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WEDNESDAY, SEPTEMBER 12, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 176

Pages 25155–25420

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September 12, 1973—Pages 25155–25420

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federal register

Area Code 202 Phone 523–5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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This is a listing of public bills enacted by Congress and approved by the President, together with the law number, the date of approval, and the U.S. Statutes citation. Subsequent lists will appear every Wednesday in the FEDERAL REGISTER. Copies of the laws may be obtained from the U.S. Government Printing Office.

The President vetoed H.R. 7935, Fair Labor Standards Amendments of 1973. Message dated Sept. 6, 1973; Weekly Compilation of Presidential Documents, Vol. 9, No. 36.

Presidential Documents

Title 3—The President

EXECUTIVE ORDER 11738

Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.), particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91–604), and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500), it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act (hereinafter referred to as "the Air Act") and the Federal Water Pollution Control Act (hereinafter referred to as "the Water Act").

SEC. 2. *Designation of Facilities.* (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as "the Administrator") shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act or section 309(c) of the Water Act. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans.* (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in

whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations.* The Federal Procurement Regulations, the Armed Services Procurement Regulations, and, to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations.* The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance.* The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of his agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement.* The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress.* (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted

for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions.* The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability.* This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity.* Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971, and section 306 of the Air Act.

SEC. 12. *Order Superseded.* Executive Order No. 11602 of June 29, 1971, is hereby superseded.

Richard Nixon

THE WHITE HOUSE,
September 10, 1973.

[FR Doc.73-19498 Filed 9-10-73; 4:35 pm]

Rules and Regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

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 Special Assistant to the Deputy Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations) is excepted under Schedule C.

Effective on September 12, 1973, §213.3305(a)(49) is added as set out below.

§ 213.3305 Treasury Department.

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

(49) One Special Assistant to the Deputy Assistant Secretary (Enforcement, Tariff and Trade Affairs, and Operations).

* * * * *

(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.73-19385 Filed 9-11-73;8:45 am]

PART 213—EXCEPTED SERVICE

Department of Housing and Urban Development

Section 213.3384 is amended to show that one additional position of Staff Assistant to the Assistant Secretary for Housing Management, and one position of Executive Assistant to the Assistant Secretary for Policy Development and Research are excepted under Schedule C.

Effective on September 12, 1973, § 213.3384(c)(5) is amended and § 213.3384(i) is added as set out below.

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(c) *Office of the Assistant Secretary for Housing Management.* * * *

(5) Four Staff Assistants to the Assistant Secretary.

* * * * *

(i) *Office of the Assistant Secretary for Policy Development and Research.*

(1) One Executive Assistant 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.73-19386 Filed 9-11-73;8:45 am]

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTION, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Inspection and Certification

A proposal to revise the Regulations Governing Inspection and Certification was published in the FEDERAL REGISTER of May 7, 1973 (38 FR 11348). Interested persons were allowed until July 5, 1973, to submit written data, views, or arguments for consideration in connection with the proposal.

These regulations are issued under the authority of the Agricultural Marketing Act of 1946 (Sec. 205, 60 Stat. 1087 et seq., as amended; 7 U.S.C. 1621 et seq.). This act authorizes official inspection and certification of processed fruits and vegetables, processed products thereof, and certain other processed food products.[1]

Such inspection and certification is voluntary and is made available upon request of financially interested parties and upon payment of a fee. The Act requires such fees to be reasonable and, as nearly as possible, to cover the cost of rendering the service.

Statement of consideration leading to the revision of regulations.—Comments were received from seven sources—individuals, the food processing industry, trade associations, and related interests.

One comment, from Topco Associates, Inc., expressed opposition to permitting the use of a U.S. grade statement, such as, "U.S. Grade A", on products inspected under a lot inspection program. Topco's objection indicated their concern that the product might not be graded, and that proper sanitation practices might not be observed by the plant. Topco's objection, while pertinent, is not reflected in these revisions because:

(1) Product graded on a lot basis may use a U.S. grade statement only if it has been inspected and certified by a USDA inspector as meeting the labeled grade; and

(2) To use a U.S. grade label on a lot inspected product, a plant must be surveyed and meet the same sanitation standards as plants operating under continuous inspection. The plants will be checked periodically and must be maintained in a sanitary manner.

The American Frozen Food Institute stated they had no adverse comments to offer.

In its comments, the California Date Administrative Committee requested that the proposed definition for "lot inspection" be expanded to recognize all locations at which a lot inspection could take place. The point is well taken and is included in the final document by an expanded definition of "lot". The Committee requested that the (new) requirement to separately mark or identify specific portions of lots that are to be inspected and certified separately from the whole lot, not be included. This point was not accepted because, for years, AMS has issued inspection certificates on small segments of large lots that have been inspected and certified. This has permitted the certification of small shipments made from the lot without restriction as to a specific code or days production. The certification indicates all of the codes in the lot, pertinent product information, the grade of the lot as a whole, and the number of cases involved. It is not AMS' intention to alter this policy. The requirement to separately mark and identify portions of a lot for certification will apply only when an applicant stipulates that a specific code or a specific portion of a lot is to be certified. The Committee's request to exclude plant sanitation surveys and inspection from inspection contracts between AMS and administrative agencies is not acceptable to AMS and is, therefore, not incorporated, as such, into the revised Regulations. The section caption has been slightly revised to clarify the scope of the sanitation requirements. While the clarification does not specifically include or exclude the AMS sanitation criteria in contracts with administrative agencies, neither does it prejudice the Administrator's prerogative to stipulate the sanitation criteria in contracts with administrative agencies.

The other comments received either concurred in the proposal, and/or addressed themselves to areas outside the purview of the regulations.

A few editorial changes have been made which either relocate materials into more logical sections of the regulations, or clarify the text of the revisions. No substantive changes have been made to the proposed revisions.

The revisions to the Regulations Governing Inspection and Certification contained in this subpart, and reprinted as

[1] Among such other processed food products are the following: Honey, molasses, except for stockfeed; nuts and nut products, except oil; sugar (cane, beet, and maple); strups (blended), except from grain; tea; cocoa; coffee; spices; condiments.

follows, shall become effective October 1, 1973.

Dated September 5, 1973.

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

The revisions are as follows:

1. Section 52.1 is revised to read as follows:

§ 52.1 Administration of regulations.

* * * * *

(b) All services provided under the regulations of this part, including the hiring and licensing of inspection, grading, and sampling personnel shall be conducted without discrimination because of race, color, sex, religion, or national origin.

2. Section 52.2 is revised as follows:

§ 52.2 Terms defined.

* * * * *

Approved plant.—See "Plant, approved".

Case or shipping case.—"Case" or "shipping case" means a unit consisting of a given number of primary containers of the same size, the number and arrangement per unit conforming to customary trade practice. For products not physically assembled into a shipping case (i.e. stacked bright) *case* means simulating the containers in such lot into a unit consisting of the same number of primary containers corresponding to customary trade practice (or corresponding to the unit as defined above).

* * * * *

Class.—See "Grade".

* * * * *

Grade or class.—"Grade" or "class" designates a level or rank of quality.

Grader.—See "Inspector".

Inspection service.—[See *Inspection service, general,* below.]

Inspection service, general. * * *

(d) Performance by an inspector of any related services such as observing the preparation of the product from its raw state through each step in the entire process; observing conditions under which the product is prepared, processed, and packed; or observing plant sanitation as a prerequisite to the inspection of the processed product, either on a continuous or periodic basis, or checkloading the inspected processed product in connection with the distribution or marketing thereof.

Inspection service; types of.—(a) "Lot inspection" means the inspection and grading of specific lots of processed fruits and vegetables which may be located in plant warehouses, commercial storage, railway cars, trucks, or any other conveyance, storage facility, or other location consistent with industry practices. Generally under "lot inspection" the inspector does not have knowledge of conditions and practices under which the product is packed and his grading is limited to examination of the finished processed product only.

(b) "Continuous inspection" is the conduct of inspection and grading services in an approved plant whereby one or more inspector(s) are present at all times the plant is in operation to make in-process checks on the preparation, processing, packing, and warehousing of all products under contract and to assure compliance with sanitary requirements.

(c) Pack certification is the conduct of inspection and grading services in an approved plant whereby one or more inspector(s) perform inspection and grading services on designated lots. The inspector(s) may make in-process checks on the preparation and processing of products under contract but is not required to be present at all times the plant is in operation.

Inspector or grader.—"Inspector" or "grader" means * * *

Inspector in charge.—"Inspector in Charge" means any inspector designated on a plant working shift or in a field office laboratory as the inspector in charge of the inspection work when authorized by the Administrator to act in that capacity.

Inspector, subordinate.—"Subordinate inspector" means any inspector assigned to a plant or field office to work under the direction of an inspector-in-charge.

Inspector's aide.—"Inspector's aide" means any employee of the Department authorized to perform a limited number and type of duties under the close supervision of an inspector.

* * * * *

Lot.—"Lot" means any number of containers of the same size and type which contain a processed product of the same type and style located in the same warehouse or conveyance, and which is available for inspection service at any one time: *Provided,* That the number of containers comprising a lot may not exceed the maximum number specified for a sample size of 60 as outlined in the sampling plans in § 52.38: *And further provided,* That (a) if the applicant requests a separate inspection certificate covering a specific portion of a lot, such portion must be separately marked or otherwise identified in such a manner as to permit sampling, inspection, and certification of such portion as a separate lot; and (b) under in-plant (in-process) inspection, the inspector is authorized to limit the number of containers of a processed product that may be included in a lot to the production of a single working shift when such production is not in compliance with specified requirements.

Plant.—"Plant" means the premises, buildings, structure, and equipment (including, but not being limited to machines, utensils, vehicles, and fixtures located in or about the premises) used or employed in the preparation, processing, handling, transporting and storage of fruits and vegetables, or the processed products thereof.

Plant, approved.—"Approved plant" means any plant in which the facilities, sanitation, and methods of operation have been surveyed and approved for specific product(s) by the Administrator as suitable and adequate for inspection or grading service in accordance with §§ 52.81 through 52.83.

* * * * *

Sample unit.—"Sample unit" means a container and/or its entire contents, a portion of the contents of one or more containers or other unit of commodity, or a composite mixture of a product used for inspection.

* * * * *

§§ 52.11, 52.25 [Amended]

3. In §§ 52.11 and 52.25, the reference to § 52.48 is changed to read § 52.42.

4. Section 52.38 is revised to read:

§ 52.38 Sampling plans and procedures for determining lot compliance.

(a) Except as otherwise provided for in this section in connection with in-plant inspection and unless otherwise approved by the Administrator, samples shall be selected from each lot in the exact number of sample units indicated for the lot size in the applicable sampling plans: *Provided,* That at the discretion of the inspection service the number of sample units selected may be increased to the exact number of sample units indicated for any one of the larger sample sizes provided for in the appropriate plans.

(b) Under the sampling plans with respect to any specified requirement:

(1) If the number of deviants (as defined in connection with the specific requirement) in the sample does not exceed the acceptance number prescribed for the sample size, the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the sample exceeds the acceptance number prescribed for the sample size, the lot fails the requirement.

(c) If in the conduct of on-line in-plant inspection of a product covered by a grade standard which does not contain sampling plans, the sample is examined before the lot size is known and the number of sample units exceeds the prescribed sample size for such lot, but does not equal any of the prescribed larger sample sizes, the lot may be deemed to meet or fail a specific requirement in accordance with the following procedure:

(1) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample does not exceed the acceptance number of the next smaller sample size, the lot meets the requirement;

(2) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample equals the acceptance number prescribed for the next larger sample size, additional sample units shall be selected to increase the sample to the next larger prescribed sample size;

(3) If the number of deviants (as defined in connection with the specific requirement) in the nonprescribed sample

exceeds the acceptance number prescribed for the next larger sample size, the lot fails the requirement.

(d) In the conduct of on-line in-plant inspection, sampling may be performed on a time interval basis. The sampling frequency shall be specified in an applicable grade standard or other procedural instruction approved by the Administrator.

(e) In the event that the lot compliance determination provisions of a standard or specification are based on the number of specified deviations instead of deviants the procedures set forth in this section may be applied by substituting the word "deviation" for the word "deviant" wherever it appears.

(f) Sampling plans referred to in this section are those contained in Tables I, II, III, IV, and V and (g)(1) and (g)(2) of this section which follow or any other plans which are applicable. For processed products not included in these tables, the minimum sample size shall be the exact number of sample units prescribed in the table, container group, and lot size that, as determined by the inspector, most closely resembles the product, type, container, size and amount of product to be sampled.

(g)(1) *Sampling plan for dried figs.*—For each 10,000 pounds (or fraction of 10,000 pounds) of product—6 sample units of approximately 35 figs each accumulated into 1 composite (at least 200 figs). Each composite will be examined separately, and all must meet the requirement for the U.S. Grade.

(2) *Sampling plan for dried fruits other than dates and figs.*—For each 15,000 pounds (or fraction of 15,000 pounds) of product—sample units of approximately 16 ounces each accumulated into 1 composite (at least 100 ounces). Each composite will be examined separately and all must meet the requirements for the U.S. Grade.

SAMPLING PLANS AND ACCEPTANCE LEVELS

Table I.—Canned or similarly processed fruits, vegetables, and products containing units of such size and character as to be readily separable

Container size group		Lot size (number of containers) [1]						
Group 1: Any type container of a volume not exceeding that of a No. 303 size can.	3,000 or less...	3,001-12,000	12,001-39,000	39,001-84,000	84,001-145,000	145,001-228,000	228,001-336,000	336,001-480,000
Group 2: Any type of container of a volume exceeding that of a No. 303 size can but not exceeding that of a No. 3 cylinder size can.	1,500 or less...	1,501-6,000	6,001-19,500	19,501-42,000	42,001-72,500	72,501-114,000	114,001-168,000	168,001-240,000
Group 3: Any type of container of a volume exceeding that of a No. 3 cylinder size can, but not exceeding that of a No. 12 size can.	750 or less.....	751-3,000	3,001-9,750	9,751-21,000	21,001-36,250	36,251-57,000	57,001-84,000	84,001-120,000
Group 4: Any type of container of a volume exceeding that of a No. 12 size can.	Convert to equivalent number of 6 pound net weight containers and use group 3							
Lot inspection:								
Sample size (number of sample units) [2]..	3	6	13	21	29	38	48	60
Acceptance number.....	0	1	2	3	4	5	6	7
On-line in-plant inspection:								
Sample size (number of sample units) [2]..	3	6	6	13	21	29	38	48
Acceptance number.....	0	1	1	2	3	4	5	6

[1] Under on-line in-plant inspection, a 5 percent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.

[2] When a standard sample unit size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. Group 4 approximately 2 pounds of product. When determined by the inspector that a 2-pound sample unit is inadequate, a larger sample unit may be substituted.

Table II.—Frozen or similarly processed fruits, vegetables, and products containing units of such size and character as to be readily separable

Container size group		Lot size (number of containers) [1]						
Group 1: Any type of container of 1 pound or less net weight.	2,400 or less...	2,401-9,600	9,601-31,200	31,201-67,200	67,201-116,000	116,001-182,400	182,401-268,800	268,801-384,000
Group 2: Any type of container over 1 pound but not over 2½ pounds net weight.	1,200 or less...	1,201-4,802	4,801-15,600	15,601-33,600	33,601-58,000	58,001-91,200	91,201-134,400	134,401-192,000
Group 3: Any type of container over 2½ pounds.	Convert to equivalent number of 2½-pound containers and use group 2							
Lot inspection:								
Sample size (number of sample units) [2]..	3	6	13	21	29	38	48	60
Acceptance number.....	0	1	2	3	4	5	6	7
On-line in-plant inspection:								
Sample size (number of sample units) [2]..	3	6	6	13	21	29	38	48
Acceptance number.....	0	1	1	2	3	4	5	6

[1] Under on-line in-plant inspection, a 5% overrun in number of containers may be permitted by the inspector before going to the next larger sample size.

[2] When a standard sample unit size is not specified in the U.S. standards, the sample units for the various groups are as follows: Groups 1 and 2—1 container and its entire contents. Group 3 containers up to 10 pounds—approximately 3 pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit of 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds.

Table III.—Canned, frozen, or otherwise processed fruits, vegetables, related products of a comminuted, fluid or homogeneous state

Container size group		Lot size (number of containers) [1]						
Group 1: Any type of container of 1 pound or less.	4,500 or less.....	4,501-18,000	18,001-58,500	58,501-126,000	126,001-217,000	217,001-342,000	342,001-504,000	504,001-720,000
Group 2: Any type of container exceeding 1 pound but not exceeding 3 pounds.	3,000 or less.....	3,001-12,000	12,001-39,000	39,001-84,000	84,001-145,000	145,001-228,000	228,001-336,000	336,001-480,000
Group 3: Any type of container exceeding 3 pounds but not exceeding 10 pounds.	1,500 or less.....	1,501-6,000	6,001-19,500	19,501-42,000	42,001-72,500	72,501-114,000	114,001-168,000	168,001-240,000
Group 4: Any type of container exceeding 10 pounds.	Convert to equivalent number of 6-pound containers and use group 3							
Lot inspection:								
Sample size (number of sample units) [2]..	3.....	6	13	21	29	38	48	60
Acceptance number.....	0.....	1	2	3	4	5	6	7
On-line in-plant inspection:								
Sample size (number of sample units) [2]..	3.....	6	6	13	21	29	38	48
Acceptance number.....	0.....	1	1	2	3	4	5	6

[1] Under on-line in-plant inspection, a five percent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.

[2] When a standard sample unit size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1, 2, and 3—1 container and its entire contents. A smaller sample unit may be substituted in group 3 at the inspector's discretion. Group 4—approximately 16 ounces of product. When determined by the inspector that a 16-ounce sample unit is inadequate, a larger sample unit may be substituted.

Table IV.—Dehydrated (low moisture) fruits and vegetables

Container size group	Lot size (number of containers)[1]							
Group 1: Any type of container of 1 pound or less, net weight.	1,800 or less	1,801–7,200	7,201–23,400	23,401–50,400	50,401–87,000	87,001–136,800	136,801–201,600	201,601–288,000
Group 2: Any type of container over 1 pound but not over 5 pounds net weight.	600 or less	601–2,400	2,401–7,800	7,801–16,800	16,801–29,000	29,001–45,600	45,601–67,200	67,201–96,000
Group 3: Any type of container over 5 pounds.	Convert to equivalent number of 5-pound containers and use group 2							
Sample size [2]	3	6	13	21	29	38	48	60
Acceptance number	0	1	2	3	4	5	6	7

[1] Under on-line in-plant inspection, a 5 percent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.
[2] When a standard sample unit size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Group 1—1 container and its entire contents. Groups 2 and 3—1 container and its entire contents or a smaller sample unit when determined by the inspector to be adequate.

Table V.—Dates

Container size group	Lot size (number of containers) [1]							
Group 1: Any type of container of 1 pound or less net weight.	2,400 or less	2,401–9,600	9,601–31,200	31,201–67,200	67,201–116,000	116,001–182,400	182,401–268,800	268,801–384,000
Group 2: Any type of container over 1 pound but not over 5 pounds net weight.	800 or less	801–3,200	3,201–10,400	10,401–22,400	22,401–38,667	38,668–60,800	60,801–89,600	89,601–128,000
Group 3: Any type of container over 5 pounds.	Convert to equivalent number of 5-pound containers and use group 2.							
Sample size [2]	3	6	13	21	29	38	48	60
Acceptance number	0	1	2	3	4	5	6	7

[1] Under in-line in-plant inspection, a five percent overrun in number of containers may be permitted by the inspector before going to the next larger sample size.
[2] Samples consist of 25-ounce sample units, each of which may be a composite of product from a sufficient number of individual containers from 1 case to make up the weight. When previous inspection results from a particular source so indicate, 1-composite sample of 25 ounces of product may be formed from the 3-sample units in the smallest sample size, and 2-composite samples of 25 ounces each may be formed from the 6-sample units in the next to smallest sample size. Sample units in larger sample sizes may not be further composited.

5. Section 52.48 is added and reads:

§ 52.48 Charges for plant survey and inspection.

(a) The fees to be charged for a plant survey and inspection shall be at the rates prescribed in §§ 52.42 and 52.51.

(b) Fees charged for plant survey and inspection under section 52.42 of this part will be credited back to plants entering into an inspection contract with AMS within 60 days of the survey.

6. Section 52.52 is amended to read as follows:

§ 52.52 Charges for inspection services on a contract basis.

