv) if it contains by weight at least 80 percent water and 6.5 percent nonfat milk solids and less than 9 percent butterfat and 20 percent total solids.

(b) The term "fluid milk product" shall not include:

(1) Evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1108.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1108.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1108.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1108.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1108.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1108.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in fluid milk products disposed of on routes in the marketing area.

(c) Each handler described in § 1108.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1108.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1108.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1108.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1108.32 Other reports.

(a) Each handler, except a producer-handler and a handler making payments pursuant to § 1108.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the seventh day of each month of April through August, for each producer for the preceding month:

(i) His name and address or other appropriate identification;

(ii) The total pounds of milk and butterfat received from such producer, including, for the months of March through July, the pounds of base milk;

(iii) The location at which such milk was received; and

(iv) The number of days on which milk was received from such producer;

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1108.12 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1108.30 and 1108.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1108.40 Classes of utilization.

Except as provided in § 1108.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1108.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraphs (b) and (c) of this section; and

(2) Not specifically accounted for as Class II or Class III milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat:

(1) Disposed of in the form of a fluid cream product, eggnog, yogurt, and any product containing 6 percent or more nonmilk fat (or oil) that resembles a fluid cream product, eggnog, or yogurt,

except as otherwise provided in paragraph (c) of this section;

(2) In packaged inventory at the end of the month of the products specified in paragraph (b)(1) of this section;

(3) 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; and

(4) Used to produce:

(i) Cottage cheese, low fat cottage cheese, and dry curd cottage cheese;

(ii) Milkshake and ice milk mixes (or bases) containing 20 percent or more total solids, frozen desserts, and frozen dessert mixes;

(iii) Any concentrated milk product in bulk, fluid form;

(iv) Plastic cream, frozen cream, and anhydrous milk fat;

(v) Custards, puddings, and pancake mixes; and

(vi) Formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers.

(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;

(iii) Any milk product in dry form;

(iv) Evaporated or condensed milk (plain or sweetened) in a consumer-type package and evaporated or condensed skim milk (plain or sweetened) in a consumer-type package; and

(v) Any product not otherwise specified in this section;

(2) 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;

(3) In fluid milk products and products specified in paragraph (b)(1) of this section that are disposed of by a handler for animal feed;

(4) In fluid milk products and products specified in paragraph (b)(1) 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;

(5) In skim milk in any modified fluid milk product that is in excess of the quantity of skim milk in such product that was included within the fluid milk product definition pursuant to § 1108.15; and

(6) In shrinkage assigned pursuant to § 1108.41(a) to the receipts specified in § 1108.41(a)(2) and in shrinkage specified in § 1108.41 (b) and (c).

§ 1108.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1108.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (a)(1) of this section that is not in excess of:

(1) Two percent of the skim milk and butterfat, respectively, in producer milk (excluding milk diverted by the plant operator to another plant);

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1108.9(c), except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm 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 from its measurement at the farm 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 paragraph (b)1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1108.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1108.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1108.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1108.44(a)(12) and the corresponding step of § 1108.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1108.44(a)(7) or the corresponding step of § 1108.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1108.44 (a) (11) or (12) or the corresponding steps of § 1108.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(4) If a specified utilization of skim milk and butterfat transferred by a handler described in § 1108.9(c) to a pool plant of another handler is not claimed by both handlers, such skim milk and butterfat shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class at the pool plant of the transferee-handler after the computations pursuant to § 1108.44(a)(13)(i) and the corresponding step of § 1108.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3), of this section:

(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 paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1108.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraph (d)(2)(i) (*a*) and (*b*) of this section 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 paragraph (d)(2) (ii) through (viii) of this section:

(*a*) The transferor-handler or diverter-handler claims such classification in his report of receipts and utilization filed pursuant to § 1108.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization, then to Class III utilization, and then to Class II utilization at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class III utilization, then to any remaining Class II utilization, and then to Class I utilization at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this subparagraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal milk order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this subparagraph.

§ 1108.43 General classification rules.

In determining the classification of producer milk pursuant to § 1108.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1108.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1108.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1108.40, 1108.41, and 1108.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1108.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1108.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1108.9(a) for each of his pool plants separately and of each handler described in § 1108.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1108.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to paragraph (a)(7)(vi) of this section, as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1108.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1108.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provisions of this subparagraph or comparable provisions of another Federal milk order in the immediately preceding month;

(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, any product specified in § 1108.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1108.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(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 paragraph (a)(2) of this section; 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 paragraph (a)(2) and (7)(v) of this section 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 paragraph (a)(2), (7)(v), and (8)(i) of this section which are in excess of the pounds of skim milk determined pursuant to paragraph (a)(8)(ii) (*a*) through (*c*) of this section. Should the pounds of skim milk to be subtracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other pool plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1108.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)(7)(vi) of this section; and

(*c*) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this pool plant is of all such receipts remaining at this allocation step at all pool plants of the handlers; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant and that were not subtracted pursuant to paragraph (a)(7)(vi) of this section, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1108.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this section;

(10) Add to the remaining pounds of skim milk in Class III the pounds of skim milk subtracted pursuant to paragraph (a)(1) of this section;

(11) Subject to the provisions of paragraph (a)(11)(i) of this section, 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 paragraph (a)(2), (7)(v), and (8) (i) and (ii) of this section 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 paragraph (a)(7)(vi) and (8)(iii) of this section:

(i) Subject to the provisions of paragraph (a)(12) (ii) and (iii) of this section, 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 follow-

ing quantities represents the lower proportion of Class I milk:

(a) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1108.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to paragraph (a)(12)(i) of this section 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 paragraph (a)(12)(ii) of this section, should the computations pursuant to paragraph (a)(12)(i) or (ii) of this section 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 receipts of fluid milk products and bulk fluid cream products from:

(i) Another pool plant or a handler described in § 1108.9(c) according to the classification of such products pursuant to § 1108.42(a); and

(ii) A handler described in § 1108.9(c) according to the classification of such products pursuant to § 1108.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1108.44(a)(14) and the corresponding step of § 1108.44(b).

§ 1108.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1108.44(a)(12) and the corresponding step of § 1108.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1108.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1108.50 Class prices.

Subject to the provisions of § 1108.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.94.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1108.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1108.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 60 miles, by shortest highway distance as measured by the market administrator, from the 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, the price computed pursuant to § 1108.50(a) shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof between such plant and such nearest point.