(a) Irrespective of fees and charges prescribed in foregoing sections, or in this section, the Administrator may enter into contracts with applicants to perform continuous inspection services or other types of inspection services pursuant to the regulations in this part and other requirements as prescribed by the Administrator in such contract, and the charges for such inspection service provided in such contracts shall be on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such inspection service including an appropriate overhead charge to cover as nearly as practicable administrative overhead expenses as may be determined by the Administrator.

Irrespective of fees and charges prescribed in the foregoing sections, or in this section, the Administrator may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing agreement or a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such inspection service including an appropriate overhead charge to cover as nearly as practicable administrative overhead expenses as may be determined by the Administrator. Likewise, the Administrator may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with an administration of a similar program operated pursuant to the laws of any State.

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant at least once each 28 days for all hours worked with a minimum of 40 hours per week, holiday pay and night differential for each inspector and inspector's aide assigned to perform the inspection services in accordance with the following schedules:

(1) For personnel assigned on a year-round basis:

Inspector(s)-in-charge—$9.65 per hour.
Subordinate inspector(s)—$7.00 per hour.
Inspector(s) in-charge—$9.65 per hour.

(2) For personnel assigned on less than a year-round basis:

Inspector(s)-in-charge—$10.50 per hour.
Subordinate inspector(s)—$7.70 per hour.
Inspector's aide(s)—$5.30 per hour.

(3) *Travel expense.*—Since travel time and other travel costs in reporting to an assignment under this type agreement are covered in the hourly rate, no additional reporting charges will be made.

(4) *Holiday pay.*—Eight (8) hours will be charged each holiday for each person assigned, whether or not work is performed. A 50 percent additional charge will be made for each hour worked up to 8 hours. For each hour worked above 8 hours the regular hourly rate will be charged.

(5) *Night differential.*—A 10 percent night differential charge will be made for all work performed between the hours of 6 p.m. and 6 a.m.

(6) *Overtime.*—All overtime hours will be charged at the regular rates specified herein rather than at an increased rate.

(d) Charges for less than year-round in-plant inspection services on a contract basis will be billed to the applicant at least once each 28 days for all hours with a minimum of 40 hours per week, holiday pay and night differential for each inspector and inspector's aide assigned to perform the inspection services in accordance with the following schedules:

(1) Each inspector assigned—first 280 hours—$15.00 per hour.
Each inspector assigned—in excess of 280 hours—$11.00 per hour.
Each inspector's aide—all hours—$5.30 per hour.

(2) *Travel expense.*—The above rates apply to hours worked on the assignment. The salary for inspectors enroute and other travel expenses including per diem will not be billed for inspectors assigned on this contract.

(3) *Holiday pay.*—In addition to the above charges, 8 hours will be charged for each person assigned each holiday whether or not work is performed. An additional 50 percent, not to exceed $5.50 per hour, will be charged for each hour worked up to 8 hours. The regular rate will be charged for all hours worked over 8 hours.

(4) *Night differential.*—A 10 percent differential, not to exceed $1.10 per hour, will be charged for all work performed between the hours of 6 p.m. and 6 a.m.

(5) *Overtime.*—All overtime hours will be charged at the regular rates specified herein rather than at an increased rate.

(e) No Member of, or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of any contract provided for in this section or to any benefit that may arise therefrom, but this provision shall not be construed to extend to such contract if made with a corporation for its general benefit, and shall not extend to any benefits that may accrue from the contract to a Member of, or Delegate to Congress, or a Resident Commissioner in his capacity as a farmer.

7. Section 52.53 is revised to read:

§ 52.53 Approved identification.

(a) *General.*—Use of the approved identification marks described and illustrated in figures 1 through 8 of this section is restricted to processed products that:

(1) Are clean, safe, and wholesome;

(2) Have been produced in an approved plant;

(3) Are truthfully and accurately labeled;

(4) Meet the quality requirements for U.S. Grade C or better;

(5) Meet applicable fill weight and/or drained weight, condition of container criteria, Brix or other characteristics of a commodity related to market value.

(6) Have been certified, or have been inspected and are eligible for certification, by an inspector; and, in addition, meet the specific requirements stated in paragraphs (b), (c), and (d) of this section.

(b) *Inspection (continuous) grade and inspection marks.*—The grade and inspection marks approved for use by plants operating under USDA continuous inspection service contracts shall be similar in form and design to the examples in figures 1 through 8 of this section. The inspection marks illustrated in figures 1 through 4 may only be used on products packed by plants operating under USDA continuous inspection.

FIGURE 1.

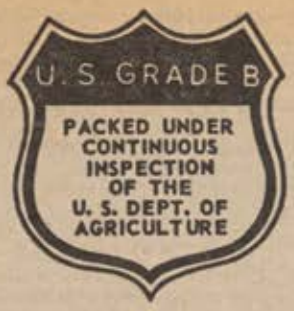


FIGURE 2.

Statement enclosed within a shield.

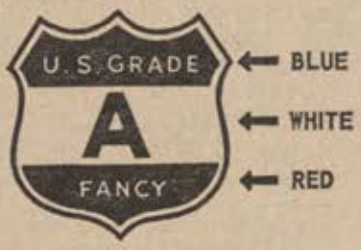
FIGURE 3.

PACKED UNDER CONTINUOUS INSPECTION OF THE U. S. DEPT. OF AGRICULTURE

Statement without the use of the shield.

FIGURE 4.

(c) *Contract in-plant inspection (other than continuous) grade marks.*—The grade marks approved for use by plants operating under USDA contract inspection service (other than continuous) requiring a resident inspector shall be similar in form and design to the examples in figures 5 through 8 of this section.



Shield using red, white, and blue background or other colors appropriate for label.

FIGURE 5.

Shield with plain background.

FIGURE 6.

Shield with plain background.

FIGURE 7.

(d) *Approved plant-lot inspection grade mark.*—Processed products that are produced in an approved plant and inspected and certified by an inspector on a lot basis may be labeled with the official mark illustrated in figure 8. Failure to have all lots, bearing such official marks, inspected and certified shall be cause for the debarment of services and such other actions as provided for in the Agricultural Marketing Act of 1946.

U. S. GRADE A

U. S. CHOICE

Statement without the use of the shield.

FIGURE 8.

(e) *Sampling marks.*—Processed products which have been packed under inspection as provided for in this section and products sampled for inspection on a lot inspection basis as provided in this part may, at the option of the Department, be identified by an authorized representative of the Department by stamping the shipping cases and inspection certificate(s) covering such lot(s) with an officially drawn sampling mark similar in form and design to the example

in figure 9 of this section: *Provided:* That the stamp will not be placed on shipping cases where any grade designation is on the case or packages unless the product has been inspected and meets such grades.

FIGURE 9.

(f) *Removal of labels bearing approved grade or inspection marks (figures 1 through 8).*—(1) At the time a lot of processed products, bearing approved grade or inspection marks (figures 1 through 8) is found to be mislabeled, the processor shall separate and retain such lot for relabeling. Removal and replacement of labels shall be done, under the supervision of a USDA inspector within ten (10) consecutive calendar days or within such period of time as may be mutually agreed by the processor and USDA.

(2) The processor shall be held accountable to the Department for all mislabeled products until the products have been properly labeled.

(3) Clearance for the release of the relabeled product shall be obtained, by the processor, from the inspector.

(g) *Licensing and identification of certain official devices.*—The Administrator may issue licenses permitting the manufacture, identification, and sale of any official device designated as a USDA color standard, defect guide or other similar aid under such terms and conditions as may be specified by the Administrator. Licenses shall be available to all persons meeting conditions prescribed by the Administrator, shall be nonexclusive, and shall be recoverable for cause. No person shall manufacture, identify, distribute or sell any such official device except at the direction of or under license from the Administrator. Such official devices may be marked, tagged or otherwise designated with the prefix "USDA" together with other identifying words or symbols, as prescribed by the license.

(h) *Prohibited uses of approved identification.*—Except as specified in this section, no label or advertising material used upon, or in conjunction, with a processed product, as defined by these Regulations, shall bear a brand name, trademark, product name, company name, or any other descriptive material that incorporates, resembles, simulates, or alludes to, any official U.S. Department of Agriculture certificate of quality or loading, grade mark, grade statement (except honey and maple syrup which may bear such grade mark or statement), continuous inspection mark, continuous inspection statement, sampling mark or sampling statement, or combinations of one or more thereof.

8. Section 52.54 is revised to read as follows:

§ 52.54 Debarment of service.

(a) The following acts or practices, or the causing thereof, may be deemed sufficient cause for the debarment, by the Administrator, of any person, including any agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of the Act for a specified period. The rules of practice governing withdrawal of inspection and grading services set forth in 7 CFR Part 50 shall be applicable to such debarment action.

(1) *Fraud or misrepresentation.*—Any misrepresentation or deceptive or fraudulent practice or act found to be made or committed in connection with:

(i) The making or filing of an application for any inspection service;

(ii) The submission of samples for inspection;

(iii) The use of any inspection report or any inspection certificate, or appeal inspection certificate issued under the regulations in this part;

(iv) The use of the words "Packed under continuous inspection of the U.S. Department of Agriculture," any legend signifying that the product has been officially inspected, any statement of grade or words of similar import in the labeling or advertising of any processed product;

(v) The use of a facsimile form which simulates in whole or in part any official U.S. certificate for the purpose of purporting to evidence the U.S. grade of any processed product.

(2) *Wilful violation of the regulations in this subpart.*—Wilful violation of the provisions of this part of the Act.

(3) *Interfering with an inspector, inspector's aide, or licensed sampler.*—Any interference with, obstruction of, or attempted interference with, or attempted obstruction of any inspector, inspector's aide, or licensed sampler in the performance of his duties by intimidation, threat, assault, bribery, or any other means—real or imagined.

§ 52.56 [Revoked]

9. Section 52.56 is revoked.

10. Sections 52.81 through 52.87 are consolidated into new §§ 52.81–52.83 and revised to read as follows:

REQUIREMENTS FOR PLANTS TO BE APPROVED AND FOR PLANTS USING CONTRACT IN-PLANT INSPECTION SERVICES[1]

§ 52.81 Plant survey.

Prior to a plant being approved, or the inauguration of in-plant inspection services, and at such intervals as may be deemed necessary or appropriate, the Administrator will make, or cause to be made, a survey and inspection of the plant where such inspection services are to be performed to determine whether the plant and methods of operation are suitable and adequate for the performance of such service in accordance with:

(1) The regulations in this part, including, but not limited to, the requirements contained in §§ 52.81 through 52.83; and

(2) The terms and provisions of any contract pursuant to which the service is to be performed: *Provided,* That, such survey(s) shall be repeated at least yearly.

§ 52.82 Basis of survey and plant inspection.

The plant survey and inspection will be based on the Regulations issued under the Federal Food, Drug, and Cosmetic Act—Human Foods; Good Manufacturing Practice (Sanitation) in Manufacture, Processing, Packing, or Holding (21 CFR, Part 128)—as may be modified or augmented by the Federal Food and Drug Administration, U.S. Department of Health, Education, and Welfare or the Administrator of the Agricultural Marketing Service.

§ 52.83 Reporting results of the plant survey and inauguration of inspection services.

(1) Results of the plant survey shall be reported in writing to a designated plant official.

(2) When the plant meets the requirements for the survey, inspection services may be inaugurated at a time mutually satisfactory to the plant management and USDA.

(3) When the plant fails the requirements of the survey, contract services shall be withheld until corrective action is completed to the satisfaction of the USDA.

[FR Doc.73-19178 Filed 9-11-73;8:45 am]

[1] Compliance with the above requirements does not excuse failure to comply with all applicable sanitary rules and regulations of city, county, State, Federal, or other agencies having jurisdiction over such plants and operations.

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 73-SW-58; Amdt. 39-1714]

PART 39—AIRWORTHINESS DIRECTIVES

Bell Model 206A, 206B, 206A-1, and 206B-1 Helicopters

There have been several reports of corrosion and plating breakdown on the main rotor strap fittings, P/N 206-010-155-11 and -15 and also on the mating pins, P/N 206-010-123-3. These surface imperfections could possibly result in fatigue cracks developing. Since this condition is likely to exist or develop in other helicopters of the Model 206 series design, an airworthiness directive is being issued in the interest of safety to reduce the service life of the main rotor strap fittings and pins from 2,400 hours to 1,200 hours and to require appropriate sealing during installation of the strap assemblies to prevent corrosion of the fittings and pins.

Since a situation exists that requires an immediate adoption of this regulation, it is found notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

BELL. Applies to Bell Model 206A, 206B, 206A–1 and 206B–1 helicopters certificated in all categories.

Compliance required as indicated.

To prevent possible fatigue cracks in the main rotor retention strap fittings P/N 206–010–155–11 and –15, and the main rotor retention strap pin, P/N 206–010–123–3, accomplish the following:

a. Remove and replace retention strap fittings, P/N 206–010–155–11 and –15 and pins, P/N 206–010–123–3, with 1,100 or more hours total time in service on the effective date of this AD within the next 100 hours time in service.

b. Remove and replace fittings, P/N 206–010–155–11 and –15 and pins, P/N 206–010–123–3 with less than 1,100 hours total time in service on the effective date of this AD, prior to accumulating 1,200 hours total time in service.

c. Install replacement fittings and pins in accordance with the appropriate model maintenance and overhaul information manuals and provide corrosion protection as specified in Bell Helicopter Company, Technical Bulletin No. 206–(04–1)–73–1, dated March 9, 1973, or later FAA approved revision or as specified in an equivalent procedure approved by the Chief, Engineering and Manufacturing Branch, Flight Standards Division, Southwest Region, Federal Aviation Administration.

This amendment becomes effective September 15, 1973.

This amendment is made under the authority of secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Fort Worth, Texas, August 31, 1973.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.73–19300 Filed 9–11–73;8:45 am]

[Airspace Docket No. 73–CE–8]

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

Alteration of Transition Area

On Pages 19413 and 19414 of the FEDERAL REGISTER dated July 20, 1973, the Federal Aviation Administration published a notice of proposed rule making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to alter the transition area at Dubuque, Iowa.

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, Missouri, on August 29, 1973.

JOHN M. CYROCKI,
Director, Central Region.

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

DUBUQUE, IOWA

That airspace extending upward from 700 feet above the surface within an 8½ mile radius of the Dubuque Municipal Airport (latitude 42°24'10" N., longitude 90°42'32" W; and within 3 miles on either side of the Dubuque VORTAC 321° radial, extending from the VORTAC to 8 miles northwest of the airport reference point; and within 3½ miles on either side of the Dubuque VORTAC 131° radial, extending from the VORTAC to 15½ miles southeast of the airport reference point, and that airspace extending upward from 1,200 feet above the surface, bounded by a line beginning at latitude 42°05'00" N., longitude 91°00'00" W., thence W. along latitude 42°05'00" N., to and N. along longitude 92°15'00" W., to and counterclockwise along the arc of a 29-mile radius circle centered on the Waterloo, Iowa VORTAC, to and E. along the S. edge of V–100, to and clockwise along the arc of a 29-mile radius circle centered on the Dubuque VORTAC, to and SE. along the SW. edge of V–218, to and S. along longitude 89°55'00" W. to and SW along the NW edge of V–216, to 90°08'00" W., and S. to the N. edge of V–172, to and N. along longitude 91°00'00" W., to the point of beginning, excluding the portion which overlies the State of Illinois.

[FR Doc.73–19301 Filed 9–11–73;8:45 am]

[Airspace Docket No. 73–WA–37]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

Correction of Waypoint Location

The purpose of this amendment to Part 75 of the Federal Aviation Regulations is to correct the "State" designation of waypoint Belle Terre. In the description of J807R, waypoint Belle Terre is designated as being located in the state of Connecticut, whereas it is actually located in the state of New York. Action is taken herein to correct that discrepancy.

Since this amendment is a minor editorial change on which the public would have no particular reason to comment, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, Part 75 of the Federal Aviation Regulations is amended, effective 0901 GMT, November 8, 1973, as hereinafter set forth.

§ 75.400 (38 FR 700) is amended as follows:

In J807R "Belle Terre, Conn." is deleted and "Belle Terre, N.Y." is substituted therefor.

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

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

CHARLES H. NEWPOL,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.73–19302 Filed 9–11–73;8:45 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 73–258]

DESIGNATION OF THE BUREAU OF CUSTOMS AS UNITED STATES CUSTOMS SERVICE

Treasury Department Order No. 165–23 provides that as of August 1, 1973, the Bureau of Customs is designated as the United States Customs Service. This necessitates amending the Customs Regulations to reflect the change in designation.

Accordingly, Chapter I, title 19 of the Code of Federal Regulations, the Customs Regulations, is amended to conform to Treasury Department Order No. 165–23 by substituting "United States Customs Service" for "Bureau of Customs" wherever the latter appears.

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

Because this amendment merely conforms the Customs Regulations with a Treasury Department Order and requires no public initiative, notice and public procedure thereon is found to be unnecessary, and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

Effective date.—This amendment shall be effective on September 12, 1973.

[SEAL] VERNON D. ACREE,
Commission of Customs.

Approved September 4, 1973.

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[FR Doc.73–19390 Filed 9–11–73;8:45 am]

PART 1—GENERAL PROVISIONS

[T.D. 73–257]

Customs Stations, Region IX

As the result of an urban renewal program the riverfront area of St. Clair, Michigan, that accommodated the St. Clair ferry operations has been converted into a waterfront park protected by a common seawall. Therefore, the St. Clair Customs station in the Detroit, Michigan, district (Region IX), no longer exists.

Accordingly, the designation of St. Clair, Michigan, as a Customs station is hereby revoked. To reflect this revocation, the table in § 1.3(d) of the Customs

Regulations is amended by deleting "St. Clair, Mich" from the list of "Customs stations", and "Port Huron." from the "Port of entry having supervision" listing in the Detroit, Michigan, district.

(Sec. 1, 37 Stat. 434; 5 U.S.C. 301, 19 U.S.C. 1)

Because this amendment revokes the designation of a Customs station which no longer exists, good cause is found for dispensing with notice and public procedure thereon as unnecessary, and good cause is found for the amendment to become effective on the earliest date possible, under 5 U.S.C. 553.

Effective date.—This amendment shall be effective on September 10, 1973.

[SEAL] LEONARD LEHMAN,
Acting Commissioner of Customs.

Approved August 30, 1973.

JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[FR Doc.73-19392 Filed 9-11-73;8:45 am]

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. R-73-237]

PART 42—RELOCATION PAYMENTS AND ASSISTANCE AND REAL PROPERTY ACQUISITION UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Eligibility Conditions for Relocation Payments; Notice of State Agency's Determination Not To Acquire Real Property

The Department is amending Title 24, Part 42 of the Code of Federal Regulations to revise § 42.55(b)(3) and add § 42.137. This amendment is necessitated by the operational difficulties in implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, with respect to those cases in which occupants move from real property after a notice of intention to acquire is issued. Because of the urgency of the situation, it is found unnecessary and infeasible to publish this amendment for comment by the public, and, therefore, the amendment shall take effect upon publication.

The newly added § 42.137 provides that where a State agency issues either a written notice of intent to acquire or firm offer to acquire, and it subsequently determines not to acquire the property, it must serve upon the owner, all persons occupying the property, and all others potentially eligible for relocation payments and assistance no later than 10 days from its determination not to acquire, a notice stating such determination and the fact that those persons moving from the premises thereafter shall not be eligible for any relocation payments and assistance.

The amendment to § 42.55(b)(3) provides that persons who move after the acquiring agency has issued a written notice of intention to acquire real property or after the issuance to the owner of a firm offer to acquire are eligible for relocation payments and assistance even though the real property is not subsequently acquired. The amendment further provides, however, that once the State agency serves on the occupants the written notice of its intention not to acquire pursuant to § 42.137, any person moving from the premises thereafter will not be eligible for relocation payments and assistance.

Part 42 is amended to read as follows:

§ 42.55 Basic eligibility conditions.

* * * * *

(b) *Displacement by acquisition* * * *

(3) The issuance by the acquiring agency of a written notice to the owner of its intent to acquire the real property for such project; or, if no other written notice of intent to acquire the real property is issued, the issuance by the acquiring agency to the owner of a firm offer to acquire: *Provided*, That no person moving from real property after the State agency has served upon him the notice described in § 42.137 of this Part shall be deemed eligible for any of the relocation assistance or relocation payments described in this part.

* * * * *

§ 42.137 Notice of State agency's determination not to acquire.

Whenever a State agency which has issued a written notice of its intent to acquire or a firm offer to acquire subsequently determines not to acquire said property, the State agency shall serve a written notice on the owner, all persons occupying the property and any other person potentially eligible for relocation payments and assistance. This notice shall state that the State agency has determined not to acquire the property and that any person moving from the premises thereafter will not be eligible for relocation payments and assistance. This notice shall be served no later than 10 days from the date of the State agency's determination not to acquire.

Effective date.—This amendment is effective on September 12, 1973.

JAMES T. LYNN,
Secretary of Housing and Urban Development.

[FR Doc.73-19377 Filed 9-11-73;8:45 am]

[Docket No. R-73-238]

PART 42—RELOCATION PAYMENTS AND ASSISTANCE AND REAL PROPERTY ACQUISITION UNDER THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970

Subpart F—Grievance Procedures Relating to Claims and Payments

PURPOSE OF REGULATIONS AND HUD REVIEW OF CLAIMS

The purpose of the following amendments is to make minor, clarifying corrections to § 42.220 and § 42.250(c).

Since these changes are minor in nature and no substantive changes in the regulations are effected, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, Part 42 is amended, effective on September 12, 1973, as hereinafter set forth:

§ 42.220 [Amended]

1. Section 42.220 is amended by changing "this part" wherever it appears in this section to read "Subpart B and §§ 42.140 and 42.145 of Subpart C".

2. Section 42.250(c) is revised to read as follows:

§ 42.250 HUD review.

* * * * *

(c) *Determination on review by HUD.*—The written determination by HUD shall be delivered to the State agency and to the claimant and shall include, but need not be limited to:

(1) The Area Director's decision on reconsideration of the claim;

(2) Findings of fact and conclusions of law, including any pertinent explanation or rationale;

(3) If the claimant is determined to have been aggrieved as to eligibility for, or the amount of, a payment under the regulations in Subpart B or under § 42.140 or § 42.145 of Subpart C, a direction to the State agency to take immediate steps to make payment to the aggrieved person in accordance with Hud's determination;

(4) A statement of claimant's right to seek judicial review.

* * * * *

(42 U.S.C. 4601; § 7(d) Department of HUD Act, 42 U.S.C. 3535(d))

Effective date.—These amendments are effective on September 12, 1973.

JAMES T. LYNN,
Secretary of Housing and Urban Development.

[FR Doc.73-19378 Filed 9-11-73;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 Colorado Plan

1. *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 states may submit for approval, under the requirements of this section, plans to assume responsibility for the development and enforcement of state occupational safety and health standards.

On December 21, 1972, the State of Colorado submitted a comprehensive developmental occupational safety and health plan in accordance with these procedures to the Regional Administrator. On December 29, 1972, the plan was formally submitted to the Assistant Secretary and on January 17, 1973, a notice

was published in the FEDERAL REGISTER (38 FR 1676) concerning the submission of the plan to the Assistant Secretary and the fact that the question of approval was in issue before him. Written comments concerning the plan were submitted by the Colorado Interstate Gas Company, Eastman Kodak Company and the Public Service Company of Colorado. No other written comments were received and there were no requests for an informal hearing.

The plan identifies the Colorado Department of Labor and Employment, Division of Labor, as the state agency designated to administer the plan throughout the state. It defines the covered occupational safety and health issues as defined by the Secretary of Labor in § 1902.2(c)(1) of Chapter XVII, Title 29, Code of Federal Regulations. Upon approval, the Colorado Plan will contain some standards such as ANSI Standards, the Uniform Building Code and the National Electric Code, No. 70. As of this writing, the only State standards which will be adopted by the State are those pertaining to Powered Platforms, Manlifts and Vehicle-Mounted Work Platforms as outlined in Subpart F of 29 CFR Part 1910. The plan, as submitted, included draft legislation to be considered by the Colorado Legislature during its 1973 session amending chapter 80 and related provisions of the Colorado Revised Statutes, to bring them into conformity with the requirements of section 18(c) of the Act and 29 CFR Part 1902. The proposed legislation was accompanied by a statement of the Governor's support for it and an opinion from an attorney that the proposed legislation will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the constitution and other laws of the state.

With certain amendments, the proposed legislation was passed by the State Legislature during the course of our review of the plan and will become effective upon the approval of the plan by the Assistant Secretary. The plan sets out goals for bringing it into full compliance with Part 1902.

2. *Issues.*—Our review of the plan raises several significant issues which are addressed by Colorado in supplementary letters of clarification submitted to the Assistant Secretary on February 16, 1973, March 9, 1973, April 9, 1973, July 12, 1973, and August 10, 1973, are incorporated as part of the plan.

a. *Private employers.*—As originally submitted, the Colorado definition of an employer was that under the existing workmen's compensation law. Since that definition depended upon election of coverage and because seasonal agriculture employees were exempt from coverage, Colorado has amended its legislation to provide a definition of employer under section 80-2-29-(7) which will apply to all employers within the State.

b. *Public employees.*—Colorado also provides for a public employee program. However, the city and county of Denver will maintain its own program for its employees, subject to monitoring and evaluation by the state. Other political subdivisions may be allowed to develop such programs by submitting plans for approval upon the request of the director of the Division of Labor, meeting conditions paralleling those for approval of a State occupational safety and health plan for private employees under section 18 of the Federal Act. Section 1902.3(b)(3) provides that "political subdivisions of the State may have responsibility and authority for the development and enforcement of standards; such authorization is conditioned, however, on the requirement that the state agency or agencies are given adequate authority by statute, regulation, or agreement to ensure that the commitment of the State under the plan will be fulfilled." The Department of Labor and Employment is charged with the overall responsibility to coordinate or regulate these programs. This authority is essential to the maintenance of an effective and comprehensive program as required by § 1902.3(j) above and section 18(c)(6) of the Act. Only experience in the operation of Colorado's political subdivision employee coverage provisions can determine whether or not they will provide such adequate authority to the State to be responsive to its commitments, regardless of the outcome of state procedures on approval, disapproval, or rejection of political subdivision plans.

c. *Emergency temporary standards.*—In the area of emergency temporary standards, Colorado proposed to treat section 3-16-2(6) of its Administrative Procedure Act as meeting the requirements for approval of its Plan. Unlike the Federal Act which provides for a six month limit on the period of effectiveness of an emergency standard, the Colorado Act provides for a three month limit. However, the state has provided assurances that the Administrative Procedure Act does not preclude the renewal of an emergency standard for another three month period, thereby providing a six month limit as under the Federal Act.

d. *Variances.*—Section 80-2-7, of the Colorado draft legislation, as originally submitted, did not meet the requirements of § 1902.4(b)(2)(iv) concerning variances. The enacted legislation contained a revision of this section and it more closely follows the Federal Act. While the provisions of section 6(b)(6)(B) relating to the contents of an application at the present time are not included in the revision, the State, by obligating itself to adopt regulations at least as effective as 29 CFR Part 1905, has assured that the provisions of section 6(b)(6)(B) of the Federal Act, including the certification required under that section, will be covered. The revised procedure for applying for a permanent variance is the same as that of section 6(d) of the Federal Act.

In addition to the above revision of the variance procedure, Colorado legislation provides that when an employer is issued a citation but believes that he is maintaining equipment or procedures which would meet the criteria for a permanent or temporary variance under section 80-2-7, he may file an application for such variance. The petition for a variance will not affect the violation or penalty, but may result in the extension of an abatement period by the director, referee, Commission, or Colorado Court of Appeals until the variance is ruled upon by the director of the Department of Labor and Employment. If the variance is granted, the abatement period will be withdrawn by the director. If the variance is interposed solely for delay or is frivolous, the director shall refuse to act on the petition for it and shall reinstate the abatement period. At each level of review and appeal there must be a specific request to extend the abatement period while the variance is ruled upon, or the decision of the Director and/or hearing officer or the Industrial Commission is reviewed. All interested parties, including employees, will have the opportunity to participate in any proceedings and/or hearings. Inasmuch as extension of abatement is permissive under these provisions, refusal to so grant can only be appealed on the issue of "abuse of discretion." Any regular appeal of abatement must be instituted within 15 days after receipt of citation, and cannot be undertaken after such period.

Although the Federal Act does not contain these specific provisions, the Secretary has followed a similar policy where a variance application is submitted after the citation is issued. Thus, where a citation is contested under the Act, the abatement is stayed pending the outcome of the proceeding before the Review Commission and this proceeding may be continued to accommodate the outcome of a valid variance request.

The State has submitted specific assurances that it will submit proposed rules and regulations to the Occupational Safety and Health Standards Board designed to provide safeguards against possible abuse of this variance procedure, to the detriment of worker safety and health. Among the proposed regulations are to be time limitations on the time in which a variance application may be submitted after a citation as well as time limits on the review of such applications.

Although the Colorado procedure is not identical to the Federal procedure, we cannot at this time find it will not be in actual operation at least as effective as the latter. However, because of the novelty of the Colorado proposal, it will be subject to close scrutiny in the periodic evaluation of the plan by the Department. The State has promised to review this procedure with this Department by November 1, 1974. If actual operations show that in application it does not provide abatement of occupational hazards as effective as that provided under the Federal program, the State has promised to amend its legislation in the 1975 Session of its General Assembly to correct such deficency.

e. *Employee complaints.*—Section 80–2–6(1) of the draft legislation provided that employees were required to notify their employer if they believed that a violation of a standard existed before they could file a complaint with the Department of Labor, Division of Occupational Safety and Health. The legislation further provided that if the employer failed to remedy the alleged violation, then the employee may request inspection by the Division of Occupational Safety and Health. Since this procedure would have resulted in the diminution of the plan's prohibition against advance notice and the protection it must provide for employee complaint anonymity upon employee request, the State revised this section. Accordingly, this section now provides that employees may notify their employer of a possible violation but in any event an employee may file a complaint with the division without first notifying his employer. The legislation further provides that "the names of complainants shall not be furnished by the director without the voluntary consent of the employee." Although the Colorado proposal differs from the comparable Federal provision, it has been found to be acceptable because it does not impose a mandatory requirement on employees to notify an employer before filing a complaint. A similar section has also been approved under the Oregon Plan (37 FR 28628).

f. *Employee discrimination.* — The Colorado legislation provides that employee discrimination cases will comprise unfair labor practices under its labor relations law. Under the legislation a complaint alleging discrimination may be filed with the Industrial Commission of Colorado, which will then investigate the complaints, hold hearings, and order all appropriate relief, including reinstatement of employees with or without back pay, depending on the circumstances of the case, as provided under CRS sections 80–4–6, 80–4–7, 80–4–8, and 80–4–9. We find, as in the North Dakota decision (38 FR 2423, at 2424), that administrative proceedings where employees do not have the burden of pressing their own charges, with appropriate remedies to correct discrimination against employees, are at least as effective as the Federal procedures. In any event, Colorado has obligated itself to provide by regulation that employees filing discrimination complaints shall be provided counsel under the state's unfair labor practice law and upon removal to the courts, such provision will follow for employee representation.

(g) *Sanctions.*—In the area of sanctions, the Colorado legislation mirrors the Federal penalty provisions with two exceptions. The state has provided for an additional criminal penalty of a fine of up to $1,000 and/or imprisonment of up to six months for any person who hinders or obstructs the director or his authorized representative in the exercise of his powers under the Act or any employer who in bad faith refuses reasonable access to his premises. A second difference is that any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction may be penalized up to $1,000 for each day the violation continues, subject to a maximum of $10,000. There is no maximum level under the Federal Act. The state has further provided that any employer who knowingly exposes an employee to hazardous conditions in violation of an abatement order may also be subject to the sanctions for willful or repeated violations. The latter provision may also be used in addition to civil penalties for failure to abate violations. The operation of this variation on penalty provisions will be subject to review during the plan's operation, along with the impact of the variance appeal provisions discussed above, upon elimination of work hazards.

(h) *Imminent danger.*—For imminent danger situations, the remedy to correct the violation under the proposed legislation was limited to either issuing a citation or to issuing an order to cease those portions of the operations as may be necessary to minimize or eliminate the threat. Colorado has amended its legislation to provide that a citation and a cease order may be issued rather than merely one or the other. However, the issuance of a citation is discretionary. In order to make this section at least as effective as the Federal Act the State has promised to submit an amendment to the 1975 session of its legislature to provide that the issuance of a citation will be mandatory in "imminent danger" situations. In any event, violations which pose an imminent hazard will fall within the category of serious violations for which there is a mandatory citation.

(i) *Inspections and investigations.*—Section 80–1–12 provides for investigations and section 80–2–5(1) provides for inspections, but certain requirements of the Federal Act, such as employee participation in the inspection process and prohibition against advance notice were provided for in a section 80–1–12 "investigation" but not in an 80–2–5(1) "inspection". The Colorado legislation as enacted includes language to make it clear that in these two sections, and a third dealing with access to premises, 80–1–20, the words "inspection", "investigation", "examine" and "examination" mean "inspection", are to be used synonymously and that in effect they are procedurally the same.

3. *Decision.*—After careful consideration of the Colorado Plan and comments submitted regarding the plan, the plan is hereby approved 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 our intentions as to continued Federal enforcement of Federal standards in areas covered by the plan and the state's developmental schedule as set out below.

Pursuant to § 1902.20(b)(1)(iii), the present level of Federal enforcement will not be diminished until the State has promulgated state standards and the standards become effective. Thereafter, Federal enforcement activity will continue to be exercised only to the degree necessary to assure occupational safety and health protection to employees in the State of Colorado.

The Colorado Plan is developmental. The following are the highlights of the schedule of developmental steps provided by the plan:

(a) Vertical and horizontal standards will be promulgated and enforcement commenced, 120 days after the standards are approved by the Secretary of Labor.

(b) Colorado Occupational Safety and Health Standards will be published within 90 days after promulgation.

(c) A public employee occupational safety and health program will be implemented within 45 days after it is approved.

(d) Operational funding of the plan and the beginning of program operations are expected to take effect by October 1, 1973.

(e) Adoption of regulations for variances, within 120 days after effective date of enabling legislation.

(f) Development of Rules of Procedure for Review and Appeals within 120 days after effective date of enabling legislation.

(g) Development and implementation of Management Information System by January 1, 1974.

(h) Agricultural standards will be promulgated by July 1, 1974.

Pursuant to section 18 of the Occupational Safety and Health Act (29 U.S.C. 667), Part 1952 is hereby amended by adding a new Subpart M as follows:

Subpart M—Colorado

Sec.

1952.190 Description of the plan.
1952.191 Where the plan may be inspected.
1952.192 Level of Federal enforcement.
1952.193 Developmental schedule.

AUTHORITY: Sec. 18, Pub. L. 91–956, 84 Stat. 1608 (29 U.S.C. 667).

Subpart M—Colorado

§ 1952.190 Description of the plan.

(a)(1) The plan identifies the Department of Labor and Employment, Division of Labor, as the State agency designated to administer the plan throughout the State. It adopts the definition of occupational safety and health issues expressed in § 1902.2(c)(1) of this chapter. All standards, except those found in 29 CFR Parts 1915, 1916, 1917, and 1918 (shiprepairing, shipbuilding, shipbreaking and longshoring) and § 1910.267 of this chapter (agricultural standards) will be adopted and enforced within 120 days after the standards are found to be at least as effective by the Secretary of Labor. Agricultural standards are expected to be adopted and enforced by July 1, 1974.

(2) The plan provides a description of personnel employed under a merit system; the coverage of employees of political subdivisions; procedures for the development and promulgation of standards, including standards for protection of employees against new and unforeseen hazards; and procedures for prompt restraint or elimination of imminent danger situations.

(b) (1) The plan includes legislation enacted by the Colorado Legislature during its 1973 legislative session amending Chapter 80 and related provisions of the Colorado Revised Statutes to bring them into conformity with the requirements of Part 1902 of this chapter. Under the legislation the Department of Labor and Employment will have full authority to enforce and administer laws respecting the safety and health of employees in all workplaces of the State. The legislation further proposes to bring the State into conformity in areas such as variances and protection of employees from hazards.

(2) The legislation is also intended to insure inspections in response to complaints; give employer and employee representatives an opportunity to accompany inspectors in order to aid inspections; notification of employees or their representatives when no compliance action is taken as a result of alleged violations, including informal review; notification of employees of their protections and obligations; protection of employees against discharge or discrimination in terms and conditions of employment; adequate safeguards to protect trade secrets; provision for prompt notice to employers and employees of alleged violations of standards and abatement requirements; effective sanctions against employers for violations of standards and orders; employer right of review to the Colorado Industrial Commission and then to the courts, and employee participation in review proceedings. The plan also proposes to develop a program to encourage voluntary compliance by employers and employees, including provision for on-site consultation. The state's proposed consultation program should not detract from its enforcement program and the State has given assurances that it will meet the conditions set forth in the issues discussed in the Washington decision (38 FR 2421, January 26, 1973).

(c) The plan includes a statement of the Governor's support for the legislation and a legal opinion from an attorney that the legislation will meet the requirements of the Occupational Safety and Health Act of 1970 and is consistent with the Constitution and laws of Colorado. The plan sets out goals and provides a timetable for bringing it into full conformity with Part 1902.

(d) The Colorado plan includes the following documents as of the date of approval:

(1) The plan description documents including draft legislation and appendices in one volume;

(2) Letter from Gregory Rogers, OSHA Coordinator of the Department of Labor and Employment, to Charlie Y. Boyd, Project Officer, Office of Federal and State Operations, January 9, 1973, submitting the proposed legislation;

(3) Letters from James M. Shaffer, Executive Director of the Department of Labor and Employment, to Thomas C. Brown, Director, Office of Federal and State Operations, February 16, 1973, March 9, 1973, April 9, 1973, July 12, 1973, and August 10, 1973, submitting information, clarifications and revisions on several issues raised during the review process, including revision of the draft legislation.

(4) A copy of the enabling legislation as enacted by the State Legislature in its 1973 session.

(e) The public comments will also be available for inspection and copying with the plan documents.

§ 1952.191 Where the plan may be inspected.

A copy of the complete plan may be inspected and copied during normal business hours at the following locations: Director, Division of Labor, Department of Labor and Employment, 200 East Ninth Avenue, Denver, Colorado 80203; Assistant Regional Director, Occupational Safety and Health Administration, Room 15010 Federal Building, 1961 Stout Street, Denver, Colorado 80202; Office of Federal and State Operations, Occupational Safety and Health Administration, Room 305, 400 First Street NW., Washington, D.C. 20210.

§ 1952.192 Level of Federal enforcement.

Pursuant to § 1902.20(b)(1)(iii) of this chapter, the present level of Federal enforcement in Colorado will not be diminished until the State has issued standards and they have become effective. Thereafter, Federal enforcement will continue to be exercised only to the degree necessary to assure occupational safety and health protection to employees in the State of Colorado.

§ 1952.193 Developmental schedule.

The Colorado state plan is developmental. The following is the developmental schedule as provided by the plan:

(a) Vertical and horizontal standards will be promulgated and enforcement commenced, 120 days after the standards are approved by the Secretary of Labor.

(b) Colorado occupational safety and health standards will be published within 90 days after promulgation.

(c) A public employee occupational safety and health program will be implemented within 45 days after it is approved.

(d) Operational funding of the plan and the beginning of program operations are expected to take effect by October 1, 1973.

(e) Adoption of regulations for variances within 120 days after effective date of enabling legislation.

(f) Development of Rules of Procedure for Review and Appeals within 120 days after effective date of enabling legislation.

(g) Development and implementation of Management Information System by January 1, 1974.

(h) Agricultural standards will be promulgated by July 1, 1974.

Signed at Washington, D.C. this 7th day of September, 1973.

JOHN STENDER,
Assistant Secretary of Labor.

[FR Doc.73-19429 Filed 9-11-73;8:45 am]

Title 32A—National Defense—Appendix

CHAPTER VI—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

[BCABP Notice 1]

BCABP NOTICE 1—RATIFICATION OF BUREAU OF DOMESTIC COMMERCE ACTIONS

SEPTEMBER 7, 1973.

This notice is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this notice, consultation with industry representatives was impracticable since the notice has no substantive affect on industry.

Sec.
1. What this notice does.
2. Existing regulations, orders, and other actions of the Bureau of Domestic Commerce.
3. Rescission of BDC Notice 1.
4. Use of Bureau of Domestic Commerce and Business and Defense Services Administration forms.

§ 1 What this notice does.

The purpose of this notice is to furnish continuity in the defense mobilization activities of the Bureau of Competitive Assessment and Business Policy, Domestic and International Business Administration, United States Department of Commerce, which will exercise certain functions formerly handled by the Bureau of Domestic Commerce, the Business and Defense Services Administration, and the National Production Authority. To accomplish a smooth transition, it provides that outstanding actions of the Bureau of Domestic Commerce, the Business and Defense Services Administration and the National Production Authority are ratified and deemed actions of the Bureau of Competitive Assessment and Business Policy, Domestic and International Business Administration. This notice supersedes BDC Notice 1 of September 30, 1970.