(b) For purposes of calculating such adjustment, transfers of fluid milk products between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1108.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1108.54 Equivalent price.

If for any reason a price or pricing constitutent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constitutent that is required.

Uniform Prices

§ 1108.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each han-

dler described in § 1108.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1108.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1108.44(a)(14) and the corresponding step of § 1108.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1108.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1108.44(a)(9) and the corresponding step of § 1108.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(7) (i) through (iv) and the corresponding step of § 1108.44(b), excluding receipts of bulk fluid cream products from another plant.

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(7) (v) and (vi) and the corresponding step of § 1108.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1108.44(a)(11) and the corresponding step of § 1108.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1108.61 Computation of uniform price (including weighted average price and base and excess prices).

(a) For each month the market administrator shall compute the uniform price (or weighted average price) per hundredweight of milk received from producers as follows:

(1) Combine into one total the values computed pursuant to § 1108.60 for all handlers who filed the reports prescribed by § 1108.30 for the month and who made the payments pursuant to §§ 1108.71 and 1108.73 for the preceding month;

(2) Add an amount equal to the total value of the location adjustments computed pursuant to §1108.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a)(1) of this section by 5 cents;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total hundredweight of producer milk; and

(ii) The total hundredweight for which a value is computed pursuant to § 1108.60(f); and

(6) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months of March through July, shall be the "uniform price" for milk of 3.5 percent butterfat content received from producers.

(b) For each of the months of March through July, the market administrator shall compute the uniform prices per hundredweight for base milk and for excess milk as follows:

(1) Subtract from the amount resulting from the computations made pursuant to paragraph (a) (1) through (4) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (a) (5) (ii) of this section by the weighted average price;

(2) Compute the aggregate value of excess milk by assigning such milk, in series beginning with Class III, to the hundredweight of producer milk in each class, multiplying the quantities of milk so assigned to each class by the respective class prices less 5 cents and adding together the resulting amounts;

(3) Divide the aggregate value of excess milk obtained in paragraph (b)(2) of this section by the total hundredweight of such milk, adjust to the nearest cent and subtract 4 cents. The resulting figure shall be the uniform price for excess milk of 3.5 percent butterfat content received from producers;

(4) Subtract an amount determined by multiplying the uniform price obtained in paragraph (b)(3) of this section, plus 4 cents, times the hundredweight of excess milk from the aggregate value of milk obtained in paragraph (b)(1) of this section;

(5) Divide the result obtained in paragraph (b)(4) of this section by the total hundredweight of base milk of handlers included in these computations; and

(6) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (b)(5) of this section. The resulting figure shall be the uniform price for base milk of 3.5 percent butterfat content f.o.b. market.

§ 1108.62 Announcement of uniform prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform prices for such month.

PAYMENTS FOR MILK

§ 1108.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1108.71, 1108.76 and 1108.77, and out of which he shall make all payments pursuant to §§ 1108.72 and 1108.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler.

§ 1108.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeds the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1108.60.

(2) The sum of:

(i) The value at the uniform prices, as adjusted pursuant to § 1108.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1108.60.

(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 paragraph (b)(1) of this section to route disposition in this marketing area by multiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1108.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount

computed pursuant to § 1108.71(a)(2) exceeds the amount computed pursuant to § 1108.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1108.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph;

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price(s) adjusted by the butterfat differential and location adjustments to producers multiplied by the hundredweight of milk or base milk and excess milk received from such producer during the month, subject to the following adjustments:

(i) Less payments made to such producer pursuant to paragraph (a)(1) of this section;

(ii) Less deductions for marketing services made pursuant to § 1108.86;

(iii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iv) Less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1108.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the 2d day prior to the date on which payments are due individual producers pay the cooperative association for milk received during the month from the producer members of such association as determined by the market administrator an amount equal to not less than the amount due such producer members as determined pursuant to paragraph (a) of this section.

(c) Each handler shall furnish the person to whom payment is to be made pursuant to this section with the following information:

(1) On or before the 25th day of the month, the pounds of milk received from the producer or from each member of the cooperative association during the first 15 days of such month:

(2) On or before the 7th day of the following month to a cooperative association for its individual members, or on or before the 15th day of the following month to producers:

(i) The pounds of milk received each day and the total for the month, together with the butterfat content of such milk;

(ii) For the months of March through July, the pounds of base milk received;

(iii) The amount or rate and nature of deductions made from payments; and

(iv) The amount and nature of payments due pursuant to § 1108.77.

(d) To a cooperative association with respect to receipts of milk for which it is the handler described in § 1108.9(c):

(1) On or before the 2d day prior to the last day of the delivery period, an amount equal to the rate specified in paragraph (a)(1) of this section times the volume received during the first 15 days of the delivery period; and

(2) On or before the 13th day after the end of each delivery period, an amount equal to not less than the value of such milk at applicable class price(s) adjusted by the butterfat differential pursuant to § 1108.74 less payment made pursuant to paragraph (d)(1) of this section.

§ 1108.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform prices shall be increased or decreased, respectively, for each 0.1 percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1108.75 Plant location adjustments for producers and on nonpool milk.

(a) The applicable uniform prices to be paid for producer milk received at a pool plant located 60 miles or more from the County Courthouse in Arkadelphia, Ark., the County Courthouse in Forrest City, Arkansas, or the State Capital in Little Rock, Ark., whichever is nearer by the shortest highway distance, as determined by the market administrator, shall be reduced according to the distance of the plant from the respective buildings designated above at the rate of 1.5 cents for each 10 miles or residual fraction thereof.

(b) For purposes of computations pursuant to §§ 1108.71 and 1108.72 the weighted average price shall be adjusted at the rates set forth in § 1108.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price plus 5 cents shall not be less than the Class III price.

§ 1108.76. Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1108.30(b) and 1108.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1108.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially

regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are classified in Class I and for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1108.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1108.60 for such handler shall include, in lieu of the value of other source milk specified in § 1108.60(f) less the value of such other source milk specified in § 1108.71(a)(2)(ii), a value of milk determined pursuant to § 1108.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1108.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1108.30(b) and 1108.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1108.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1108.74, for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of such nonpool supply plant, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1108.74, 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 paragraph (b)(1)(iii) of this section applies.

§ 1108.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in moneys due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1108.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk received by a handler described in § 1108.9(c), except that transferred to another handler operating a pool plant;

(b) Producer milk of a handler operating a pool plant (including such handler's own production), plus milk received from a handler described in § 1108.9(c);

(c) Other source milk allocated to Class I pursuant to § 1108.44(a)(7) and (11) and the corresponding steps of § 1108.44(b), except such other source milk that is excluded from the computations pursuant to § 1108.60 (d) and (f); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1108.76(a)(2).