§ 2 Existing regulations, orders, and other actions of the Bureau of Domestic Commerce.

All regulations, orders, and delegations of authority to other Government agencies or officials thereof, shown in List A

of this notice, and all other actions (including but not limited to directives), which were issued or taken by or under authority of the Director of the Bureau of Domestic Commerce, the Administrator of the Business and Defense Services Administration or the Administrator of the National Production Authority and which were in existence at the close of business November 17, 1972, are hereby adopted, ratified, and confirmed by the Deputy Assistant Secretary for Competitive Assessment and Business Policy, Domestic and International Business Administration, and shall remain in full force and effect until they expire by their terms or are revoked or amended. Any references in such actions to the Director of the Bureau of Domestic Commerce or the Bureau of Domestic Commerce, to the Administrator of the Business and Defense Services Administration or the Business and Defense Services Administration or to the Administrator of the National Production Authority or the National Production Authority shall be deemed references to the Deputy Assistant Secretary for Competitive Assessment and Business Policy or to the Bureau of Competitive Assessment and Business Policy, as the case may be.

§ 3 Rescission of BDC Notice 1.

This BCABP Notice 1 supersedes BDC Notice 1 of September 30, 1970, which is hereby rescinded.

§ 4 Use of Bureau of Domestic Commerce or Business and Defense Services Administration forms.

Pending the preparation and adoption of revised forms, and until otherwise ordered or prescribed, forms of the Bureau of Domestic Commerce or the Business and Defense Services Administration shall be deemed forms of the Bureau of Competitive Assessment and Business Policy, Domestic and International Business Administration.

This notice shall take effect September 7, 1973.

(Defense Production Act of 1950, as amended, (64 Stat. 816; 50 U.S.C. App. 2061 et seq.); Executive Order 10480, as amended, 18 FR 4939, 6201, 19 FR 3807, 7249, 21 FR 1673, 23 FR 5061, 6971, 24 FR 3779, 27 FR 9683, 11447, 3 CFR 1949–1953 Comp., p. 919; Executive Order 11725, 38 FR 17175; DMO 8400.1, 32A CFR 15; Department of Commerce Organization Order 10–3, as amended, 37 FR 25555, 38 FR 4278; and Department of Commerce, Domestic and International Business Administration Organization and Function Orders 45–1, 38 FR 9326, and 45–2, 38 FR 9327.)

BUREAU OF COMPETITIVE ASSESSMENT AND BUSINESS POLICY,
GARY M. COOK,
Acting Deputy Assistant Secretary for Competitive Assessment and Business Policy.

LIST A OF BCABP NOTICE 1

EXISTING BDC AND BDSA ACTIONS REGULATIONS

Basic Rules of Priorities System

DPS Regulation 1 (as amended March 23, 1953) (formerly BDSA Regulation 2) 18 FR 1684;

Amendment 1 (May 9, 1958) (formerly BDSA Regulation 2, Amendment 5), 23 FR 3273;

Amendment 2 (April 27, 1960) (formerly BDSA Regulation 2, Amendment 6) 25 FR 3820;

Amendment 3 (July 21, 1964) (formerly BDSA Regulation 2, Amendment 7), 29 FR 10461;

Amendment 5 (December 3, 1970), 35 FR 19575;

Amendment 6 (July 1, 1971), 36 FR 12741.

Direction 2 (June 29, 1956) (formerly BDSA Regulation 2, Direction 7) 29 FR 4911;

Direction 2, Amendment 1 (May 9, 1958) (formerly BDSA Regulation 2, Direction 7, Amendment 1), 23 FR 3272;

Direction 3 (January 18, 1957) (formerly BDSA Regulation 2, Direction 8), 22 FR 474;

Direction 4 (August 15, 1967) (formerly BDSA Regulation 2, Direction 11), 32 FR 11734.

Operations of the Priorities and Allocations Systems Between Canada and the United States

DPS Regulation 2 (February 1, 1956) (formerly BDSA Regulation 3), 21 FR 787.

Compliance and Enforcement Procedures

DPS Regulation 3 (May 15, 1956) (formerly BDSA Regulation 8), 21 FR 3254.

Basic Rules of the Defense Materials System

DMS Regulation 1 (as amended December 1, 1959) 24 FR 9595;

Amendment 1 (March 15, 1966) (formerly DMS Regulation 1, Amendment 2) 31 FR 4594.

Amendment 3 (July 1, 1971), 36 FR 12742.

Direction 1 (December 1, 1959), 24 FR 9607.

Direction 2 (December 1, 1959), 24 FR 9607.

Direction 3 (December 1, 1959), 24 FR 9608.

Direction 3, Amendment 1 (July 1, 1971), 36 FR 12742.

ORDERS

Metalworking Machines

DPS Order 1 (as amended May 24, 1963) (formerly BDSA Order M–41), 28 FR 5295.

Iron and Steel

DMS Order 1 (as amended August 14, 1970) (formerly BDSA Order M–1A), 35 FR 12897;

Amendment 1 (July 1, 1971), 36 FR 12742.

Nickel Alloys

DMS Order 2 (June 29, 1956) (formerly BDSA Order M–1B), 21 FR 4914;

Amendment 1 (August 17, 1956) (formerly BDSA Order M–1B, Amendment 1), 21 FR 6227;

Amendment 2 (January 20, 1958) (formerly BDSA Order M–1B, Amendment 2), 23 FR 383;

Amendment 3 (July 1, 1971), 36 FR 12743.

Aluminum

DMS Order 3 (May 6, 1953) (formerly BDSA Order M–5A), 18 FR 2639;

Amendment 1 (December 31, 1956) (formerly BDSA Order M–5A, Amendment 1), 22 FR 32;

Amendment 2 (January 20, 1958) (formerly BDSA Order M–5A, Amendment 2), 23 FR 383;

Amendment 3 (July 1, 1971), 36 FR 12743.

Copper and Copper-Base Alloys

DMS Order 4 (as amended October 28, 1966) (formerly BDSA Order M–11A), 31 FR 13852;

Amendment 1 (July 1, 1971), 36 FR 12744;

Schedule A (Revised as of May 15, 1972) (formerly Schedule A to BDSA Order M–11A), 36 FR 10440.

DELEGATIONS

Delegation of Authority to Secretary of Defense

BDC Delegation 1 (as amended May 31, 1960) (formerly BDSA Delegation 1), 25 FR 5788.

Delegation of Authority to Atomic Energy Commission

BDC Delegation 2 (as amended May 31, 1960) (formerly BDSA Delegation 2), 25 FR 5789.

Delegation of Authority to Administrator of General Services Administration

BDC Delegation 3 (May 16, 1972) (formerly BDSA Delegation 3), 37 FR 10456.

Secretary of the Interior Delegation of Authority with Respect to Certain Industrial Chemicals Used Principally in the Petroleum Industry

BDC Delegation 4 (February 26, 1951) (formerly BDSA Delegation 9), 16 FR 1908.

Administrator of Production and Marketing Administration Delegation of Authority to Exercise Certain Functions

BDC Delegation 5 (April 26, 1951) (formerly BDSA Delegation 10), 16 FR 3669.

Emergency Delegation of Priorities and Allocation Powers

BDC Emergency Delegation 1 (Revised as of April 18, 1972) (formerly BDSA Emergency Delegation 1), 37 FR 8681.

NOTICE

Designation of BDC Actions To Be Taken Under The Authority of the Defense Production Act of 1950, as amended

BDC Notice 3 (November 30, 1970), 35 FR 18279.

NOTE: BDC Notice 2 of September 30, 1970 was reissued as BCABP Notice 2 on April 13, 1973, 38 FR 9589.

[FR Doc.73–19357 Filed 9–11–73;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 207—NAVIGATION REGULATIONS

Weymouth Back River, Massachusetts

Pursuant to the provisions of sec. 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.11 establishing and governing the use of a restricted area in Weymouth Back River, Weymouth and Hingham, Massachusetts is hereby revoked, effective on September 12, 1973.

Since the revocation constitutes only an agency procedural matter, notice of proposed rule making and public procedures thereto are considered unnecessary. Accordingly, § 207.11 of title 33 of the Code of Federal Regulations is hereby revoked as follows:

§ 207.11 [Revoked]

[Regs., August 13, 1973, 1522–01 (Subj: Withdrawal of Prohibited Area in § 207.11 CFR 33; Weymouth Back River, Mass.) DAEN–CWO–N] (Sec. 7, 40 Stat. 266 (33 U.S.C. 1).)

For the Adjutant General.

R. B. BELNAP,
Special Advisor to TAG.

[FR Doc.73–19311 Filed 9–11–73;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19665—FCC 73-884]

ON-BOARD COMMUNICATIONS IN THE INDUSTRIAL AND MARITIME MOBILE SERVICES

1. A notice of proposed rule making in the above-captioned matter was released on January 9, 1973, and was published in the FEDERAL REGISTER on January 15, 1973, (38 FR 1513). The date for filing comments and reply comments have passed.

2. Comments were filed by: American Institute of Merchant Shipping (AIMS); Central Committee on Communication Facilities of the American Petroleum Institute (API); Land Mobile Section of the Communications and Industrial Electronics Division of the Electronic Industries Association (EIA); National Association of Business and Educational Radio, Inc. (NABER); and Santa Fe International Corporation (SANTA FE).

3. AIMS agrees in substance with the proposed rule making. API agrees in substance with the philosophy of rules proposed. EIA, in general, concurs with the proposed rule making. NABER states their awareness of the pressing needs for on-board communications. Consideration of the comments has not affected the following proposed rule sections and they are, therefore, adopted as proposed.

Part 2:	§ 2.1.
Part 81:	§ 81.3(b)(1).
Part 83:	§ 83.3(b).
	§ 83.3(n), (o) & (p).
	§ 83.7(k).
	§ 83.22(h).
	§ 83.134(h)(1) and (h)(2).
	§ 83.811(b)(1) and (b)(2).
	§ 83.815(a)(1) and (b)(1).
	§ 83.825(a) through (d).

With regard to proposed § 83.823: paragraphs (a) and (c) are now contained within § 83.162; paragraph (b), in major part, is now contained within § 83.160(a)(1) and (a)(2), and the remainder is added to § 83.164 as paragraph (c); and paragraph (d) is added to § 83.164 as paragraph (d).

4. Questions were raised and/or alternative proposals were filed by each of the commentors concerning various of the proposed rules and these are treated in the paragraphs set forth hereinafter.

5. With regard to proposed § 83.7(j), NABER expressed concern regarding possible misinterpretation of the main lobe of a directional antenna. The proposed definition was taken from No. 99[1] of the International Radio Regulations. The last sentence of No. 99 was omitted from proposed § 83.7(j) because in this proceeding the scatter mode of propagation is not planned or authorized. With regard to directional antennas used by On-Board Stations, we expect these antennas will be of the collinear array type which radiate equally in the horizontal plane, the gain being obtained by compression of energy in the vertical plane. It is not expected that there will be much use of the "yagi" type antenna because of the poor coverage to the back of such arrays. As concerns the directional properties of the antenna, it seems probable that the antenna used by an On-Board Station (on-board repeater) would be selected by the applicant from a catalog of antennas to meet a particular requirement. The antenna selected will have published directional characteristics which will be readily available to all interested persons, including the Commission. As concerns special antennas, the high cost of developing an antenna to provide a substantially different coverage pattern, taken in conjunction with the limited market for such antennas, will, as a practical matter, reduce to a minimum the number of these special antennas for which published characteristics are not readily available. We expect § 83.7(j) to be of more interest to antenna manufacturers than it is to the user. Over the years there has been wide variation in the basis used by various mobile service antenna manufacturers to express antenna gain. The intent of § 83.7(j) was, therefore, to stabilize this basis for antennas used by On-Board Stations in the Maritime Services. By relating gain to a half-wave dipole, instead of to an isotropic antenna, we are providing a practical reference which is readily determinable by all antenna manufacturers. Further, the (dB) gain or loss in a particular direction is directly applicable in computing effective radiated power, which will be of benefit to the user. Lastly, in the application form we are requiring that the applicant for an On-Board Station state the gain, relative to a half-wave dipole, of the antenna employed in those cases where an on-board repeater is installed. Further, should there be a need to do so, the Commission can require that an applicant provide substantiation of the value of antenna gain set forth in the application. In view of the foregoing, the Commission is adopting § 83.7(j) without change, as set forth in the attached Appendix.

6. NABER commented that any new uses of the Business Radio Service frequencies should be coordinated so that accurate records could be maintained to guide the orderly assignment of business applicants in areas of heavy maritime use. Considering the transient nature of ships and the fact that on-board equipment can be expected to remain with the ship on which it is licensed, the Commission believes that frequency coordination would serve no real purpose. Accordingly, no requirement for frequency coordination in the maritime service has been adopted.

7. NABER pointed out that the proposed changes for Parts 81 and 83 do not specifically authorize or prohibit use of on-board station frequencies by aircraft and requested that the rules be changed to prohibit such use. In the Business Radio Service, use of the frequencies by aircraft in flight is specifically prohibited by frequency limitation 13 in § 91.554(b). So that there will be no question about use of the frequencies by aircraft in connection with on-board stations, we have amended § 83.811(a) to show that the frequencies are not available to aircraft.

8. With regard to proposed § 83.36(d), AIMS and API strongly express the view that FCC Forms 501 and 502 be used in applying for an On-Board Station in order that all transmitters of a ship station may be included under a single instrument of authorization. In examining Forms 501 and 502 it is quickly apparent that these forms do not solicit information needed by the Commission for the technical and administrative regulation of On-Board Stations. FCC Forms 501 and 502 cannot be readily modified to include this needed information. There are substantial differences between ship stations, an integral part of the maritime mobile service, and On-Board Stations. Fundamental to these differences is the practical matter that ship stations communicate with other ship stations and/or with coast stations. In the course of doing this, they operate on frequencies which are allocated to the maritime mobile service. Radionavigation aboard ship is carried out in bands allocated to, or available to, maritime radionavigation. In contrast, On-Board Stations are intended to provide internal communications within the confines of a single vessel. They will operate on frequencies which are allocated to the Land Mobile Service. Use will be on an equal and cooperative shared basis with the Business Radio Service. Under the ship station license, since the United States conforms to the requirements of the International Radio Regulations relative to ship station license requirements, the licensee of a ship station is required to provide properly licensed operator personnel. Thus, if the On-Board Station is licensed as a part of the ship station, personnel operating that station must hold operator licenses as required by the International Radio Regulations. In contrast thereto, RTCM SC62, which considered this matter in depth, recommended that personnel operating On-Board Stations not be required to hold operator licenses. RTCM's motivation was that there are numerous crew members who are not United States citizens and are not, therefore, eligible to hold an FCC operator license. The absence of such eligibility in no way detracts from the capability of these personnel to fully and adequately perform their jobs aboard ship, including the operation of components of the On-Board Station. Further, the technical nature of the On-Board Station (see the Appendix attached hereto), permits a relaxation of the operator requirements where not required by treaty. In summary, we are persuaded that the recommendations of RTCM should take precedence and that the benefits or convenience of a single instrument of authorization, if any, are substantially less than the benefits accruing from a relaxation of the operator license requirements. Accordingly, as set forth in the attached Appendix, § 83.36(b) is being adopted to

[1] Radio Regulations, International Telecommunication Union, Geneva 1968.

prescribe that FCC Form 503 shall be used in application for an On-Board Station.

9. EIA, in regard to proposed § 83.131 (f), expresses the view that the frequency tolerance applicable to on-board repeater stations should be 5 parts per million, instead of the proposed tolerance of 2.5 parts per million. In support, EIA comments that the tolerance for on-board repeaters should not be different from that applicable to the Business Radio Service. We accept this view and, as set forth in the attached Appendix, have amended § 83.131(f) to show a frequency tolerance for on-board repeaters of 5 parts per million.

10. Our proposal to modify both the Petroleum and Business Radio Service rules in Part 91 to duplicate, in part, the marine availability of the frequencies, was supported by AIM and API. We have reconsidered this proposal, particularly in the light of the rule amendments to permit communication between the marine on-board stations and stations in the Business Radio Service. We have adopted rule changes solely for the Business Radio Service. Duplication in the Petroleum Radio Service is not necessary because applicants for use of the frequencies in the Petroleum Radio Service would also be eligible in the Business Radio Service.

11. AIMS and API, in regard to proposed § 83.132(a)(2)(iv), point to the need for use of an emission other than F3 for certain intraship non-voice functions. In particular, AIMS and API set forth the need, by use of a non-voice emission, to anchor towed barges under adverse environmental conditions, when those conditions require that the tug and tow be separated. AIMS and API state that under these conditions the safety of life, property and environment are directly affected. AIMS and API call attention to the current provisions of the rules applicable to the Business Radio Service (§ 91.554(b)(43)) which permits the use of emissions A1, A2, F1 and F2 and recommends that proposed § 83.132(a)(2)(iv) be amended to add the use of F2 emission. We are persuaded that the addition of emission F2 for the purpose described would be in the public interest.

12. The matter of dropping anchors by transmitted radio frequency signals was discussed in some detail in RTCM SC-62. During those discussions, it was recognized that unless appropriate steps were taken in the coding, that is, in the actuating information of the transmitted signal, it would be possible for one vessel to drop anchors aboard one or more other vessels so equipped, which are within propagation range of the radio frequency signals. The same is true, of course, under similar conditions with the raising of anchors. It is readily apparent that the lowering or raising of anchors aboard other than the intended vessel would constitute a safety hazard, which could result in loss of life and/or large amounts of property damage. Such a hazard can be removed where the coding of the transmitted signal is such that only the anchor of the intended vessel is actuated.

13. It is apparent that adequate safety regulations could appear in the regulations of either the United States Coast Guard (USCG), or those of the FCC. We have, therefore, effected coordination with the Office of Chief Counsel, USCG, and it has been agreed that appropriate safety regulations will be included in the FCC Rules and Regulations.

14. It is our view that the coding of the transmitted signal must be unambiguous and distinctive to the vessel concerned. Further, the safety considerations involved preclude an approach where we merely authorize the use of emission F2 and leave to the person operating the vessel the determination of the details of the coding to be used. Unless industry-wide coordination is effected in the assignment of codes, it is probable that two or more vessels will employ the same coding signal. Since it appears unreasonable to expect intra-industry coordination of this nature and scope, we intend to prescribe, in Part 83, the coding and technical standards applicable to the system and these are set forth in a further notice of proposed rulemaking in this proceeding.

15. AIMS and API, in regard to proposed § 83.134(h)(3) and the limitation of type accepted transmitter to a power of 4.0 watts, indicate that such limitation appears to preclude the use of a technique which may prove to be very desirable on many vessels. The technique to which AIMS and API refer is that of use of a "lossy" coaxial antenna system to carry the radio frequency energy above and below deck. Such a system is expected to require the use of a higher transmitter output power. We can concur that such a system may have a high future potential, however, the establishment of appropriate technical standards for the use of such a system goes substantially beyond the scope of this proceeding. In view thereof, we are not in this proceeding making provision for the use of "lossy" coaxial antenna systems, and have adopted, for the purpose of type acceptance, the power limitation of 4.0 watts carrier power, as set forth in the attached Appendix.

16. AIMS and API, in regard to proposed § 83.813, inquire, in effect, as to the need for or purpose served by this section. As set forth in paragraph 6 above, AIMS and API recommended that the on-board station be a part of the ship station and that FCC Forms 501 and 502 be employed in applying for an on-board station. Were Forms 501 and 502 used, § 83.813 would be redundant or repetitious. However, since the on-board station will not be a part of the ship station, it is necessary that the Commission determine that the applicant is in control of the vessel on which the on-board station is to be installed and operated. This direct relationship between Commission and licensee is deemed essential due to the relaxation of the log keeping and operator licensing requirements appearing in §§ 83.821 and 83.823. Accordingly, with some editorial change to conform to existing rules, we are adopting § 83.813 essentially as proposed, as set forth in the attached Appendix.

17. AIMS, API, and SANTE FE commented with regard to § 83.815. AIMS and API commented in regard to §§ 83.815(a)(2) and 83.815(b)(2). SANTE FE directed their comments to § 83.815(b)(2). As concerns (a)(2), AIMS and API express the view that the phrase "large oil transfer operations" is too restrictive and should be changed to "petroleum or petroleum products." As concerns paragraph (b)(2), AIMS and API indicate that paragraph (b)(2) is or appears to be in conflict with paragraph (a)(2), which conflict could be removed by adding (as italicized) words at the end of paragraph (b)(2), to read:

(2) For the loading or unloading of cargo *except as provided in § 83.815(a)(2).*

SANTA FE suggests that paragraph (b)(2) should be amended by adding (as italicized) either of two phrases, to read:

(2) For the loading or unloading of cargo *by cargo and other vessels which are primarily engaged in the carriage of cargo for hire;* or

(2) For the loading or unloading of cargo *while a vessel is within the inland waters of the United States.*

18. With regard to AIMS and API suggestion for change of § 83.815(a)(2), the phrase "large oil transfer operations" was taken from regulations adopted by the USCG and published in the FEDERAL REGISTER dated December 21, 1972 (see 37 FR 28250), on the subject of pollution prevention. In those regulations the USCG included a Part 154, entitled "Large Oil Transfer Facilities," which requires, in § 154.560, that means be provided for "two-way communication between the person in charge of the transfer operation on board the vessel and the person in charge of the facility transfer operation." While the USCG requirement can be fulfilled by the use of facilities other than radio, the view was taken in RTCM SC-62 that it would be necessary in many cases to use radio. To that end, SC-62 urged that in drafting its regulations, the Commission permit the use of the on-board station to fulfill this USCG requirement. The alternative to this approach would be for the vessel and shore facilities to operate on other frequencies which could require installation of additional radio equipment. Such alternative approach, as compared to the use of the on-board station, would increase, rather than decrease action required by the Commission to provide frequencies and licenses. The view taken by RTCM SC-62 was, therefore, considered to be the more practical approach since it would reduce the overall cost of radio facilities aboard concerned vessels. These facts notwithstanding, the Commission's concurrence to use of the on-board station for communication with shore facilities derives from the USCG pollution prevention requirement that a communication capability be provided in the case of "large oil transfer facilities".

19. Returning now to AIMS and API suggestion that the word "oil" is too restrictive and should be changed to "Petroleum and petroleum products": While we are inclined to agree, we suspect, in turn, that the proposed phrase is similarly too restrictive, since it does not cover other types of matter which should not be spilled in the water in the process of loading or unloading vessels. While we are not familiar with the background which led the USCG to select the title for Part 154, we can assume that there is an adequate basis for the title chosen. Further, should it develop that the USCG finds it appropriate to expand the scope of Part 154 by a change in title, we will at that time accept requests for a change in Part 83, § 83.815 (a) (2). In view of the foregoing, since pollution prevention is the responsibility of the USCG, we will await action by that agency to amend the title of Part 154 of Title 33 of the CFR. § 83.815(a) (2) is, therefore, adopted without change, as set forth in the attached Appendix.

20. As set forth in Paragraph 14 above, AIMS, API, and SANTA FE suggested changes to § 83.815(b) (2). AIMS and API suggestion seeks to remove an apparent conflict with § 83.815(a) (2). This suggested change would remove any existing ambiguity and it is, therefore, adopted as set forth in the attached Appendix. Further changes to § 83.815 are discussed in Paragraphs 23 and 24, below.

21. SANTA FE suggested two alternatives to the proposed wording of § 83.815 (b) (2). The first suggested change would, stated in context, reduce the instances where on-board stations should not be used for the loading or unloading of cargo. The effect of this first suggestion, if adopted, would be to expand the use of the on-board station for the loading or unloading of cargo, or specifically for the loading or unloading of cargo by vessels which are not engaged in the carriage of cargo for hire or do so on a secondary basis. Our objection to the use of on-board stations for the loading or unloading of cargo is because of the congestion caused to the limited number of channels available, the concentration of vessels in port and harbor areas, and the increased operational need for the channels by vessels when in these areas. Whether a vessel does or does not handle cargo for hire is not a controlling factor, since the congestion is the result of the communications generated by the loading or unloading activity. It is our view that congestion could be caused as easily by vessels not engaged in the carriage of cargo for hire as by vessels which are so engaged. We are not, therefore, adopting the first alternative change to § 83.815(b) (2) as suggested by SANTA FE.

22. SANTA FE's second alternative suggestion for change to § 83.815(b) (2) would prohibit the use of the on-board station for the loading or unloading of cargo when within inland waters of the United States, but would permit that station to be used for the loading or unloading of cargo when not within the inland waters. In their comments, SANTA FE provides no clarifying explanation or background in support of this suggested change. While their comments include the statement: "Subsidiary companies of SANTA FE International Corporation which operate offshore floating drilling, construction and pipelaying vessels primarily in foreign locations, but also in U.S. waters and/or offshore the U.S. coastline * * *," this statement cannot be construed as either enlightening or of providing definition with respect to this suggested change. In the absence of any basis from which to assess the merits or to determine the degree of need, and recognizing that the area which is not within the inland waters of the United States includes the inland waters of all other countries, we are not adopting the second alternative change to § 83.815(b) (2) suggested by SANTA FE.

23. AIMS and API, with regard to § 83.817, commented that the limitation applicable to antenna height is too restrictive and, second, that distinction is not made between an antenna used by a hand-carried mobile unit and one used by an on-board repeater. With regard to the first comment, in the case where the wheel house is on one of the lower decks, it is correct that it would be impractical to mount an antenna as proposed. With regard to the second comment, the antenna height proposed was intended to be applicable to the antenna used with an on-board repeater. We are, therefore, amending § 83.817, as set forth in the attached Appendix, to include the changes suggested by AIMS and API.

24. AIMS and API, in regard to § 83.819, comment that the procedure proposed in this section would be burdensome, since defective equipment is usually not repaired aboard ship. In the typical example which they cite, after the vessel docks any defective equipment is unplugged and replaced with equipment which performs properly. The service personnel then return the defective equipment to a service shop on shore for repair at a later time. In due course, the service shop completes repair of that equipment and it becomes available for use as a replacement unit aboard other vessels. The problem, as pointed out by AIMS and API, is that the repair of the defective equipment is usually effected well after the vessel has departed. Thus, it would be necessary to locate that vessel, which by that time will be at sea or in some other port, in order to enter in the station records the details of the repair work carried out on the defective equipment. With a large number of vessels, each of which carry multiple transceiver units, the record updating would present a major problem. We concur that under these conditions a sizable problem would be generated, without providing any particular benefit. The intent was that the station records should set forth the equipment used at that station and accurately reflect any changes thereto. In the case where repair of equipment is effected on the vessel, we are of the view that it is proper than an appropriate entry be made in the station record covering the nature of repair effected. At the same time, where a piece of equipment is defective and is replaced, the entry in the station record would cover only the replacement and not service work carried out on the defective unit at some other time and place. Accordingly, we have amended § 83.819, as set forth in the attached Appendix, to bring it into accord with the above discussion.

25. AIMS and API, in regard to § 83.821 (b) (2), comment that this section makes no provision for the licensing of hand-carried transceiver units on the dock, or for operator licensing during the time those units are used to handle docking communications. The scope of change required to cover these two points goes well beyond the provisions of § 83.821(b) (2). As outlined, the dock personnel would use the hand-carried unit for communication with numerous vessels which tie-up to that or nearby docks. Were the situation such that the hand-carried unit was used solely for communication with one vessel, that unit could be a part of the on-board station of that vessel. As a practical matter, however, this unit will be used for communication with all vessels using that dock or nearby docks. Under marine licensing procedures there is no way the hand-carried unit on the dock can be licensed as one unit of the on-board station aboard many vessels. Licensing in the Business Radio Service appears to be a means of providing for this mode of communication. On-board facilities could be utilized if proposed § 83.815 is changed to permit intercommunication. On this basis, no change is required to § 83.821(b) (2). As concerns the operator licensing of personnel operating the shore-side hand-carried unit(s), such personnel must meet the requirements set forth in the rules applicable to the Business Radio Service.

26. A parallel situation exists with regard to communication between the on-board station and the shore-based radio facility which is provided to meet USCG requirements (see paragraph 18, above), during large oil transfer operations. The shore-based facility could be authorized in the Business Radio Service. In order that these two facilities may intercommunicate, it will be necessary to remove the apparent conflict which exists between on the one hand, § 83.815 (a) (2) and on the other hand, § 83.815 (a) and (b) (2). Accordingly, in order to effect the changes discussed in this and in Paragraph 17 above, we have amended § 83.815 (a), (b) (1) and have added a new Paragraph (c), as set forth in the attached Appendix.

27. Turning now to the Business Radio Service and the shore-based facility, our rule modifications of Part 91 have been broadened in regard to the nature of the communications that would be permitted on the frequencies. The frequencies have

been made available for communications from shore to vessel, relative to cargo handling. As discussed above, the scope of messages that can be handled by the on-board stations will be limited by § 83.815 and the on-board station license. The 25-foot restriction between control point and the center of radiation of the antenna, as set forth in § 91.554(b)(13), is replaced by the 10-foot above the vessel's highest working deck antenna height, see § 83.817, and effective radiated power of 2 watts limitations which are contained in the marine rules. The same frequency arrangement for simplex and mobile relay operation as established in the marine rules has been made available to the Business Radio Service. Business Radio Service licensees will be able to maintain mobile transmitter/receiver units at docks and other areas where vessels handle cargo, which can be taken aboard a vessel and used for communications where equipment is not available to operate in the marine service. It will also be possible for mobile units licensed in the Business Radio Service and operated on the dock or shore location to communicate with on-board stations in the marine services.

28. AIMS and API, in regard to § 83.821(b)(3), comment that this section is inconsistent with § 83.815(a)(2) and that § 83.821(b)(3) does not provide for the case where it is necessary to make large transfer of petroleum or petroleum products from one vessel to another. In support, AIMS and API state that the use of on-board communication facilities under these conditions would substantially contribute to the prevention of spillage, in the same manner that such facilities contribute in the transfer from ship to dock. In examining USCG regulation, Title 33, Part 154, § 154.560, we find that that section concerns only the case of large oil transfer operations from a vessel to an on-shore or off-shore facility, neither of which is defined to include another vessel. While we have provided in this proceeding for the use of the on-board station as a means of complying, where necessary, with the mandatory provisions of § 154.560 of the USCG regulations, we are not persuaded that it is appropriate or desirable to expand the use of the on-board facilities beyond the scope of the present USCG regulations. Should it develop at some future date that the USCG chooses to amend their regulations, we will at that time reconsider the matter of use of the on-board station for vessel to vessel communications. Accordingly, the suggestion of AIMS and API that the on-board station be used for large oil transfer operations from vessel to vessel is not adopted. We are, however, removing the inconsistency pointed out by AIMS and API between §§ 83.821(b)(3) and 83.815(a)(2), as set forth in the attached Appendix.

29. EIA, in a general vein, stresses that equipments type accepted for use under Part 91 rules should be permitted to be used on the on-board frequencies under Part 83, even though that equipment is not type accepted under Part 83 rules. EIA points out that at the time these equipments were type accepted under Part 91, there were no 450–470 MHz allocations under Part 83. EIA expresses the view that it would be an unjust and unbearable burden, both procedurally and economically, upon the equipment suppliers to now require an additional filing for type acceptance under Part 83 rules. EIA emphasizes that the additional use of these frequencies for on-board communications is a channel sharing (Part 91 with Part 83) proceeding and that equipments type accepted under Part 91 Rules should be usable also under Part 83. EIA requests that the acceptability of such arrangements be included in the instant proceeding.

30. In considering EIA's supporting comments, we note there are equipments type accepted under Part 91 which do not conform to the limitations applicable to on-board communications. A rubber-stamp procedure such as suggested by EIA would, therefore, authorize types of equipment for use at on-board stations which do not confrom to the technical limitations imposed on those stations. In itself, this is an unacceptable arrangement. By progression, when viewed in the light of the eventual consequences, i.e., if such an arrangement is acceptable between Parts 91 and 83 it should be similarly acceptable between other Parts of the rules, it would destroy the effectiveness of the Commission's type acceptance program. This does not mean that some, or more, of the equipment type accepted under Part 91 do not meet the technical requirements for on-board stations under Part 83. In fact, some or more of the Part 91 equipment do meet the requirements applicable to on-board stations.

31. The introduction of on-board stations under Part 83 opens a sales area for equipment suppliers which previously did not exist. On the positive side, this sales area does not impose on the equipment supplier any requirement to develop a new line of equipment, or to change the technical characteristics of an existing line of equipment. To apply for type acceptance under Part 83 for Part 91 equipment, which meets the technical limitations applicable to on-board stations, the equipment supplier does not necessarily have to repeat all tests, since he can use the test data filed or on file under Part 91. This would appear to be a bonus situation for the equipment supplier. For these reasons, we are not persuaded that this is either an unjust or unbearable burden on the equipment supplier. Accordingly, we will continue the procedure as applied in the past, that is, equipment will be type accepted for the Part of the Rules under which it is to be operated. EIA's request is, therefore, denied.

32. In view of the foregoing, *It is ordered*, That pursuant to the authority contained in secs. 4(i) and 303 (a), (b), (c), (d), (e), (f), and (r) of the Communications Act of 1934, as amended, Parts 2, 81, 83, and 91 of the Commission's rules are amended, effective October 12, 1973, as set forth in the attached Appendix.

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

Adopted August 29, 1973.

Released September 6, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] VINCENT J. MULLINS,
Acting Secretary.

APPENDIX

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

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

A. Part 2, Frequency Allocations and Radio Treaty Matters; General Rules and Regulations, is amended as follows:

1. In § 2.1, the definition of Maritime Mobile Service is amended to add a Note, to read as follows:

§ 2.1 Definitions.

* * * * *

Maritime mobile service.—A mobile service between coast stations and ship stations, or between ship stations, in which survival craft stations may also participate.

NOTE.—Including use of on-board stations.

* * * * *

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

B. Part 81, Stations on Land in the Maritime Services and Alaska-Public Fixed Stations, is amended as follows:

1. In § 81.3, paragraph (b)(1) is amended to read as follows:

§ 81.3 Maritime mobile service.

* * * * *

(b) Maritime and land mobile service.

(1) Maritime Mobile Service. A mobile service between coast stations and ship stations, or between ship stations, in which survival craft stations may also participate. (Includes use of on-board stations. Aircraft stations, when transmitting on frequencies allocated to the maritime mobile service, may communicate in this service with ship stations and coast stations.)

* * * * *

PART 83—STATIONS ON SHIPBOARD IN MARITIME SERVICES

C. Part 83, Stations on Shipboard in the Maritime Services, is amended as follows:

[1] Commissioners Johnson and Reid absent.

1. In § 83.3, paragraph (b) is amended, and new paragraphs (n), (o) and (p) are added, to read as follows:

§ 83.3 Maritime mobile service.

* * * * *

(b) *Maritime mobile service.*—A mobile service between coast stations and ship stations, or between ship stations, in which survival craft stations may also participate. (Includes use of on-board stations. Aircraft stations, when transmitting on frequencies allocated to the maritime mobile service, may communicate in this service with ship stations and coast stations.)

* * * * *

(n) *On-board station.*—A station in the the maritime mobile service on board ship, including a combination of two or more on-board mobiles and an on-board repeater, intended to be used primarily for intraship operational communications on board ship and in the immediate vicinity of the ship, as related to ship security and protection, while the ship is in motion or moored.

(o) *On-board mobile.*—A hand-carried mobile transmitter and receiver operated as part of an on-board station.

(p) *On-board repeater.*—A transmitter and receiver operated as part of an on-board station, intended for the reception and automatic retransmission of signals between on-board mobiles.

2. In § 83.7, the existing paragraphs are lettered (a) through (i) and new paragraphs (j) and (k) are added, to read as follows:

§ 83.7 Technical.

* * * * *

(j) *Antenna power gain.*—The ratio of the power required at the input of a half-wave dipole to the power supplied to the input of the given antenna to produce, in a given direction, the same field at the same distance. When not specified otherwise, the figure expressing the gain of an antenna refers to the gain in the direction of the radiation main lobe.

(k) *Effective radiated power (ERP).*—The product of the antenna input power and the antenna power gain. This product should be expressed in watts and is referred to a half-wave dipole. (If specified in a particular direction, effective radiated power is based on the antenna power gain in that direction only.)

3. In § 83.22, add a new paragraph (h), to read as follows:

§ 83.22 Administrative Classification of Stations.

* * * * *

(h) On-board stations.

4. In § 83.36, paragraph (b) is amended to read as follows:

§ 83.36 Application forms for station authorizations.

* * * * *

(b) FCC Form 503 shall be used: (1) For filing formal application for new or modified station license in the maritime radiolocation service; and (2) In applying for an on-board station license.

* * * * *

5. In § 83.131, a new paragraph (f) is added to read as follows:

§ 83.131 Authorized frequency tolerance.

* * * * *

(f) The frequency tolerance authorized for on-board stations is 5.0 parts in 10^4.

6. In § 83.132, a new subdivision (iv) is added to paragraph (a)(2), to read as follows:

§ 83.132 Authorized classes of emission.

(a) * * *
(2) * * *
(iv) Frequency band.

For the frequency band 450–470 MHz	F3

* * * * *

7. In § 83.134, a new paragraph (h) is added to read as follows:

§ 83.134 Transmitter power.

* * * * *

(h) The power employed by on-board stations when operating shall not exceed 2.0 watts effective radiated power. These transmitters will be type accepted on the basis of a carrier power of not more than 4.0 watts, with the transmitter terminated in a dummy load of matching impedance (not connected to an antenna). The licensee shall apply appropriate measures to assure that the effective radiated power does not exceed 2.0 watts.

8. In § 83.137, paragraph (h) is amended to read as follows:

§ 83.137 Modulation requirements.

* * * * *

(h) Each transmitter[2] operated in the bands 156–162 and 450–470 MHz shall be equipped with an audio low-pass filter installed between the modulation limiter and the modulated (radio frequency) stage which, at audio frequencies between 3 kHz and 20 kHz, shall have an attenuation greater than the attenuation at 1 kHz by at least 60 $\log_{10}$ (f/3) decibels, where "f" is the audio frequency in kHz. At audio frequencies above 20 kHz the attenuation shall be at least 50 decibels greater than the attenuation at 1 kHz.

[2] * * *

9. In § 83.164, new paragraphs (c) and (d) are added to read as follows:

§ 83.164 Waivers of operator requirement.

* * * * *

(c) No radio operator license is required for the operation of an on-board station: *Provided,* That the limitations set forth in § 83.160(a) (1) and (2) shall apply.

(d) No person is required to be in attendance at the repeater of an on-board station when transmitting during the normal rendition of service.

9a. The table of contents for Part 83 is amended by adding a Subpart Z as follows:

Subpart Z—Use of On-board Communications

Sec.
83.811 Authorized frequencies.
83.813 Supplemental eligibility requirements.
83.815 Points of communication.
83.817 Antenna height.
83.819 Station records.
83.821 Station logs.
83.823 Station operation.
83.825 Identification of station.

AUTHORITY: Secs. 4, 303, 48 Stat. 1068, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

10. A new Subpart Z, entitled Use of On-Board Communications, is added to read as follows:

Subpart Z—Use of On-Board Communications

§ 83.811 Authorized frequencies.

(a) The assigned frequencies set forth in paragraph (b) of this section may be used aboard vessels employing radiotelephony for on-board communications when authorized by station license. The frequencies are available on a shared and cooperative basis with stations operating in the Business Radio Service. These frequencies are not available for use by aircraft.

(b) Assigned frequencies.

(1) For two frequency simplex (duplex), paired as follows:

Channel	On-board repeater (MHz)	On-board mobile (MHz)
1	457.525	467.750
2	457.550	467.775
3	457.575	467.800
4	457.600	467.825

(2) For single frequency simplex:

457.525, 457.550, 457.575, and 457.600 MHz.

§ 83.813 Supplemental eligibility requirements.

(a) Subject to the basic eligibility requirements set forth in § 83.23, authorization for on-board stations may be granted to the following:

(1) State or local government subdivisions; or any agency of the Federal Government which is subject to the provisions of sec. 301 of the Communications Act;

(2) The owner or operator having control of the vessel aboard which the on-board station is to be installed and operated; or

(3) A parent corporation or its subsidiary if either corporation is the owner or operator of the vessel aboard which the on-board station is to be installed and operated.

(b) Each application shall be accompanied by a statement containing facts sufficient to establish the applicant's eligibility for license under the criteria set forth in paragraph (a) of this section.

§ 83.815 Points of Communication.

(a) Subject to the conditions and limitations imposed by the terms of the particular station license or by applicable provisions of this part with respect to the use of particular radio-channels, on-board stations on board ships in the maritime mobile service are authorized to communicate with other mobile units of the same station, except as provided in paragraph (c) of this section:

(1) Aboard the same vessel for operational communications;

(2) From ship to dock for large oil transfer operations to prevent spillage; and

(3) In the immediate vicinity of the same vessel for operational communications relating to docking or life boat and emergency drills.