§ 1108.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1108.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

Base-Excess Plan

§ 1108.90 Base milk.

"Base milk" means milk received by handlers from a producer during any of the months of March through July which is not in excess of such producer's base computed pursuant to § 1108.93.

§ 1108.91 Excess milk.

"Excess milk" means milk received by handlers from a producer during any of the months of March through July which is in excess of the base milk of such producer for such month, and shall include all milk from a producer for whom no base can be computed pursuant to § 1108.93.

§ 1108.92 Computation of daily average base for each producer.

The daily average base for each producer shall be determined by the market administrator as follows: Divide the total pounds of milk received from such producer by handlers fully regulated under the terms of the respective orders regulating the handling of milk in the Memphis, Tennessee; Fort Smith, Arkansas; and Central Arkansas marketing areas (Parts 1097, 1102 and 1108, respectively, of this chapter) during the immediately preceding period of September through January by the total number of days in such period beginning with the first day on which milk is received from such producer by a handler regulated under any one of the aforesaid orders, but not less than 120. In the case of producers delivering milk to a plant which first became a pool plant during or after the

end of the base-forming period, the daily average base for each producer shall be that which would have been calculated for such producer for the entire base-forming period if the plant had been a pool plant during such period.

§ 1108.93 Determination of monthly base of each producer.

Subject to the rules set forth in § 1108.94, the market administrator shall calculate a monthly base for each producer for each of the months of March through July, as follows:

(a) If milk is received by handlers as producer milk during the month, multiply such producer's daily average base computed pursuant to § 1108.92 by the number of days in such month;

(b) If milk is received as producer milk from the same farm by handlers regulated under this part and by handlers fully regulated under the terms of the Memphis, Tennessee (Part 1097 of this chapter), or Fort Smith, Arkansas (Part 1102 of this chapter), orders during the month, multiply such producer's daily average base computed pursuant to § 1108.92 by the number of days in such month and multiply the result by the percentages of the total pounds of milk received from such producer by handlers fully regulated under the terms of the three orders specified in § 1108.92 which were received by each handler to determine the amount of base milk received from such producer by each handler.

§ 1108.94 Base rules.

The following rules shall apply in connection with the transfer of daily average bases for each producer computed pursuant to § 1108.92:

(a) An entire base shall be transferred from a person holding such base to any other person effective as of the end of any month during which an application for such transfer is received by the market administrator, such application to be on forms approved by the market administrator and signed by the baseholder, or his heirs, and by the person to whom such base is to be transferred; and

(b) If a base is held jointly, the entire base shall be transferable only upon the receipt of such application signed by all joint holders or their heirs, and by the person to whom such base is to be transferred.

§ 1108.95 Announcement of established bases.

On or before February 25 of each year the market administrator shall notify each producer of the daily average base established by such producer.

§ 1108.96 Monthly announcement of base milk and excess milk for each producer.

On or before the 11th day after the end of each of the months March through July, the market administrator shall notify each handler of the amount of base milk and excess milk received from each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1108.110 Agency.

"Agency" means an agency organized by producers and producers' cooperative associations, in such form and with methods of operation specified in this part, which is authorized to expend funds made available pursuant to § 1108.121(b)(1), on approval by the Secretary, for the purposes of establishing or providing for establishment of research and development projects, advertising (excluding brand advertising), sales promotion, educational, and other programs, designed to improve or promote the domestic marketing and consumption of milk and its products. Members of the Agency shall serve without compensation but shall be reimbursed for reasonable expenses incurred in the performance of duties as members of the Agency.

§ 1108.111 Composition of Agency.

Subject to the conditions of paragraph (a) of this section, each cooperative association or combination of cooperative associations, as provided for under § 1108.113(b), is authorized one agency representative for each full 5 percent of the participating member producers (producers who have not requested refunds for the most recent quarter) it represents. Cooperative associations with less than 5 percent of the total participating producers which have elected not to combine pursuant to § 1108.113(b), and participating producers who are not members of cooperatives, are authorized to select from such group, in total, one agency representative for each full 5 percent that such producers constitute of the total participating producers. If such group of producers in total constitutes less than 5 percent, it shall nevertheless be authorized to select from such group in total one agency representative. For the purpose of the agency's initial organization, all persons defined as producers shall be considered as participating producers.

(a) If any cooperative association or combination of cooperative associations, as provided for under § 1108.113(b), has a majority of the participating producers, representation from such cooperative or group of cooperatives, as the case may be, shall be limited to the minimum number of representatives necessary to constitute a majority of the agency representatives.

§ 1108.112 Term of office.

The term of office of each member of the Agency shall be 1 year, or until a replacement is designated by the cooperative association or is otherwise appropriately elected.

§ 1108.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each person selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative authorized one or more representatives to the Agency shall notify the market administrator of the name and address of each representative who shall serve at the pleasure of the cooperative.

(b) For purposes of this program, cooperative associations may elect to combine their participating memberships and, if the combined total of participating producers of such cooperatives is 5 percent or more of the total participating producers, such cooperatives shall be eligible to select a representative(s) to the Agency under the rules of § 1108.111 and paragraph (a) of this section.

(c) Selection of Agency members to represent participating nonmember producers and participating producer members of a cooperative association(s) having less than the required five (5) percent of the producers participating in the advertising and promotion program and who have not elected to combine memberships as provided in paragraph (b) of this section, shall be supervised by the market administrator in the following manner:

(1) Promptly after the effective date of this amending order, and annually thereafter, the market administrator shall give notice to participating producer members of such cooperatives and participating nonmember producers of their opportunity to nominate one or more agency representatives, as the case may be, and also shall specify the number of representatives to be selected.

(2) Following the closing date for nominations, the market administrator shall announce the nominees who are eligible for agency membership and shall conduct a referendum among the individual producers eligible to vote. The election to membership shall be determined on the basis of the nominee (or nominees) receiving the largest number of eligible votes. If an elected representative subsequently discontinues producer status or is otherwise unable to complete his term of office, the market administrator shall appoint as his replacement the participating producer who received the next highest number of eligible votes.

§ 1108.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum and any action of the Agency shall require a majority of concurring votes of those present and voting.

§ 1108.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1108.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With approval of the Secretary, enter into contracts and agreements with persons or organizations as deemed necessary to carry out advertising and promotion programs and projects specified in §§ 1108.110 and 1108.117.

§ 1108.116 Duties of the Agency.

The Agency shall perform all duties necessary to carry out the terms and provisions of this program including, but not limited to, the following:

(a) Meet, organize, and select from among its members a chairman and such other officers and committees as may be necessary, and adopt and make public such rules as may be necessary for the conduct of its business;

(b) Develop programs and projects pursuant to §§ 1108.110 and 1108.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secretary and furnish any information and reports requested by the Secretary;

(d) Prepare and submit to the Secretary for approval prior to each quarterly period a budget showing the projected amounts to be collected during the quarter and how such funds are to be disbursed by the Agency;

(e) When desirable, establish an advisory committee(s) of persons other than Agency members;

(f) Employ and fix the compensation of any person deemed to be necessary to its exercise of powers and performance of duties;

(g) Establish the rate of reimbursement to the members of the Agency for expenses in attending meetings and pay the expenses of administering the Agency; and

(h) Provide for the bonding of all persons handling Agency funds in an amount and with surety thereon satisfactory to the Secretary.

§ 1108.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval all programs or projects undertaken under the authority of this part. Such programs or projects may provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of milk and milk products on a nonbrand basis;

(b) The utilization of the services of other organizations to carry out Agency programs and projects if the Agency finds that such activities will benefit producers under this part; and

(c) The establishment, support, and conduct of research and development projects and studies that the Agency finds will benefit all producers under this part.

§ 1108.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1108.121(b)(1) shall be utilized for administrative expense of the Agency.

(b) Agency funds shall not, in any manner, be used for political activity or for the purpose of influencing governmental policy or action, except in recommending to the Secretary amendments to the advertising and promotion program provisions of this part.

(c) Agency funds may not be expended to solicit producer participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1108.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member in performance of his duties, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1108.120 Procedure for requesting refunds.

Any producer may apply for refund under the procedure set forth under paragraphs (a) through (c) of this section.

(a) Refund shall be accomplished only through application filed with the market administrator in the form prescribed by the market administrator and signed by the producer. Only that information necessary to identify the producer and the records relevant to the refund may be required of such producer.

(b) Except as provided in paragraph (c) of this section, the request shall be submitted within the first 15 days of December, March, June, or September for milk to be marketed during the ensuing calendar quarter beginning on the first day of January, April, July, and October, respectively.

(c) A dairy farmer who first acquires producer status under this part after the 15th day of December, March, June, or September, as the case may be, and prior to the start of the next refund notification period as specified in paragraph (b) of this section, may, upon application filed with the market administrator pursuant to paragraph (a) of this section, be eligible for refund on all marketings against which an assessment is withheld during such period and including the remainder of the calendar quarter involved. This paragraph also shall be applicable to all producers during the period following the effective date of this amending order to the beginning of the first full calendar quarter for which the opportunity exists for such producers to request refunds pursuant to paragraph (b) of this section.

§ 1108.121 Duties of the market administrator.

Except as specified in § 1108.116, the market administrator, in addition to other duties specified by this part, shall perform all the duties necessary to administer the terms and provisions of the advertising and promotion program including, but not limited to, the following:

(a) Within 30 days after the effective date of this amending order, and annually thereafter, conduct a referendum to determine representation on the Agency pursuant to § 1108.113(c).

(b) Set aside the amounts subtracted under § 1108.61(a)(4) into an advertising and promotion fund, separately accounted for, from which shall be disbursed:

(1) To the Agency each month, all such funds less any necessary amount held in reserve to cover refunds pursuant to paragraph (b)(2) and (3) of this section, and payments to cover expenses of the market administrator incurred in the administration of the advertising and promotion program (including audit).

(2) Refund to producers the amounts of mandatory checkoff for advertising and promotion programs required under authority of State law applicable to such producers, but not in amounts that exceed a rate of 5 cents per hundredweight on the volume of milk pooled by any such producer for which deductions were made pursuant to § 1108.61(a)(4).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1108.120. Such refund shall be computed at the rate of 5 cents per hundredweight of such producer's milk pooled for which deductions were made pursuant to § 1108.61(a)(4) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to paragraph (b)(2) of this section.

(c) Promptly after the effective date of this amending order, and thereafter with respect to new producers, forward to each producer a copy of the provisions of the advertising and promotion program (§§ 1108.110 through 1108.122).

(d) Make the necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1108.122 Liquidation.

In the event that the provisions of this advertising and promotion program are terminated, any remaining uncommitted funds applicable thereto shall revert to the producer-settlement fund of § 1108.70.

Signed at Washington, D.C., on August 27, 1973.

E. L. PETERSON,
Administrator,
Agricultural Marketing Service.

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PART III

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

■

ACCREDITATION OF TESTING LABORATORIES

Criteria and Procedures

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1907—ACCREDITATION OF TESTING LABORATORIES

Criteria and Procedure for Accrediting Testing Laboratories

Many of the occupational safety and health standards adopted, directly or through incorporation by reference, under the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 (29 U.S.C. 651)) or under the Contract Work Hours and Safety Standards Act (83 Stat. 96 (29 U.S.C. 333)) require that specified equipment, or installations, or products, be approved. The term "approved" is commonly defined in the standards by reference to some action of a nationally recognized testing laboratory or agency. For instance, 29 CFR 1910.308(d) provides that "An installation or equipment is acceptable to the Assistant Secretary of Labor and approved within the meaning of this Subpart S: (i) If it is accepted or certified, or listed, or labeled or otherwise determined to be safe by a nationally recognized testing laboratory, such as, but not limited to, Underwriters' Laboratories, Inc. and Factory Mutual Engineering Corp.; * * *" Again, 29 CFR 1926.32(a) defines "approved" as sanctioned, endorsed, accredited, certified, or accepted as satisfactory by a duly constituted and nationally recognized authority or agency."

Numerous questions have arisen with regard to these definitions. In brief, it appears that the services of some testing laboratories are refused for fear that the laboratories are not "nationally recognized." In addition, some employers are uncertain as to what is sanctioned or accredited or accepted by a "nationally recognized authority or agency."

The purpose of the accreditation regulation set out below is to remove the uncertainty, and to facilitate the enforcement of occupational safety and health standards requiring approval by providing an official register of testing laboratories accredited by the Department of Labor. Any equipment, or product, or installation tested, or listed, or certified, or labeled, or accepted, or otherwise determined to be safe by such an accredited laboratory would be deemed "approved," for purposes of the relevant definition.