(b) An on-board station may not be used:

(1) For communication with any other station, except as provided in paragraph (c) of this section; or

(2) For the loading or unloading of cargo, except as provided in paragraph (a)(2) of this section.

(c) An on-board station may communicate with a station in the Business Radio Service operating on the same frequency, provided that the communications pertain to the activities set forth in paragraphs (a)(2) and (a)(3) of this section.

§ 83.817 Antenna height.

The center of the radiating system of the on-board repeater antenna shall be located no higher than 10 feet above the vessel's highest working deck.

§ 83.819 Station records.

(a) Each on-board station shall be provided with records showing:

(1) The name of ship and identification of the on-board station;

(2) The number and type of repeater and mobile units used aboard the vessel under the on-board station authorization;

(3) The date and type of equipment which is added to or removed from the on-board station;

(4) The date and time of any failure of the equipment to operate in accordance with these rules;

(5) The date of repair, servicing, or replacement of each repeater or mobile equipment used under the on-board station authorization. Where repair is effected aboard ship, the record shall also include the nature of the repair; and

(6) The name, category of operator license and license number of the person effecting repair, servicing, or replacement of equipment employed under the on-board station authorization.

(b) The record specified in paragraph (a) of this section shall be maintained by the licensee for the duration of the station authorization, and such records shall be retained for a period of one year thereafter.

(c) The station records shall be made available to authorized Commission personnel upon request.

§ 83.821 Station logs.

(a) Stations authorized for use aboard vessels for on-board communications are not required to maintain a log.

§ 83.823 Station operation.

(a) The licensee of an on-board station shall assure;

(1) That the on-board station is operated in accordance with the Commission's rules applicable to that station;

(2) That personnel operating the mobile units are limited to designated members of the crew of the vessel aboard which the on-board station is authorized;

(3) That use of the on-board station is limited to communications between crew members aboard the same vessel; and shall prohibit use of the on-board station for communications with another vessel, except as authorized in § 83.815 of this chapter;

(4) That unnecessary transmissions are not made, as a means of avoiding harmful interference to other vessels within communication range which are employing the same frequencies.

(b) Each on-board repeater shall be furnished with automatic means to deactivate the transmitter in the event the carrier remains on for a period in excess of 3 minutes.

§ 83.825 Identification of Station.

(a) On-board stations shall identify transmissions by announcement in the English language as set forth in paragraphs (b), (c) and (d) of this section.

(b) Identification of station shall include the name of the vessel, followed by a number or name designating the respective mobile unit(s), for example, the identification and call would be: "S.S. United States Mobile One this is Mobile Two."

(c) Identification shall be transmitted when:

(1) The vessel is in a port or harbor, in inland waters, within 20 miles of any coastline or in a busy shipping lane; or

(2) The communications are likely to be received aboard another vessel.

(d) Identification, when required, shall be transmitted at the beginning and upon completion of a series of communications *Provided, however*: That station identification shall be transmitted at intervals not exceeding 15 minutes whenever transmissions, or a series of transmissions, is sustained for a period exceeding 15 minutes.

PART 91—INDUSTRIAL RADIO SERVICES

D. Part 91, Industrial Radio Services is amended as follows:

1. In § 91.554, paragraph (a) is amended by adding new limitation designators (49) and (50) to certain frequencies and paragraph (b) is amended to include the new frequency limitations (49) and (50) as follows:

§ 91.554 Frequencies available.

(a) • • •

BUSINESS RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	General reference	Limitations
MHz:			
•	•	•	•
457.525	Mobile	Low power general use	13, 33, 43, 49, 50
457.550	do	do	13, 33, 43, 49, 50
457.575	do	do	13, 33, 43, 49, 50
457.600	do	do	13, 33, 43, 49, 50
•	•	•	•
467.750	Mobile	Low power general use	13, 33, 44, 49, 50
467.775	do	do	13, 33, 44, 49, 50
467.800	do	do	13, 33, 44, 49, 50
467.825	do	do	13, 33, 44, 49, 50
•	•	•	•

(b) • • •

(49) This frequency is used on a shared and cooperative basis with on-board stations in the maritime mobile service.

(50) Frequencies subject to this assignment limitation are herein considered collectively for use for communications concerned with cargo handling from a dock, or cargo handling facility, to a vessel alongside. Any number of the frequencies may be authorized to one licensee for the purpose. Mobile relay stations may be temporarily installed at or in the vicinity of a dock or cargo handling facility and used when a vessel is alongside the dock or cargo handling facility.

On-vessel mobile relay (MHz):	*Associated mobile (MHz)*
457.525	467.750
457.550	467.775
457.575	467.800
457.600	467.825

For single frequency simplex:

457.525, 457.550, 457.575, and 457.600 MHz.

The effective radiated power (ERP) on any frequency shall not exceed 2 watts. For an on-vessel mobile relay station the separation between the transmitter control point and the radiating portion of the antenna shall not be over 10 feet above the vessel's highest working deck.

• • • • •

[FR Doc.73-19375 Filed 9-11-73;8:45 am]

Title 49—Transportation

CHAPTER III—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. MC-12; Notice No. 73-25]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Safe Loading of Commercial Motor Vehicles, Revision; Correction

FR Doc. 73-18439, published at pages 23520-23524 in the issue dated Friday,

August 31, 1973, is corrected by changing the reference to "20 feet per second" in paragraph (a) of § 393.104 appearing on page 23524 to read "20 feet per second per second".

As so corrected § 393.104(a) reads as follows:

§ 393.104 Blocking and bracing.

(a) *Protection against longitudinal movement.*—When a motor vehicle carries cargo that is not firmly braced against a front-end structure that conforms to the requirements of § 393.106, the cargo must be secured so that, when the vehicle decelerates at a rate of 20 feet per second per second, the cargo will remain on the vehicle and will not penetrate the vehicle's front-end structure.

* * * * *

Issued on September 6, 1973.

ROBERT A. KAY,
Director,
Bureau of Motor Carrier Safety.

[FR Doc.73-19299 Filed 9-11-73;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.73-19712 Filed 9-11-73;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—BUREAU OF SPORT FISHERIES AND WILDLIFE, FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Certain National Wildlife Refuges in Alaska

The following regulations are issued and are effective on September 12, 1973. These regulations apply to public hunting on portions of certain national wildlife refuges in Alaska.

General conditions.—Hunting shall be in accordance with applicable State regulations. Information relative to hunting may be obtained from Refuge Managers addressed to respective refuges.

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

Upland game may be hunted on the following refuge areas:

Cape Newenham National Wildlife Refuge, P.O. Box 346, Bethel, Alaska 99559.

Clarence Rhode National Wildlife Range, P.O. Box 346, Bethel, Alaska 99559.

Nunivak National Wildlife Refuge, P.O. Box 346, Bethel, Alaska 99559.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Bering Sea National Wildlife Refuge, P.O. Box 346, Bethel, Alaska 99559.

Clarence Rhode National Wildlife Range, P.O. Box 346, Bethel, Alaska 99559.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuge areas generally and which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through June 30, 1974.

DAVID L. SPENCER,
Area Refuge Supervisor, Bureau of Sport Fisheries and Wildlife, Anchorage, Alaska.

AUGUST 30, 1973.

[FR Doc.73-19305 Filed 9-11-73;8:45 am]

PART 32—HUNTING

Crab Orchard National Wildlife Refuge, Illinois

The following special regulation is issued and is effective on September 12, 1973.

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

ILLINOIS

CRAB ORCHARD NATIONAL WILDLIFE REFUGE

Public hunting of ducks and coots on the Crab Orchard National Wildlife Refuge, Illinois, is permitted from October 20 through December 3, 1973, and the hunting of geese is permitted from November 19, 1973, through January 20, 1974, but only on the area designated by signs as open to hunting. This open area comprising 12,380 acres is delineated on a map available at refuge headquarters, Carterville, Illinois, and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Season for hunting geese will be closed when a kill quota of 24,000 Canada geese is reached. Hunting will be in accordance with all applicable State and Federal regulations subject to the following special conditions:

(1) Blinds—the building of permanent blinds of any kind or other structural works on the refuge public hunting area is prohibited. All blinds must be of a portable nature or constructed with dead vegetation located at the blind site and must be removed or dismantled at the end of the day's hunt. Blinds may not be constructed beyond the shoreline on refuge waters.

(2) All waterfowl hunting at the Grassy Point and Carterville Beach areas shall be from blind sites established by the Project Manager.

(3) No goose pits may be built on the refuge public hunting area.

(4) It is unlawful for any person to establish or use any blind for the taking of migratory waterfowl within 100 yards of any other blind on the refuge public hunting area.

(5) All persons hunting geese on the refuge public hunting area must register before entering and upon leaving the area and must register any geese taken on the area at the locations designated by the Project Manager.

(6) Hunting shall not be permitted at the Carterville Beach area as posted by the Project Manager.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 20, 1974.

CHARLES A. HUGHLETT,
Acting Regional Director.

AUGUST 31, 1973.

[FR Doc.73-19306 Filed 9-11-73;8:45 am]

Title 15—Commerce and Foreign Trade

CHAPTER III—DOMESTIC AND INTERNATIONAL BUSINESS ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER B—EXPORT REGULATIONS

[13th Gen. Rev., Export Regs., Amdt.]

PART 377—SHORT SUPPLY CONTROLS

Licensing System for Certain September Exports of Agricultural Commodities

Section 377.3 of the Export Control Regulations sets forth licensing systems for exports of various agricultural commodities. For soybeans, cottonseed, and their meals and oils, the regulations require evidence of contracts accepted on or before June 13 (July 20 in the case of oils) for shipment prior to September 1 for soybeans, August 1 for cottonseed, and October 1 for their meals and oils. A separate licensing system applies to contracts accepted on or before June 13 for shipment of soybeans in September. Thirty two other categories of oils, protein feeds, and animal fats are subject to quotas equal to each exporter's shipments of these commodities during July-September 1972 (90 percent of that amount for inedible tallow) for shipment prior to October 1. All of these licensing systems remain in effect for contracts entered into prior to September 8, 1973.

The purpose of this document is to establish a new policy for shipments during September of all agricultural commodities subject to validated licensing, for which export contracts are entered into on, or after, September 8, 1973. Applications for export against such contracts will be licensed for 100 percent of the quantity specified in the contract, provided the application is supported by a photocopy or certified copy of the contract of sale for export to a foreign buyer entered into by the parties on or after September 8, 1973 and calling for export shipment during the month of September. Licenses issued against such applications shall expire October 15, 1973.

Exporters who choose to deliver their license applications directly to the Office of Export Control may have these handcarried to Room 1613, Main Department of Commerce Building, 14th and E Streets NW., Washington, D.C. After normal business hours, a receiving desk is maintained in the main lobby of the building on Monday until 12 p.m., on Tuesday thru Friday until 10 p.m., and on Saturdays from 8:30 a.m. until 5 p.m.

It is anticipated that all restrictions on exports of these agricultural commodities will be terminated as of October 1, 1973.

The new policy in no way modifies or affects the reporting requirements set forth in Part 376, which remain in full force and effect.

Accordingly, § 377.3 of the Export Control Regulations is amended by redesignating paragraphs (f) and (g) as (g) and (h) respectively, and inserting a new paragraph (f) to read as follows:

§ 377.3 Agricultural commodities.

* * * * *

(f) *Licensing System for Agricultural Commodities to be Exported in September Against Contracts Entered into on or after September 8, 1973.*—(1) *Submission of application with supporting documentation.*—All exporters who wish to be considered for the issuance of a validated license for export during September against a contract entered into on or after, September 8, 1973, of any of the agricultural commodities listed in Supplement No. 1 to this Part 377, must file with the Office of Export Control, U.S. Department of Commerce, Washington, D.C. 20230, an application on forms FC-419 and FC-420, accompanied by a photocopy or certified copy of the contract of sale for export to a foreign buyer, dated on or after September 8, 1973, and which specifies shipment in September. The copy of the contract will serve in lieu of the form FC-842, Single Transaction Statement by Consignee and Purchaser, that would otherwise be required pursuant to § 375.2 of the Export Control Regulations.

(2) *Issuance of license.*—The Office of Export Control will verify the authenticity of each application and supporting documentation and will issue a validated export license for the quantity of each verified contract submitted under the terms of subparagraph (1) of this paragraph.

* * * * *

Effective date of action.—September 7, 1973.

RAUER H. MEYER,
Director,
Office of Export Control.

[FR Doc.73-19471 Filed 9-11-73;8:45 am]

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rulemaking prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Customs Service

[19 CFR Part 1]

CUSTOMS FIELD ORGANIZATION

Proposed Changes in Customs Region IX

AUGUST 31, 1973.

In order to effect a better ratio of Customs ports of entry to Customs districts and to align the Customs ports of entry with congressional representation and state interests, it is proposed to transfer the jurisdiction of the Customs ports of entry of Baudette, Noyes, Pinecreek, Roseau, and Warroad, Minnesota, from the Pembina, North Dakota, Customs district (Region IX), to the Duluth, Minnesota, Customs district (Region IX).

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. II), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 9 (38 FR 17517), it is hereby proposed to transfer the jurisdiction of the Customs ports of entry of Baudette, Noyes, Pinecreek, Roseau, and Warroad, Minnesota, from the Pembina, North Dakota Customs district (Region IX), to the Duluth, Minnesota, Customs district (Region IX).

Prior to the adoption of the foregoing proposal, consideration will be given to any relevant data, views, or arguments which are submitted to the Commissioner of Customs, Attention: Regulations Division, Washington, D.C. 20229, and received not later than October 12, 1973.

Written material or suggestions submitted will be available for public inspection in accordance with section 103.3(b) of the Customs Regulations (19 CFR 103.3(b)), at the Regulations Division, Headquarters, United States Customs Service, Washington, D.C., during regular business hours.

[SEAL] JAMES B. CLAWSON,
Acting Assistant Secretary of the Treasury.

[FR Doc.73-19391 Filed 9-11-73;8:45 am]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Part 7]

CAPE HATTERAS NATIONAL SEASHORE, NORTH CAROLINA

Proposed Fishing Regulations

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 August 17, 1937 (1, 50 Stat. 669; 16 U.S.C. 459), 245 DM-1 (27 FR 6395), 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 add paragraph (c) to § 7.58 of Title 36 of the Code of Federal Regulations as set forth below.

The purpose of this addition is: (1) To provide for the issuance of commercial fishing permits, authorizing commercial fishing from seashore beaches, to legal residents of the villages specified in Section 1 of the Act of August 17, 1937 (50 Stat. 669) establishing Cape Hatteras National Seashore; (2) to define the criteria for determining eligibility for a commercial fishing permit; (3) to provide for the sanitation of seashore beaches and disposal of unwanted fish and fish parts.

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 regarding the proposed addition to the Superintendent, Cape Hatteras National Seashore, P.O. Box 457, Manteo, North Carolina 27954, within 30 days of the publication of this notice in the FEDERAL REGISTER.

Paragraph (c) is added to § 7.58 of Title 36 of the Code of Federal Regulations as follows:

§ 7.58 Cape Hatteras National Seashore Recreational Area; hunting.

* * * * *

(c) *Fishing.*—(1) *Definitions.*—As used in this part:

(i) *Superintendent.*—The Superintendent of Cape Hatteras National Seashore.

(ii) *Seashore.*—Cape Hatteras National Seashore.

(iii) *Permittee.*—A person authorized to engage in commercial fishing from seashore beaches.

(iv) *Legal resident of an established village.*—An individual (excluding a corporation, partnership, or other artificial person) having domicile in one of the following Outer Banks villages referred to in Section 1 of the Act of August 17, 1937 (50 Stat. 669):

Corolla.	Rodanthe.
Duck.	Waves.
Kitty Hawk.	Salvo.
Kill Devil Hills.	Avon.
Collington.	Buxton.
Nags Head.	Frisco.
Manteo.	Hatteras.
Wanchese.	Ocracoke.

(v) *Commercial fishing.*—All operations preparatory to, during, and subsequent to the taking of fish by any means if a primary purpose of the taking is to sell fish.

(vi) *Commercial fishing permit.*—Written revocable authorization, issued by the Superintendent to an eligible individual, to engage in commercial fishing from the Seashore beaches. The permit will be issued on an annual basis commencing on October 1st of each year.

(2) *Commercial fishing permit required.*—A commercial fishing permit is required before engaging in commercial fishing from the seashore beaches. All other commercial fishing is prohibited.

(3) *Permits.*—Commercial fishing permits may be issued by the Superintendent or his authorized representative limited to individuals meeting the following criteria of eligibility:

(i) A legal resident of an established village.

(ii) Possession of a valid North Carolina commercial fishing license or engagement in a joint commercial fishing venture with a North Carolina commercial fishing licensee.

The permit shall be carried at all times while engaged in commercial fishing and shall be displayed upon request by the Superintendent or his representative. When two or more individuals engage in a joint commercial fishing venture involving a splitting of profits or any other assumption of proprietary interests, each individual must qualify for and have a commercial fishing permit. An employee hired by a permittee for a specific wage with no financial interest in the activity need not have a permit.

(4) *Revocation of permit.*—The Superintendent may revoke the commercial fishing permit of any permittee who ceases to meet the criteria of eligibility set forth in paragraph (c)(3) of this section or who violates any General, Special, or other related regulation governing activities at the Seashore.

(5) *Beach sanitation and conservation of aquatic life.*—Notwithstanding any General Regulation of the National Park Service to the contrary, all fishermen, commercial and sport, landing fish on the Seashore by any method and not using such fish because of size, edible quality, or other reason, shall immediately release and return such fish alive in the waters from which taken. No dead fish or part thereof may be left on any shore, beach, dock, pier, fish cleaning table or thrown back into the waters, but must be disposed of only at points or

places designated for the disposal thereof or removed from the seashore area.

ROBERT D. BARBEE,
Superintendent,
Cape Hatteras National Seashore.

[FR Doc.73-19329 Filed 9-11-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 26]

GRAIN SORGHUM

Proposed Revision of U.S. Standards

Correction

In FR Doc. 73-18559, appearing on page 23955 of the issue for Wednesday, September 5, 1973, make the following changes:

1. In item number 11 in the preamble, the word "Docket" should read "Dockage".

2. In § 26.551(a), the word "or" in the fourth line should read "of".

3. In the second paragraph after § 26.554(c), the word "portioin" in the sixth line should read "portion".

4. In the 8th and 9th lines of the third paragraph from the end of the document, the date "October 22, 1973" should read "October 23, 1973".

[7 CFR Part 1050]

[Docket No. AO 355-A13]

MILK IN THE CENTRAL ILLINOIS MARKETING AREA

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Central Illinois marketing area. The hearing was held, 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 (7 CFR Part 900), at Bridgeton, Missouri, on May 23, 1973, pursuant to notice thereof issued on May 11, 1973 (38 FR 12926).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on July 23, 1973 (38 FR 20093), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein subject to the following modifications:

Issue No. 2 is revised in its entirety.

The material issues on the record of the hearing relate to:

1. Pooling standards for distributing plants.

2. Designation of a cooperative as a handler on bulk tank milk.

3. Order format.

4. Emergency action.

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. *Pooling standards for distributing plants.* The provisions of the order with respect to pool distributing plant performance standards should be modified. For purposes of determining whether a distributing plant has met the pooling percentages specified in the order, both as to the proportion of its receipts distributed on routes in the marketing area and the proportion distributed on all routes, receipts at the distributing plant should (a) exclude the amount of fluid milk products transferred without specific Class II designation to other pool distributing plants, and (b) include all Grade A milk received by transfer from other pool plants.

The order currently provides that a pool distibuting plant's total route disposition, both inside and outside the marketing area, must be at least 50 percent of its Grade A receipts from dairy farmers and cooperative associations in their capacity as bulk tank handlers during the months of August through February, and 40 percent during all other months. In addition, a pool distributing plant's route disposition in the marketing area must be not less than (a) 10 percent of such receipts, or (b) an average of 7,000 pounds per day.

A cooperative association supplying the market proposed that transfers and diversions of bulk and packaged fluid milk products from a distributing plant to other pool plants be excluded from the former plant's receipts for purposes of determining its performance percentages. Proponent contended that the proposed change in the order is needed if the possibility of loss of producer status for a substantial number of dairy farmers supplying the Central Illinois market is to be avoided. No opposition to the proposal was expressed at the hearing or in briefs.