Laboratories which desire to be accredited to test the equipment, installation, or products required to be approved by 29 CFR Part 1910, or 29 CFR Part 1926, are invited to apply after October 11, 1973.

Because of the need to give prompt relief to the testing laboratories whose services are being refused, and to facilitate compliance with occupational safety and health standards requiring "approval," the notice of proposed rulemaking and the public participation therein, otherwise required by 5 U.S.C. 553, are impracticable and contrary to the public interest, and good cause is found for adopting the new Part 1907 immediately. However, interested persons are invited to submit in writing, data, views, and arguments concerning the regulation to the Office of Standards, U.S. Department of Labor, Railway Labor Building, 400 First Street, NW., Washington, D.C. 20010, by October 31, 1973. The regulation will be reviewed in the light of any submissions received, and will be changed appropriately if the submissions should warrant it.

Accordingly, pursuant to section 8(g)(2) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1600 (29 U.S.C. 657)), section 107 of the Contract Work Hours and Safety Standards Act (83 Stat. 96 (29 U.S.C. 333) and Secretary of Labor's Order No. 12–71 (36 FR 8754), Chapter XVII of Title 29 of the Code of Federal Regulations is amended by adding a new Part 1907, reading as follows:

Subpart A—General

Sec.
1907.1 Purpose and scope.
1907.2 Definitions.

Subpart B—Accreditation

1907.10 Accreditation.
1907.11 Criteria of accreditation.
1907.12 Conditions of accreditation.

Subpart C—Procedures for Granting, Reviewing, Modifying, or Terminating Accreditation

1907.20 Granting of accreditation.
1907.30 Renewal of accreditation.
1907.35 Modification of accreditation.
1907.40 Revocation of accreditation.

AUTHORITY: Sec. 8, Pub. L. 91–596, 84 Stat. 1598 (29 U.S.C. 657); sec. 107, Pub. L. 91–54, 83 Stat. 96 (40 U.S.C. 333); Secretary of Labor's Order No. 12–71, 36 FR 8754.

Subpart A—General

§ 1907.1 Purpose and scope.

(a) This part prescribes criteria and procedures for the accreditation of laboratories which test for safety specified products, devices, systems, materials, or installations.

(b) Any product, device, system, material, or installation which is accepted, or classified, or certified, or listed, or labeled, or otherwise determined to be safe by a testing laboratory at a time when it is duly accredited shall be deemed "approved" for the purpose of the relevant definitions in Parts 1910 and 1926 of this chapter.

§ 1907.2 Definitions.

(a) For purposes of this part, unless the context clearly requires otherwise:

(1) "Accepted" means inspected and found by an accredited testing laboratory to conform to applicable test standards;

(2) "Accredited" means accredited by the Occupational Safety and Health Administration, Department of Labor, in accordance with this part;

(3) "Accreditation" means a written recognition that a named testing laboratory complies with the criteria specified in this part;

(4) "Certified" means that a product (i) either has been tested and found by an accredited testing laboratory to conform to applicable test standards, or to be safe for use in a specified manner, or (ii) is of a kind items of which are periodically inspected by an accredited testing laboratory, and (iii) in either case, bears a label, tag, or other record of certification;

(5) "Classified" means that a product has been tested, evaluated, and classified by an accredited testing laboratory with respect to a specific hazard, or limitation or condition of performance, and has affixed to it a controlled label, authorized by the laboratory, which indicates the nature of the coverage;

(6) "Labeled" means that a product has affixed to it a controlled label, symbol, or other certification mark of an accredited testing laboratory which makes periodic inspection of the production of the product and whose labeling indicates compliance with applicable test standards or tests to determine safe use in a specified manner;

(7) "Listed" means that a product is of a kind named in a list which (i) is published by an accredited testing laboratory which makes periodic inspections of the production of that kind of product, and (ii) states that samples of such products have been tested and found to conform to applicable test standards, and found to be safe for use in a specified manner;

(8) "Manufacturer" includes the person or organization that assembles or otherwise fabricates a product, and any other person or organization authorized to attach to a product his or its name, in lieu of a manufacturer's name or identifying mark;

(9) "OSHA" means Occupational Safety and Health Administration, U.S. Department of Labor;

(10) "Product" includes materials, devices, equipment, systems, installations, as well as completely assembled products;

(11) "To test" means to employ any means to determine compliance of a product with applicable test standards;

(12) "Test method" means the technical procedures and activities required in testing;

(13) "Test procedure" means a document which details the implementation of a test method; and

(14) "Test standard" means a document which specifies the performance and safety requirements for a product. Such requirements are utilized in the preparation of test procedures for testing a product. Some test standards prescribe test procedures.

Subpart B—Accreditation

§ 1907.10 Accreditation.

OSHA shall accredit any laboratory which demonstrates that it satisfies all of the requirements of §1907.11.

§ 1907.11 Criteria of accreditation.

In order to be accredited, a testing laboratory must meet all the following conditions:

(a) *General.*—(1) The laboratory maintains good housekeeping practices.

These practices are evident in office areas, test areas both inside and outside storage areas, and shipping and receiving areas.

(2) The laboratory maintains a current organization chart of the company, showing key personnel and the relationship between administration, operation, and quality control.

(3) The quality control structure and responsibilities of key personnel of the laboratory are described in a quality control manual(s). The manual is kept up-to-date and the procedures and requirements stated therein are complied with. The quality control manual(s) includes information with regard to receiving, handling, and shipping of products, testing procedures, calibration program, test reports, certifications, records and files, subcontracts, and the test standards files relating to areas of accreditation.

(b) *Master file.*—The laboratory maintains a master file containing all of the relevant primary OSHA standards and test standards applicable to the category of products for which the accreditation is sought. It contains information which provides a historical record of changes to these standards. A procedure is maintained to control the use of the master file and to insure that it is kept up-to-date.

(c) *Receiving, handling and shipping controls.*—Controls for receiving, handling, and shipping are in effect, and include procedures for:

(1) Visual examination of samples (upon receipt) for evidence of shipping damage;

(2) Periodic review of handling capabilities and maintenance of equipment;

(3) Storage of items while awaiting disposition with regard to the safety of personnel and degree of protection to preclude the possibility of damage; and

(4) Shipping and receiving data containing the date of receipt, name of manufacturer, and other necessary data to accurately record and positively identify samples as received at the laboratory.

(d) *Test procedures.*—(1) For each specified product to be tested, the laboratory uses written test procedures. These test procedures will be made available upon request to the Division of Safety Standards for examination and will serve as part of the laboratory evaluation by OSHA. The procedures shall be based on pertinent test standards such as those of American National Standards Institute (ANSI), National Fire Protection Association (NFPA), American Society for Testing and Materials (ASTM), Factory Mutual Research Corporation (FMRC) or Underwriters' Laboratories, Inc., and the specific test standard shall be identified in the application form for accreditation. Where no safety test standard exists, the laboratory shall prepare and submit both a written test standard and test procedure to the Division of Safety Standards for approval.

(2) Each test procedure includes the following information, when applicable:

(i) Nomenclature and identification of the test product;

(ii) Characteristics and design criteria to be inspected or tested, including values for acceptance or rejection;

(iii) Detailed steps and operations to be taken in sequence, including verifications to be made before proceeding;

(iv) A list of measuring equipment to be used, specifying range, type, accuracy, and test in which to be used.

(v) Layout and interconnection of test equipment and test items;

(vi) Hazardous situations or operations;

(vii) Precautions to comply with established laboratory safety requirements to ensure safety of personnel, and to prevent damage to test items and measuring equipment;

(viii) Environments and other conditions to be maintained, including tolerances;

(ix) Special instructions for inspection or testing (e.g. special handling of fragile test items);

(x) Special instructions for nonconformances, anomalous occurrences or results; and

(xi) Nomenclature and designation of applicable test standard on which the test procedure is based (for example; ANSI–A92.9–1969 or U.L. 408).

(e) *Data sheet.*—The laboratory maintains data sheets and test equipment lists for all inspections and tests performed, which are appropriate for the type and scope of inspection or test operation performed and sufficient in detail to provide for complete verification and evaluation of the operations and objectives. Data sheets include the following minimum information:

(1) Date of test, name of test and supervising engineer, nomenclature of test item and name of manufacturer;

(2) Unusual occurrences and results of each phase of testing thoroughly explained; and

(3) Signature of technician performing test.

(f) *Test equipment lists.*—A test equipment list is provided prior to the equipment utilized for that test. It includes the following information:

(1) The type and manufacturer of the equipment;

(2) The serial and/or model number of the equipment; and

(3) Date of last calibration.

(g) *Calibration program.*—The laboratory has established and utilizes a documented calibration program to assure the required degree of accuracy in measurements.

(1) The accuracy of all measurement instrument standards are traceable to primary standards maintained by the National Bureau of Standards of the United States of America or the national physical laboratory maintaining such standards in the country in which the laboratory is located. This traceability may be maintained through appropriate reference standards whose accuracy and stability have been certified by such agencies.

(2) The normal accuracy of the reference standard is at least four times as great as that of the instrument being calibrated. All equipment and reference standards are calibrated at least once a year, or in accordance with the instrument manufacturers' recommended schedules or the recommendations of the National Bureau of Standards.

(3) Documented evidence of calibrated standards and test equipment is maintained by the laboratory.

(i) If the laboratory utilizes an outside facility for calibration services, then the laboratory is responsible for the adequacy and quality of that service.

(ii) The laboratory maintain certifications with copies of calibration data and equipment lists.

(4) If equipment calibrations are performed in-house, the laboratory maintains written calibration procedures, and equipment folders containing routine maintenance information, values recorded during calibration, and standards equipment utilized for the calibration.

(5) Environmental factors critical to the calibration method are controlled during calibration processes and depend upon the physical property and degree of sensitivity of the instrument involved. The environmental factors may include temperature, humidity, cleanliness, vibration, voltage, radio frequency interference, and pressure. The requirement for these controlled environments are stated in each calibration procedure.

(6) The calibration program also contains written requirements and controls for permissible error limits, labeling and tagging of calibrated equipment, and state of the art measurements.

(h) *Laboratory organization, independence and competence.*—(1) The laboratory is legally constituted to perform testing and is independent of manufacturers and vendors in that:

(i) It has no managerial affiliation with producers, suppliers, or vendors;

(ii) It has a sufficient breadth of interest or activity, so that the loss or award of a specific contract to determine compliance of a product with the applicable test standard would not be a substantial factor in the financial well-being of the laboratory;

(iii) The employment security status of the personnel of the laboratory is free of influence or control of manufacturers, suppliers, and vendors; and

(iv) The laboratory is not engaged in promotion of the product.

(2) The laboratory can demonstrate to the OSHA representatives a level of competence and experience in the area of testing for which it is seeking accreditation or in a comparable test area, in the following manner:

(i) The technical director or the equivalent personnel of the laboratory, in conjunction with other personnel, is capable of orally presenting the laboratory's capabilities, and has a working knowledge of the applicable test standards and methods for approval of items for which the laboratory is seeking accreditation;

(ii) The laboratory can demonstrate that it is a working laboratory which has performed testing in the field of endeavor or in a comparable field of testing for which it is seeking accreditation; and

(iii) The laboratory is prepared to submit a minimum of three customer references and three test reports.

(3) The laboratory has an acceptable degree of financial security. This may be shown by means of a copy of its most recently audited financial statement, and a list of bank and credit references.

(4) The laboratory has the necessary test and inspection equipment to test the products for which it is seeking accreditation. If the laboratory utilizes a manufacturer's in-house laboratory or subcontracts for certain tests, it assumes the responsibility for the results of all testing.

(5) The laboratory maintains an adequate followup inspection system which includes means of inspecting and/or testing an appropriate sampling of a manufacturer's production at appropriate intervals (based on volume, complexity of manufacturing process, intended use, extent of field complaints, etc.) by factory inspections, field surveys, and other forms of audit procedures.

(i) *Facilities and equipment.*—The laboratory has available all facilities and test equipment relevant to the product for which accreditation is being requested. Such equipment and facilities are capable of uniformly producing and controlling all the test conditions specified in the applicable test standards. A list of such facilities and equipment is made available to the OSHA survey team, prior to the inspection of such facilities and equipment.

(j) *Personnel.*—(1) The laboratory is under the technical direction of a graduate, registered professional engineer or scientist, and is staffed by an adequate number of personnel qualified by training and experience to conduct tests and analyze data to assure the accuracy, performance, and timeliness of testing and followup inspections. The personnel has a working knowledge of the applicable test standards and test methods.