Proponent operates a pool distributing plant that it acquired as a result of a merger with another cooperative association on November 1, 1972. Most of the fluid milk processed and packaged at this plant is distributed on routes in the marketing area. However, some of it is moved to other pool distributing plants for which proponent is a custom bottler. In addition, the association's plant is the principal supplier of bulk fluid milk for yet another pool distributing plant.

The latter plant is physically unable to receive milk directly from producers. Therefore, milk supplied to this plant is received initially at proponent's plant where it is cooled and stored until needed. It is then shipped to the second plant and pumped directly from tank trucks into the plant's own processing and packaging facilities.

The producer milk that must be received at proponent's plant in order to perform these supply plant and custom bottling plant functions ultimately is used for Class I route disposition by other pool distributing plants. The producers receipts associated with this route disposition are credited to proponent's plant while the route disposition itself is credited to the other pool plants. Proponent contends that the consequent decrease in its plant's performance percentages jeopardizes its pool status. The association projects that during the summer, when route sales to schools are down and producer receipts are near their seasonal peak, its plant will not be able to meet the total route disposition requirement now specified in the order.

Proponent cited a recent change in its plant's supply situation as an additional factor that is contributing to its pooling difficulties. In October 1972, a large pool distributing plant ceased all processing operations leaving a substantial number of producers with no immediately available fluid outlet for their milk. Subsequently, proponent began receiving the milk of a number of these producers at its plant. Proponent has continued to receive these additional supplies since that time.

The revised method of computing pooling percentages adopted herein, by excluding transfers of fluid milk not specifically designated as Class II from the shipping plant's receipts and including them in the receiving plant's receipts, will, in effect, allocate the former plant's receipts to the plant that actually made use of such receipts for route disposition. This will enable the shipping plant to continue performing services that are vital to the fulfillment of the market's fluid needs without risking its pool plant status.

In addition the modification will provide a more logical basis for computing performance percentages for a distributing plant that receives a substantial amount of milk from pool plants. Under the present order provisions, milk transferred from pool plants to a distributing plant is not counted as part of the receiving plant's receipts for purposes of determining its pool status. However, to prevent such a distributing plant from attaining pool status when most of its receipts are utilized for Class II products it is necessary that all transfers from other pool plants, and not just those transfers without a specified Class II designation be included in a transferee distributing plant's receipts for qualifying purposes.

For similar reasons, transfers from a distributing plant to pool supply plants and nonpool plants, and transfers from a distributing plant to pool distributing plants when such transfers carry a specific Class II designation, should not be excluded from the shipping plant's receipts for purposes of determining its pool status. Under normal circumstances, milk will not be so transferred unless it is to be used for manufacturing purposes at the receiving plant. If such transfers were excluded from the shipping distributing plant's receipts for qualifying purposes, the plant could conceivably maintain its pooling percentages at or above the minimum levels specified in the order even though a major portion of its

receipts were ultimately used to produce manufactured products.

2. *Designation of a cooperative association as a handler on bulk tank milk.* The order should provide that a cooperative association shall be the handler for milk of producers it receives for the account of the association from the farm in a tank truck operated by, or under the control of such association for delivery to a pool plant. In addition, a cooperative association should be the handler for all milk of producers it diverts from a pool plant to a nonpool plant.

Under the current order provisions, a cooperative may be a bulk tank handler, or a diverting handler with respect to milk of member producers. Also, it may elect whether to be the handler as to member milk it receives from the farm for delivery to a pool plant in a tank truck owned and operated by, or under contract to, such association.
tract to, such association.

Milk produced for this market is handled through farm bulk tanks and moved to the market in tank trucks. Milk of any producer when commingled in a tank truck with that of other producers is indistinguishable from such other milk. The amount of a producer's milk placed in a tank truck, and the butterfat content thereof, can be determined only by measurement at the farm and from milk samples taken at the farm. After the milk has been pumped from the farm tank into the tank truck and commingled with the milk of other producers, there is no further opportunity to measure, sample, or reject the milk of the individual producer.

When milk is picked up at the farm by a truck owned or operated by a cooperative association, or by a person under contract to, or otherwise under the control of, such association for delivery to a pool plant, it is the association that determines the weight and butterfat content of each producer's milk. Frequently, the plant operator will not know the identity of the individual producers whose milk he receives, and will know only the aggregate amount of milk received. In such cases, the association obviously must become the responsible handler for the milk as it leaves the farm.

Most often, in this market, the handler responsibility imposed on the cooperative will be limited, however. It is commonplace for cooperatives to make an agreement with pool plant operators for the latter to receive milk marketed by the cooperative on the basis of farm weights and tests. When milk is received at the pool plant on such basis, it is accounted for as a receipt at such plant from producers. The cooperative association would be required, however, to report to the market administrator the total volume of milk delivered to the pool plant(s), and to file a payroll report showing the weight and butterfat content of the milk of the individual producers involved.

The provision set forth in the recommended decision made specific reference to the possibility of such agreements between a cooperative association and a pool plant operator. While this language is revised, the revision in no way precludes such agreements for accounting for milk. A cooperative association's basic responsibilities under the order as a bulk tank handler thus will not be affected by the modifications made and, in those instances where the pool plant operator purchases on the farm weights and tests, will continue to be limited primarily to filing a report of the farm weights and tests of such milk and of the quantities delivered to each pool plant.

Another situation arises when the pool plant operator receives milk from a cooperative on the basis of its scale weight at the plant rather than on farm weights and tests. In this event, the cooperative's monetary obligations to the pool, with respect to the milk for which it is the bulk tank handler, will continue to be, as at present, with respect to any difference in the amounts of milk and butterfat as measured at the farm and those recorded at the receiving plant. This amount usually will be shrinkage in accordance with its value under the shrinkage provisions.

Several cooperative associations expressed concern at the hearing that the modifications adopted might require a cooperative to be the handler for the milk of nonmember producers. Nothing in the amendments adopted would require a cooperative association to pick up the milk of nonmember producers in tank trucks under the association's operation or control. It does provide that if a cooperative should pick up milk of nonmember producers on routes under its control, it must assume varying degrees of responsibility with respect to such milk, depending on the circumstances.

The provision adopted, which accommodates substantial flexibility in the arrangements under which cooperatives sell to pool plant operators, makes it possible for a cooperative association to pick up, on its trucks or trucks under its control, the milk of nonmember producers for delivery to pool plants and the pool plant operator to make payment directly to such nonmember producers for their milk. Thus, the degree of responsibility the cooperative will have for such milk will depend on the terms of the arrangements for its delivery to pool plants. At the same time, it will enable the cooperative to act as the marketing agent for a nonmember producer who, although he has not become a member of such association, has contracted with the cooperative association to act as the marketing agent for his milk. In this connection the cooperative association may collect payment from pool plant operators for a nonmember producer provided such nonmember has given the association authorization to make such collection.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. This amendment to the order is consistent with that provision of the Capper-Volstead Act wherein it is recognized that cooperatives may "deal in the products of nonmembers" and limits such dealings to amounts not greater in value than such as are "handled by it for members."

In the event the milk of a nonmember producer is diverted as producer milk from a pool plant to a nonpool plant by a cooperative association, the cooperative should be the diverting handler with respect to such milk. Here the cooperative performs the complete handling function and in such capacity obviously must be held to be responsible for order obligations applicable to such milk. Thus, all milk commingled in the truck should be handled on equal terms insofar as its producer status under the order is concerned.

The provisions of the present order relating to diversion to nonpool plants are revised further to make clear that milk may not be diverted to the plant of a producer-handler if the producer-handler plant is to maintain its status as a nonpool plant rather than become a pool plant. The receipt of milk from producers (other than own farm production) places a producer-handler in the same position as other handlers receiving producer milk.

Another question raised was whether, in paying a nonmember producer, a cooperative may reblend proceeds due such nonmember producer with those paid to its member producers. If the nonmember producer has signed a contract with the cooperative association whereby he authorizes the cooperative association to market his milk, collect payment therefor, and reimburse him on the same basis as though he were a member of the cooperative association, the cooperative association could pay such nonmember on the same basis as it pays its member producers. However, such a contract between the cooperative association and the nonmember must specifically provide for a payment reflecting: (1) The same blending of proceeds as is otherwise done for members, (2) the same treatment of withholding for capital (revolving fund) purposes, (3) the same right of liquidation of certificates issued for a revolving fund or other capital withholding, and (4) the same privilege of sharing in ultimate distribution of proceeds if and when special distribution is made, such as dividends or return of unused deductions.

In the absence of a written contract containing the terms set forth above, the cooperative association would be required to pay a nonmember producer, for whose milk it is the handler, at not less than the uniform price announced by the market administrator for the month.

An exception filed raised certain questions of interpretation concerning the provisions set forth in the recommended decision. Application of order provisions requires knowledge of specific factual situations. Consequently, it would not be appropriate to attempt here to deal with

potential market situations. The foregoing findings relate, however, to the major points raised in the exception and describe the thrust of the provisions.

In their briefs, certain cooperative associations requested that consideration of this entire issue be deferred. In view of the above findings, and the lack of any specific exceptions, it is concluded that this request should be denied.

3. *Order format.* Consideration was given at the hearing to revising the format of the Central Illinois order. It is concluded, however, that such a revision would not be appropriate at this time. Amendatory proceedings for 39 markets, including the Central Illinois market, on the proposed use of a uniform plan for classifying milk for pricing purposes under Federal milk orders are currently in progress. Consideration is being given in those proceedings to a uniform format for all 39 orders.

4. *Emergency action.* Proponent cooperative requested that emergency action be taken with respect to its proposal to revise the pool plant provisions. It claimed that emergency action is necessary if its plant is to retain its pool status through the summer months.

A suspension order, requested by proponent at the hearing pending the completion of this amendatory procedure was issued on June 26, 1973, by the Assistant Secretary. The order suspends the total route disposition requirement for the months of June through August 1973 and will enable proponent's plant to maintain its pool status during such period. In view of this action, it is concluded that a recommended decision should be issued and opportunity for filing exceptions thereto should be given. The request for emergency action is therefore denied.

Rulings on Proposed Finding 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 the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(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.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Central Illinois marketing area which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of Producer Approval and Representative Period

July 1973 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Central Illinois marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on September 7, 1973.

Clayton Yeutter,
Assistant Secretary.

Order[1] Amending the Order, Regulating the Handling of Milk in the Central Illinois Marketing Area

Findings and Determinations

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

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Illinois marketing area.

The hearing was held 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 (7 CFR Part 900).

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

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

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

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

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the Central Illinois marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreement and order amending

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

the order contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on July 23, 1973, and published in the FEDERAL REGISTER on July 27, 1973 (38 FR 20093), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein subject to the following modifications:

1. Paragraphs (c) and (d) of § 1050.9 are revised.

2. Paragraph (d) of § 1050.14 is revised.

1. Section 1050.7 is revised to read as follows:

§ 1050.7 Producer.

"Producer" means any person, other than a producer-handler as defined in any order (including this part) issued pursuant to the Act, who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, and whose milk is (a) received at a pool plant, (b) diverted as producer milk pursuant to § 1050.14, or (c) accounted for by a cooperative association pursuant to § 1050.14(b).

2. In § 1050.9, paragraphs (c) and (d) are revised to read as follows:

§ 1050.9 Handler.

* * * * *

(c) Any cooperative association with respect to milk of producers it diverts from a pool plant to a nonpool plant pursuant to § 1050.14;

(d) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant(s);

* * * * *

3. In § 1050.12, paragraph (a) (1) and (2) is revised to read as follows:

§ 1050.12 Pool plant.

* * * * *

(a) * * *

(1) Disposition of fluid milk products, except filled milk, in the marketing area on routes is 10 percent or more of its Grade A receipts from dairy farmers, handlers described in § 1050.9(d), and other pool plants, such receipts to be exclusive of fluid milk products (except filled milk) transferred without specific Class II designation to other pool plants described in this paragraph, or from which an average of not less than 7,000 pounds per day of fluid milk products, except filled milk, is distributed on routes in the marketing area; and

(2) Total disposition of fluid milk products, except filled milk, on routes is 50 percent or more of its Grade A receipts from dairy farmers, handlers described in § 1050.9(d), and other pool plants, such receipts to be exclusive of fluid milk products (except filled milk) transferred without specific Class II designation to other pool plants described in this paragraph, during the months of August through February and 40 percent during all other months;

* * * * *

4. Section 1050.14 is revised to read as follows:

§ 1050.14 Producer milk.

Except for milk received at a pool plant by diversion from a plant at which such milk is fully subject to the pricing and pooling provisions of this or any other order issued pursuant to the Act, "producer milk" means all skim milk and butterfat contained in milk from producers that is:

(a) Received at a pool plant from producers or from a handler described in § 1050.9(d);

(b) Represented by the difference between the quantity of milk received by a handler described in § 1050.9(d) at producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1050.53 and 1050.81, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered;

(c) Diverted by a handler from a pool plant for the account of the plant operator to another pool plant(s) for not more days of production of such producer's milk than is physically received at a pool plant(s) from which diverted. For pricing purposes such diverted milk shall be deemed to be received by the diverting handler at the location of the plant to which diverted;

(d) Diverted from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant, or to a nonpool plant that is an other order plant if diverted as Class II milk, subject to the conditions of this paragraph. For pricing purposes, milk so diverted shall be deemed to be received at the plant from which diverted, unless the plant to which the milk is diverted is located more than 110 miles from the city hall in Peoria, Ill. (by shortest highway distance as determined by the market administrator) in which case the milk shall be deemed to be received by the diverting handler at the location of the plant to which diverted:

(1) During May, June and July the operator of a pool plant or a cooperative association may divert the milk production of a producer on any number of days;

(2) Subject to the conditions set forth in paragraph (d)(4) of this section, during the months of August through April the operator of a pool plant may divert the milk of a producer for not more days of production of such producer's milk than it is physically received at the pool plant from which diverted: *Provided*, That the total quantity of producer milk diverted does not exceed 35 percent of the physical receipts of producer milk at the handler's pool plant during the month, exclusive of milk of producers who are members of a cooperative association that is diverting milk and the milk of other producers that is diverted pursuant to paragraph (d)(3) of this section;

(3) Subject to the conditions set forth in paragraph (d)(4) of this section, during the months of August through April a cooperative association may divert the milk of producers for not more days of production of each producer's milk than is physically received at a pool plant: *Provided*, That the total quantity of producer milk does not exceed 35 percent of (i) its member milk physically received at pool plants during such month and (ii) other producer milk for which the cooperative association is the handler pursuant to § 1050.9(d) during such month;

(4) In the case where a cooperative association has notified the market administrator and the handler in writing prior to the first day of the month that milk of specified member producers will not be diverted by the cooperative and is not to be included in computing the cooperative association's diversion percentage for the month, milk of such producers shall be deducted from the cooperative's total receipts of member milk for the purposes specified in paragraph (d)(3) of this section and added to the total milk receipts included in computing the diversions of the pool plant handler who receives their milk for the purposes specified in paragraph (d)(2) of this section;

(5) When milk is diverted in excess of the limits specified in paragraph (d)(2) and (3) of this section, eligibility as producer milk under this section shall be forfeited on the excess quantity. In such event the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If a handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(6) Milk diverted to an other order plant under the conditions specified in this section shall be producer milk pursuant to this section only if it is not producer milk under such other order.

5. In § 1050.41, paragraph (b)(7)(iii) and (vi) is revised to read as follows:

§ 1050.41 Classes of utilization.

* * * * *

(b) * * *

(7) * * *

(iii) One and one-half percent of milk received in bulk from handlers described in § 1050.9(d); plus

* * * * *

(vi) One and one-half percent of bulk transfers of milk to a pool plant of another handler; less

* * * * *

6. In § 1050.80, paragraphs (b) and (d) are revised to read as follows:

§ 1050.80 Time and method of payment for producer milk.

* * * * *

(b) Payments required in paragraph (a) of this section for milk caused to be delivered to such handler by a cooperative association qualified under § 1050.5 shall be made to such association, or its duly authorized agent, which the market administrator determines is authorized by such producers to collect payment for

their milk and which has so requested the handler in writing. Such handler shall, on or before the 18th day of the following month, pay the cooperative association for milk received during the month from producers at the direction of such association as determined by the market administrator an amount equal to not less than the amounts due such producers as determined pursuant to paragraph (a) of this section, less any deductions authorized in writing by such association: *Provided*, That the association has provided the handler with a written promise to reimburse the handler the amount of any actual loss incurred by such handler because of any improper claim on the part of the cooperative association;

* * * * *

(d) On or before the 18th day of the following month, each handler, in his capacity as the operator of a pool plant, who receives milk for which a cooperative association is the handler pursuant to § 1050.9(d), including the milk of producers who are not members of such association, and who the market administrator determines have authorized such cooperative association to collect payment for their milk, shall pay such cooperative for such milk at the uniform price adjusted by applicable butterfat and location adjustments.

[FR Doc.73-19400 Filed 9-11-73;8:45 am]

[7 CFR Part 1096]

[Docket No. AO-257-A22]

MILK IN THE NORTHERN LOUISIANA MARKETING AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Northern Louisiana marketing area.

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250, on or before September 27, 1973. The exceptions should be filed in quadruplicate. 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 agreement and to the order as amended, were formulated, was conducted at Shreveport, Louisiana, on May 22, 1973, pursuant to notice thereof issued on May 7, 1973 (38 FR 12232).

The material issues on the record of the hearing relate to:

1. Diversion of producer milk.
2. Pool plant qualifications.
3. Designating a cooperative as the handler on bulk tank milk.
4. Reports included in uniform price computation.
5. Location adjustments.

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. *Diversion of producer milk.*—Diverted milk should be priced at the location of the plant to which diverted and only the milk of producers from whom not less than 6 days' production during the month was physically received at a pool plant should qualify for diversion. Milk diverted by a cooperative from pool plants to nonpool plants should be limited to a quantity not greater than 15 percent of the total producer milk physically received at all pool plants from the cooperative during the month; and milk diverted by the proprietary operator of a pool plant should not exceed 15 percent of the total nonmember producer milk physically received at his plant.

Diversions of producer milk now are unlimited during February through August. In other months not more than 10 days' production of each producer may be diverted unless, in the case of a cooperative, not more than 15 percent of its member producer milk is diverted during the month, or in the case of a pool plant operator (other than a cooperative), not more than 15 percent of the total nonmember producer milk delivered to his plant during the month is diverted.

A proposal by the major cooperative in the market would have provided for diversion in all months of up to 10 days' production for any individual producer. In addition, it proposed that only the milk of those dairy farmers who held producer status for the entire two immediately preceding months would be eligible for diversion.

The cooperative testified that the present diversion provisions provide a means of associating milk with the market solely for manufacturing purposes at the expense of producers who regularly supply the market and on whom the market depends for its Class I needs. Under current marketing conditions, they contend, tighter restrictions on diversions are needed in the Northern Louisiana market. No testimony was presented in opposition to the expressed need for revision of the order's diversion provisions.

The purpose of the diversion provisions is to facilitate marketing the reserve milk that is a necessary part of the market supply. Because of variations in market needs and in production, the milk of each producer is not needed every day for processing as fluid milk at the plant to which it is customarily delivered. It is necessary, however, that there be a reserve of qualified milk available for the fluctuating needs of handlers serving the market. At times, therefore, when milk of a dairy farmer regularly supplying the market is not needed at the plant to which it is usually shipped, it can be handled most economically by moving it as diverted milk from the farm to a nonpool manufacturing plant.

Only that milk from dairy farmers genuinely associated with the market, as evidenced by their deliveries to pool plants, should be eligible for diversion to nonpool plants. It is provided, therefore, that at least 6 days' production of a producer must be received at a pool plant during the month to qualify any of his production in the same month for diversion. Also, limiting diversions of producer milk by cooperatives and proprietary handlers to 15 percent of the respective quantities of member and nonmember delivered to pool plants during any month, as adopted in this decision, will provide for diversions in February through August (during which diversions are now unlimited) on the same basis as is now the case for other months (September through January). These requirements are sufficient to establish a producer's continuing association with the fluid market and still permit the necessary flexibility in diverting milk not needed for fluid use.

The cooperative's proposal providing for diversion of 10 days' production of each producer would appear to allow up to twice as much diversion as provided under the 15 percent limitation adopted herein. It is unrealistic, however, to expect the milk of every producer to be diverted during the month. It is more practicable to divert during any particular month on a continuous basis the milk of those producers whose farms are at distant locations from the market and/or are conveniently located relative to a nonpool plant to which milk may be diverted.