(2) There is a technical or scientific director (chief engineer) who is responsible for program schedules, manpower control and overall supervision of all test functions and personnel and who has at least a Bachelor of Science or equivalent college degree, and five (5) years of experience in fields which he directs, and is a registered professional engineer or scientist.

(3) There is a technical or scientific supervisor (department manager) who is responsible for the supervision and performance of engineers and technicians within a group, and the supervisory control of planning and testing within that group, and who has at least a Bachelor of Science or equivalent technical college degree, and two (2) years of experience in his field of responsibility.

(4) There is an engineering or scientific employee, who is responsible for the technical adequacy and quality of testing performed either by himself or under his supervision, and of the performance of technicians assigned to him, and who has at least a Bachelor of Science degree or equivalent technical college degree, and on-the-job-training.

(5) There is a technical staff responsible for tasks assigned in the performance of test functions and/or for assistance to the engineering or scientific employee, who have at least a high school diploma or equivalent and on-the-job training or trade school training.

§ 1907.12 Conditions of accreditation.

The following conditions shall be part of every accreditation:

(a) *Evidence of accreditation.*—The accreditation of any testing laboratory shall be evidenced by a letter of accreditation from OSHA.

(b) *Period of accreditation.*—The accreditation of a testing laboratory shall be valid for a period of two years, unless terminated before or renewed after the expiration of the period. The period of validity shall be stated in the letter of accreditation.

(c) *Maintenance of qualifying conditions.*—Every accredited testing laboratory shall continue to satisfy all the conditions specified in § 1907.11 during the period of the accreditation.

(d) *OSHA identification.*—(1) The accredited laboratory shall require its OSHA identification to appear on every product which it has found to comply with the appropriate test standards. The OSHA identification shall be assigned by OSHA and shall include the laboratory's own distinctive label or trademark. It:

(i) Shall be coded or otherwise designed as to aid in detection of counterfeiting or other forms of misuse;

(ii) Shall not be readily transferable from one product to another;

(iii) Shall be directly applied to each unit of production in the form of labels or markings suitable for the environment and use of the product. If the physical size of a unit does not permit direct application, such a label or marking may be attached to the smallest package in which the unit is marketed;

(iv) Shall include either the proprietary name, certification mark, or registered trademark of the laboratory; and

(v) Shall include the name of the product classification, where this is not completely obvious.

(2) Determination of noncompliance or revocation of authority to use the OSHA identification mark for a product shall be the responsibility of the accredited laboratory. Such actions shall not prejudice resubmission of the product after deficiencies have been corrected. If the manufacturer defaults in its obligations with respect to its approved products, the laboratory may, at its discretion, terminate its approval by written notice to the manufacturer and to OSHA.

(3) The laboratory shall establish and implement appropriate procedures to prevent the misuse of its OSHA identification mark, including procedures for:

(i) Removal of the OSHA identification mark from a product found at the factory not to comply;

(ii) Recall of nonconforming products, with notice of the recall to OSHA, the manufacturer of the affected product, and the public; and

(iii) Return of separable OSHA identification marks or labels, and confirmation of obliteration or destruction of other means of directly applying the identification mark, when approval of a product is withdrawn or discontinued.

(e) *Product acceptance.*—(1) A test report shall be made to OSHA by the accredited laboratory for each submission of a product that has been tested and found to comply with applicable test standards. The test report shall be signed by an authorized representative of the laboratory, who is technically competent, responsible for the quality and accuracy of the work, and whose credentials have been previously presented to OSHA.

(i) A copy of the report shall also be forwarded to the manufacturer to serve as notification that the product complies with the applicable test standards.

(ii) The laboratory shall retain a copy of the report on file with the data accumulated during the actual testing for at least five (5) years.

(iii) The test report shall:

(A) Specify the catalog or model numbers covered by the test investigation;

(B) Specify the differences in various models;

(C) Report the results of all tests performed;

(D) Incorporate a signed statement that the product covered by the test Report complies with the applicable test standards; and

(E) Include a copy of the test procedure.

(2) A list of all products which have been approved by an accredited laboratory shall be published by that laboratory, and a copy forwarded to OSHA, on at least a quarterly basis, and shall be consolidated on an annual basis.

(3) The laboratory shall perform followup testing or inspection of the production of products which it has approved. Contractual arrangements regarding these services shall be between the laboratory and the manufacturer and shall limit the application of the OSHA identification mark only to those products which are in compliance with the applicable test standards. As part of the followup procedures, the laboratory shall:

(i) Conduct market surveys to countercheck approved products;

(ii) Investigate alleged field failures of approved products to assess adequacy of safety test standards, acceptance testing, and continuing product compliance;

(iii) Select and evaluate production samples of the products to confirm validity of prototype testing before issuances of approval notice;

(iv) Conduct a production compliance inspection of products of a manufacturer being approved for the first time, before authorizing release of products bearing the OSHA identification mark; and

(v) File a followup report to OSHA. Such a report shall be deemed a test report within the meaning of paragraph (e)(1) of this section.

(4) Authorization to apply the OSHA identification mark to approved products shall be the function of the accredited laboratory. Testing of the product, inspection at place of manufacture, observation of, or participation in, in-house testing, consulting, and any other procedures necessary shall be employed by the accredited laboratory to assure that the products comply with appropriate test standards.

(f) *Recordkeeping.*—(1) The accredited laboratory shall maintain the following records:

(i) Test reports on all products tested;

(ii) All data generated during testing;

(iii) Records supporting compliance with calibration program;

(iv) Equipment lists;

(v) Receiving and shipping records;

(vi) OSHA accreditation correspondence (application, letter of accreditation, etc.);

(vii) Organization chart and personnel files, including list of all personnel job responsibility description and job training program;

(viii) Financial records;

(ix) Quality control manual(s); and

(x) A master file containing all the OSHA regulations and standards referenced therein which are applicable to the product for which accreditation has been granted.

(2) The minimum period of retention for the records shall be five (5) years, except that shipping and receiving records need be kept only for a minimum of one (1) year.

(g) *Reports.*—(1) The accredited laboratory shall furnish OSHA an annual report detailing the extend of its activities for the year, and covering the products which it has approved during the year. The report shall include information concerning:

(i) The number of factory inspections;

(ii) Field surveys;

(iii) Laboratory check tests;

(iv) Extent of examination or testing of products;

(v) Calibration program;

(vi) List of approved products;

(vii) List of recalled products; and

(viii) Extent of audit of manufacturer's quality control procedures.

(2) The accredited laboratory shall also furnish OSHA a quarterly report which shall inclule the following:

(i) List of approved products.

(ii) List of recalled products.

(h) *Inspection of laboratories.*—(1) The accredited testing laboratory shall grant OSHA the right to conduct unscheduled inspections of the laboratory in order to assure continued compliance with the requirements for accreditation, and shall cooperate in the conduct of the inspections.

(2) The laboratory upon request by OSHA shall verify, at its expense, any data which it has generated.

(3) In order to compare and verify various testing techniques and interpretation of requirements, an accredited laboratory shall, at its own expense, participate in periodic reference sample test programs under the direction of OSHA.

(i) *Other conditions.*—The accredited testing laboratory shall comply with any other term or condition stated in its letter of accreditation.

Subpart C—Procedures for Granting, Reviewing, Modifying, or Terminating Accreditations

§ 1907.20 Granting of accreditation.

(a) *Application.*—Any testing laboratory seeking accreditation may file an application therefor with the Division of Safety Standards, Office of Standards, OSHA, U.S. Department of Labor, Railway Labor Building, 400 First Street NW., Washington, D.C. 20001. The application for accreditation must be made on appropriate forms available at the Division of Safety Standards.

(b) *Action on applications.*—(1) *Defective application.*—If an application for accreditation does not contain sufficient information with regard to all the criteria of accreditation the Division of Safety Standards may deny the application. Notice of a denial shall be given to the applicant and shall state all the deficiencies of the application. A denial of an application shall be without prejudice to the submission of a new or amended application.

(2) *Adequate applications.*—If an application is not denied pursuant to paragraph (b)(1) of this section the Division shall acknowledge the receipt of the application and shall make arrangements for an onsite survey of the applicant's laboratory facilities at a mutually agreeable time.

(3) *Onsite survey.*—The Division of Safety Standards shall perform an onsite survey of the applicant's laboratory facilities for the purpose of verifying the representations of the application concerning the criteria of accreditation. The Division shall make a complete written report of the survey and shall maintain it in an appropriate file containing the application, the report and any other writing concerning the application.

(4) *Decision.*—(i) If the Division of Safety Standards is persuaded that the applicant satisfies all the criteria of accreditation it shall send to the applicant a letter of accreditation. The applicant shall keep the letter with the other records required by § 1907.12(f).

(ii) If the Division is not persuaded that the applicant satisfies all the criteria of accreditation it shall give the applicant written notice of a proposal to deny the application. The notice shall contain a statement of all the reasons for the proposed denial and shall notify the applicant that:

(A) The proposal to deny the application is based on the information in the relative application file;

(B) All the papers in the file are available to the applicant for inspection and copying;

(C) The applicant may contest the Division's reasons for the proposed denial, by giving to the Division prompt notice of its contentions;

(D) The applicant may request an opportunity to submit oral or written evidence in support of its contentions, and also to conduct such cross-examination as may be necessary for a full and true disclosure of the relevant facts; and that

(E) The application will be deemed denied, on a stated date, unless, prior to that date, the Division receives a notice of contest.

(iii) If a proposal to deny an application is contested, the Division shall make the arrangements necessary to disclose to the applicant all the facts and arguments on which the proposed denial of the application is based and to afford the applicant a full opportunity to refute those facts and arguments and to present evidence in support of its own contentions. To the maximum extent consistent with fairness the disclosures by the Division and the refutations and presentations of a contesting applicant shall be in written form and shall be made part of the application file. Any oral examination and cross-examination shall be recorded and made part of the application file.

(iv) The Division shall make a decision on the application and give notice of it to the applicant. The decision shall include a statement of findings and conclusions and the basis therefor on all the material issues presented. Findings and conclusions on issues of fact must be based solely on the evidence in the application file.

(5) *Review.*—An applicant aggrieved by a decision of the Division of Safety Standards may obtain review of the decision by filing a written application for review with the Administrator of OSHA within 20 days of receipt of the notice of the decision. The review shall be on the basis of the application file. The Administrator may affirm, modify, or reverse the decision of the Division or remand it to the Division for further proceedings.

§ 1907.30 Renewal of accreditation.

(a) *Applications.*—An accredited testing laboratory may renew its accreditation by filing with the Division of Safety Standards a completed renewal form, not less than 30, nor more than 60, days before the expiration date of its current accreditation.

(b) *Effect of application.*—When an accredited testing laboratory has filed a timely and sufficient renewal form, its current accreditation does not expire until the renewal application has been finally determined.

(c) *Action on applications.*—An application for renewal of accreditation may be granted only if the Division of Safety Standards is persuaded that the applicant continues to satisfy all the criteria of accreditation set forth in § 1907.11. As far as practicable, an application for

renewal of accreditation shall be processed in accordance with § 1907.20 except that the Division may waive its right to conduct an onsite survey.

§ 1907.35 Modification of accreditation.

(a) *Termination or limitation of accreditation.*—An accredited testing laboratory may voluntarily terminate its accreditation, either in its entirety or with respect to some of the products covered by the accreditation, by giving written notice of its intent to the Division of Safety Standards. The notice shall state the date as of which the termination is to take effect. As of the effective date of the termination, the laboratory may no longer use, nor authorize the use of, its OSHA identification labels or markings for the products involved.

(b) *Enlargement of accreditation.*—An accredited testing laboratory may apply to the Division of Safety Standards for an enlargement of its current accreditation to cover additional products. The application shall be processed and acted on in accordance with the applicable provisions of § 1907.20, except that the Division may waive the right to conduct an onsite survey.

§ 1907.40 Revocation of accreditation.

(a) *Grounds for revocation.*—The Division of Safety Standards may revoke an accreditation in case of (1) material misrepresentation in the application for the accreditation or its enlargement, or its renewal, or (2) failure to comply with a condition of the accreditation.

(b) *Procedure for revocation.*—(1) Except in cases of willfulness or those in which the safety of employees requires otherwise, no accreditation may be suspended or revoked unless before the institution of revocation proceeding the accredited laboratory has been given (1) written notice by the Division of Safety Standards of the facts or conduct which are believed to warrant the revocation or suspension, and (2) a reasonable opportunity to demonstrate or achieve compliance with the applicable requirements.

(2) The procedure for suspension or revocation of an accreditation shall conform, to the extent practicable, to the procedure for accreditation prescribed in § 1907.20(b) (4) and (5).

Effective date.—This Part 1907 shall become effective on October 11, 1973.

Signed at Washington, D.C. this 4th day of September 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-19042 Filed 9-10-73;8:45 am]