In the above circumstance, it is more appropriate that the quantities of milk that may be diverted be based on aggregate producer deliveries to pool plants rather than be determined by the number of days the milk of each producer was diverted during the month. Moreover, diversion limits based on a percentage of total producer receipts, instead of on the number of delivery days of each producer, will enable the cooperative or proprietary handler affected to more readily ascertain the extent to which he is within his diversion limits at any time during the month.

Because of the relatively high Class I utilization of producer milk under the Northern Louisiana order (e.g., 83 percent in 1972), there has been little need to divert producer milk in this market.

Therefore, limiting diversion to 15 percent of producer deliveries to pool plants monthly throughout the year should be adequate to facilitate the disposition of any surplus milk that may result from changing market conditions.

Milk diverted to nonpool plants in excess of the limitations provided should not be considered producer milk. Hence, eligibility for pricing and pooling under the order would be forfeited on any such excess. It would be the responsibility of the diverting handler to specify which milk is ineligible as producer milk. If the handler fails to make such designation, and the market administrator is unable to determine which milk is overdiverted, all milk diverted to nonpool plants by such handler would be ineligible as producer milk.

Providing for the diversion of producer milk to an other order plant for manufacturing purposes will contribute to orderly marketing. In some instances, a pool plant operator may find that his most desirable outlet for this purpose is an other order plant. Specifying under the order that, insofar as this order is concerned, such milk may be diverted as producer milk if a Class II or Class III classification is designated for such milk pursuant to the other order, will tend to insure the integrity of both orders. Otherwise, such milk's eligibility to be included under a Federal order would more appropriately be determined at the other order plant where received. Diversion to such plants, if permitted unconditionally, could result in the pricing and pooling of the same milk under two orders.

As a corollary change, when milk from a dairy farmer is received at a pool plant as diverted from an other order plant, it should not be eligible for pooling as the milk of a producer under this order if a Class II classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order.

The order's location adjustments recognize the greater value of producer milk f.o.b. plants in or near the principal population centers in the marketing area as compared to its value at other locations. In view of this, it would be inconsistent to continue to price milk as if delivered to the pool plant from which diverted (as now provided in the order) when actually delivered as diverted milk to a nonpool plant at a location at which a different price is appropriate based on the location adjustment that would be applicable to a pool plant at the same location.

When producer milk is received as diverted milk at a nonpool plant, its location value is similar to that of milk delivered by producers to a pool plant at the same distance from the market. Pricing milk at the location of the pool plant from which diverted tends to subsidize, at the expense of producers generally, the more distant producers when the latter's milk is diverted to distant manufacturing plants rather than delivered to the market center. This is because the distant producers receive the f.o.b. market uniform price on milk that is not moved to the market and on which the full cost for the farm to market hauling has not been incurred.

The cooperative's proposal to allow diversions of milk of only those dairy farmers who held producer status throughout the entire two immediately preceding months is denied. The purpose of this proposal is to insure that only the milk of dairy farmers regularly associated with the market will be pooled. Other changes in the diversion provisions adopted in this decision will more appropriately achieve this end.

Allowing no diversions by dairy farmers in their first two months as producers under the order will not contribute to orderly marketing. Rather, it could tend to impede the normal maintenance and development of a dairy farmer supply of milk on which the market must depend for its Class I needs.

2. *Pool plant qualifications.*—The pooling percentage qualification for a distributing plant should be based on its total receipts of fluid milk products plus milk diverted from the plant under the diversion limits; and the pooling percentage qualification for a supply plant should be based on the milk diverted from the plant in addition to its receipts of producer milk. The qualifying percentages should remain the same as now provided in the order. However, the in-area route sales requirements for pooling a distributing plant should be revised.

The order currently requires that a pool distributing plant distribute on routes at least 50 percent of the total quantity of milk delivered directly to the plant from producers' farms during the month. In addition, at least 10 percent of such receipts, or 1,500 pounds on a daily average, whichever is less, must be distributed on routes in the marketing area. A supply plant qualifies as a pool plant if it transfers to pool distributing plants at least 50 percent of the milk delivered to the plant from producers' farms during the month.

Proponent, a cooperative supplying a majority of milk in the market, contended that the present provisions are inappropriate under current conditions by providing undue incentive for the pooling of plants that have no real association with the market and on which the market cannot depend for its fluid needs. The changes herein provided were proposed by the cooperative. They are necessary, according to the cooperative, to avoid possible dilution of returns to producers that would result from attaching to the Northern Louisiana pool milk supplies largely predestined for manufacturing.

The pooling qualifications for a distributing plant should be based on its route disposition relative to the quantity of approved fluid milk products physically received at such plant plus the milk of producers diverted therefrom by the plant operator or the cooperative through which the producers' milk is marketed. All such milk is essentially an integral part of the plant's supply. It is appropriate, therefore, in determining a plant's pool status, to consider as its total supply all milk diverted from the plant together with all approved fluid milk products physically received at the plant.

As indicated above, diverted milk may now be pooled without being considered as a part of the supply of the plant from which diverted in determining its qualifications to pool. In the case of a distributing plant receiving its total supply from producers, if 15 percent of producer milk associated with such plant is diverted without being counted as part of the plant's supply, the route disposition percentage requirement for pooling the plant is, in effect, reduced by 7.5 percent as compared to a plant that diverted no milk during the month.

Similarly, if 15 percent of producer milk associated with a pool supply plant were pooled by diversion to nonpool manufacturing plants, the supply plant, by shipping half the milk physically received at such plant to pool distributing plants, would remain pooled. In this circumstance, the plant could qualify as a pool plant by shipping only 42.5 percent of its producer milk to pool distributing plants. On the other hand, a supply plant that diverted no milk would have to ship 50 percent of its actual producer receipts to qualify for pooling.

The principal purpose of a minimum in-area distribution requirement to qualify a distributing plant for pooling is to insure that only plants associated with the market in a significant and regular manner are pooled. As indicated above, presently a distributing plant to pool, must have route disposition in the marketing area during the month, at least 10 percent of its supply, or in a daily average of at least 1,500 pounds.

The latter alternative, eliminated in this decision, was adopted in 1955 as a basis for pooling under the individual pool order then instituted in the market. Under such an order, producers are paid by a handler according to his own utilization instead of having their returns equalized based on the aggregate utilization of all handlers as provided under the present marketwide pool order. No Northern Louisiana order handler now depends on the 1,500 pound in-area route disposition option to qualify a plant for pooling.

Continuing the 1,500 pound in-area route disposition option to qualify a plant for pooling could result in the pooling of plants that are only casually or incidentally associated with the market. For example, the production of dairy farmers supplying a plant that thus qualified, but whose in-area sales were but 2 percent of its total route disposition, could not reasonably be considered a regular part of the market's supply; and the plant likewise, could not be considered as one that is primarily associated with the Northern Louisiana order market.

Elimination of the 1,500 pound daily average in-area disposition requirement as an option will not restrict any milk plant operator from disposing of any

fluid milk products in the marketing area. If a plant's route disposition in the marketing area were more than 1,500 pounds daily but less than 10 percent of its supply, it could reasonably be concluded that the plant was only marginally associated with the market and, unless otherwise regulated in another market, should appropriately be subject to the order as a partially regulated distributing plant.

The quantities of fluid milk products physcially received at or diverted from plants in determining their pool status should be that milk approved for fluid consumption by a "duly constituted regulatory agency." The term "duly constituted health authority" is now used in the order to designate such approved milk. The cooperative spokesman suggested that the term "duly constituted regulatory agency" would be more appropriate in referring to approved milk thoughout the order. While the milk to be regulated is not changed, that term is more inclusive than the designations now used for agencies having jurisdiction in this field. The agency responsible for approving milk for fluid consumption is not always specifically designated as a health authority. In some states, for example, this function is the responsibility of the state Department of Agriculture.

3. *Designating a cooperative as the handler on bulk tank milk.*—A cooperative should be the handler for milk of producers it receives for the account of the cooperative from the farm in a tank truck operated by, or under the control of, such cooperative for delivery to a pool plant. In addition, a cooperative should be the handler for all milk of producers it diverts from a pool plant to a nonpool plant.

Under the current order provisions, a cooperative may be a bulk tank handler, or a diverting handler, for milk of member producers. Also, it may elect whether to be the handler for member milk it receives from the farm for delivery to a pool plant in a tank truck owned and operated by, or under contract to, such association.

Milk produced for this market is handled through farm bulk tanks and moved to the market in tank trucks. Milk of any producer when commingled in a tank truck with that of other producers is indistinguishable from such other milk. The amount of a producer's milk placed in a tank truck, and the butterfat content thereof, can be determined only by measurement at the farm and from milk samples taken at the farm. After the milk has been pumped from the farm tank into the tank truck and commingled with the milk of other producers, there is no further opportunity to measure, sample, or reject the milk of the individual producer.

When milk is picked up at the farm by a truck owned or operated by a cooperative, or by a person under contract to, or otherwise under the control of, such cooperative for delivery to a pool plant, it is the cooperative that determines the weight and butterfat content of each producer's milk. Frequently, the plant operator will not know the identity of the individual producers whose milk he receives, and will know only the aggregate amount of milk received. In such cases, the cooperative obviously must become the responsible handler for the milk as it leaves the farm.

As a bulk tank handler, a cooperative's obligation is basically limited to filing a payroll report showing the weights and butterfat content of the milk of the individual producers involved and of reporting the quantities of such milk delivered to each pool plant. The cooperative is responsible to the pool only for that portion of milk received from a producer's farm for delivery to pool plants that is not accounted as actually received at a pool plant because of a difference between the weight and test of the milk received at the plant and the weight and test as picked up at the farm. The cooperative's monetary obligation to the pool normally will be for the difference in these amounts, which usually will be shrinkage in accordance with its value under the shrinkage provisions. Even this small monetary obligation is eliminated, however, when, as in this market, the handler receives milk from the cooperative on the farm weights and tests.

A cooperative expressed concern at the hearing that the modifications adopted might require a cooperative to be the handler for the milk of nonmember producers. Nothing in the amendments adopted would require a cooperative to pick up the milk of nonmember producers in tank trucks under the cooperative's operation or control. It does provide that if a cooperative should pick up milk of nonmember producers on routes under its control, it must assume varying degrees of responsibility with respect to such milk depending on the circumstances.

The provision adopted, which accommodates substantial flexibility in the arrangements under which cooperatives sell to pool plant operators, makes it possible for a cooperative to pick up, on its trucks or trucks under its control, the milk of nonmember producers for delivery to pool plants and for the pool plant operator to make payment directly to such nonmember producers for their milk. Thus, the degree of responsibility the cooperative will have for such milk will depend on the terms of the arrangements for its delivery to pool plants. At the same time, it will enable the cooperative to act as the marketing agent for a nonmember producer who, although he has not become a member of such cooperative, has contracted with the cooperative to act as the marketing agent for his milk. In this connection the cooperative may collect payment from pool plant operators for a nonmember producer provided such nonmember has given the cooperative authorization to make such collection.

The Capper-Volstead Act provides the criteria by which cooperative associations are determined to be qualified cooperatives under the Agricultural Marketing Agreement Act. This amendment to the order is consistent with that provision of the Capper-Volstead Act wherein it is recognized that cooperatives may "deal in the products of nonmembers" and limits such dealings to amounts not greater in value than such as are "handled by it for members."

In the event the milk of a nonmember producer is diverted as producer milk from a pool plant to a nonpool plant by a cooperative, the cooperative should be the diverting handler with respect to such milk. Here the cooperative performs the complete handling function and in such capacity obviously must be held to be responsible for order obligations applicable to such milk. Thus, all milk commingled in the truck should be handled in equal terms insofar as its producer status under the order is concerned.

A question that might be raised is whether, in paying a nonmember producer, a cooperative may reblend proceeds due such nonmember producer with those paid to its member producers. If the nonmember producer has signed a contract with the cooperative whereby he authorizes the cooperative to market his milk, collect payment therefor, and reimburse him on the same basis as though he were a member of the cooperative, the cooperative could pay such nonmember on the same basis as it pays its member producers. However, such a contract between the cooperative and the nonmember must specifically provide for a payment reflecting: (1) The same blending of proceeds as is otherwise done for members, (2) the same treatment of withholding for capital (revolving fund), (3) the same right of liquidation of certificates issued for a revolving fund or other capital withholding, and (4) the same privilege of sharing an ultimate distribution of proceeds if and when special distribution is made, such as dividends or returns of unused deductions.

In the absence of a written contract containing the terms set forth above, the cooperative would be required to pay a nonmember producer, for whose milk it is the handler at not less than the uniform price announced by the market administrator for the month.

A cooperative is, of course, also a handler in its capacity as an operator of a pool plant. However, there are significant differences in a cooperative's responsibilities in its various capacities as a handler. In connection with the revision of the handler definition adopted in this decision, the order language is revised (where reference is made to a cooperative association as a handler) when necessary to indicate explicitly the extent to which the order applies to a cooperative in its different capacities as a handler.

A cooperative must settle with the producer-settlement fund in the same manner as any pool plant operator (1)

for the producer milk received at its pool plant, (2) for milk diverted as producer milk to nonpool plants by the cooperative from its own pool plant(s) and from the plant(s) of other handlers, and (3) for the quantities of milk received for its account from producers' farms in tank trucks under its control that exceed the quantities of such milk delivered to pool plants.

When fluid milk products are transferred from a cooperative's pool plant to the pool plant of another handler, the order's allocation and transfer provisions apply in the same manner as on transfers between proprietary handlers' pool plants. That is, the classification of such transfers is essentially that agreed to by the operators of the transferor-plant and the transferee-plant. However, when the transferor-plant is a cooperative plant, the operator of the transferee-plant must pay the cooperative for the fluid milk products transferred at not less than the applicable class prices on or before the same dates that payments must be made for milk moved directly from producers' farms by the cooperative to pool plants.

4. *Reports included in uniform price computation.*—The order should not exclude from the current month's uniform price computation the report of a handler who has not paid his producer for the preceding month.

The market administrator must compute the uniform price for each month by the 10th of the following month. Less than four weeks earlier (by the 15th of the month) handlers must have completed their payments for producer deliveries in the preceding month.

It is not administratively feasible to audit the records of all handlers between the final date when payments to producers for the preceding month were due and the date by which the next monthly uniform price must be computed. Within that limited period of time, it is not practicable for the market administrator to determine that each handler has actually completed his payments to individual producers and cooperatives. Handlers' cancelled checks, for example, are necessary to verify such payments. They are received by handlers from their banks periodically, usually monthly, and it cannot be expected that all handlers' cancelled checks would be available for audit within the necessary time period.

In view of the above, the requirement to exclude from the current month's uniform price computation the report of a handler who has not paid his producers for the preceding month should be discontinued.

5. *Location adjustments.*—Location adjustments (the amounts by which the Class I price and the uniform price are reduced according to the location of a plant where milk is received from producers) should continue to be applied only at plants at least 50 miles from the City Hall in Minden or Monroe, Louisiana, and should be at the rate of 1.5 cents for each 10 miles or fraction thereof that a plant is located from the nearer of such point in Minden or Monroe.

The present location adjustment rate is 12 cents at plants between 50 and 60 miles from the nearer of the City Hall in Minden or Monroe, and an additional one cent for each 10 miles or fraction thereof at plants more than 60 miles from the nearer of those two basing points.

Proponent cooperative contended that the present location adjustment rates, which were incorporated in the order a number of years ago, do not now reflect the cost of transporting milk from distant plants to the market. Their revision was not opposed at the hearing.

Fluid milk products are bulky and perishable, and incur a relatively high transportation cost when moved a considerable distance. The location adjustment provisions assist in facilitating, under the minimum price provisions, the movement of milk from supply plants to the points where processed for Class I uses. Since location adjustments apply only at outlying plant locations, no location adjustment applies when milk is received directly from the farm at a plant in or near the marketing area. The transportation or hauling cost on such milk is paid for the individual producer and the hauling rate is not fixed by the order.

When milk is received at a supply plant located a considerable distance from the market, the handler, rather than the producer, incurs the cost of moving that milk from the outlying plant to the market for processing. Under these conditions, the value of producer milk delivered to a supply plant located some distance from the market is reduced in proportion to the distance and the cost of transporting such milk from the plant of first receipt to the distributing plant. If a distributing plant serving the market is located at a considerable distance from the main center of population in the marketing area, the price at such plant will reflect a value relative to such center of population equivalent to that of milk received at a supply plant similarly located.

The location adjustment rate of 1.5 cents for each 10 miles or fraction thereof, which is adopted in this decision, provides a more realistic transportation allowance from distant locations from the market than is now provided in the order. The present location adjustment rates, instituted in the order in 1958, are not appropriate under current marketing conditions.

The 1.5-cent rate for each 10 miles is recognized as being reasonably reflective of the cost of transporting milk and consequently is widely used in Federal orders. It approximates the hauling cost experience of the proponent cooperative, and its adoption will provide for the Northern Louisiana market the same rate as is used in other Federally regulated markets in the region.

Since all eight fully regulated plants now under the order are within 50 miles of the two basing points and are not subject to location pricing, the change herein adopted will not affect them. It will insure, however, that the location pricing of milk at outlying plants that might become subject to the order will approximate the order price f.o.b. the market less a reasonable allowance for the cost of moving milk to the market.

In modification of its original proposal, proponent cooperative proposed at the hearing that no location adjustment should apply at plants more than 60 miles south of Minden or Monroe. In support of this position, the cooperative spokesman contended that Class I prices in a Federal order market should relate directly to its distance from the Chicago milkshed, a major milk production area in the United States and an important alternative source of supply for order markets throughout the country. On this basis, he asserted, the greater the distance the plant location is from the Chicago milkshed, the higher the Class I price should be at that location.

As indicated above, location pricing under a given order is related to the problems of providing supplies for outlets in the marketing area regulated by that order and of achieving uniform prices for regulated handlers similarly situated. Proponent presented no problem with regard to the procuement of milk for this market or with respect to price alignment with other markets that would warrant a different application of location adjustments in a southerly direction from Minden or Monroe from that applicable in other directions. Consequently, there is inadequate basis for discontinuing the application of location adjustments in areas south from the marketing area. The proposal to eliminate location pricing at plants more than 60 miles to the south of Minden and Monroe therefore is denied.

General Findings

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

(a) 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 agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Northern Louisiana marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Section 1096.7 is revised as follows:

§ 1096.7 Producer.

"Producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted regulatory agency, which milk is received at a pool plant, diverted to a nonpool plant pursuant to § 1096.16(b) or accounted for by a cooperative association pursuant to § 1096.16(c), except:

(a) A producer-handler as defined in any order (including this part) issued pursuant to the Act, or

(b) A person with respect to milk that is physically received at a pool plant as diverted milk from an other order plant if a Class II classification under this order is designated for such milk and it is subject to the pricing and pooling provisions of another order issued pursuant to the Act.

2. In § 1096.8, paragraphs (c) and (d) are revised as follows:

§ 1096.8 Handler.

* * * * *

(c) A cooperative association with respect to milk of producers it diverts from a pool plant to a nonpool plant;

(d) Any cooperative association with respect to milk it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such association, for delivery to a pool plant(s); and

* * * * *

3. In § 1096.13, paragraphs (a) and (b) are revised as follows:

§ 1096.13 Pool plant.

"Pool plant" means:

(a) A distributing plant (other than a producer-handler plant) from which the quantity of fluid milk products, except filled milk, disposed of on routes during the month is not less than 50 percent of the fluid milk products, except filled milk, that are approved by a duly constituted regulatory agency for distribution under a Grade A label and that are physically received at such plant or diverted to a nonpool plant as producer milk pursuant to § 1096.16 and such disposition on routes, except filled milk, in the marketing area during the month is not less than 10 percent of such fluid milk products; or

(b) A supply plant from which during the month not less than 50 percent of the total quantity of Grade A milk approved by a duly constituted regulatory agency that was physically received at such plant from dairy farmers and handlers described in § 1096.8(d) or diverted therefrom by the plant operator or a cooperative association as producer milk to a nonpool plant pursuant to § 1096.16 is shipped during the month to a plant(s) described in paragraph (a) of this section. A supply plant that 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 any of the remaining months through August; and

* * * * *

4. Section 1096.16 is revised as follows:

§ 1096.16 Producer milk.

"Producer milk" shall be that skim milk and butterfat in milk from producers that is:

(a) Received at a pool plant directly from a producer or a handler pursuant to § 1096.8(d);

(b) Diverted by the operator of a pool plant or by a cooperative association to a nonpool plant other than a producer-handler plant, subject to the conditions of paragraph (d) of this section; or

(c) The difference between the quantity of milk received by a handler pursuant to § 1096.8(d) from producers' farms and the quantity of such milk delivered to pool plants. For the purposes of §§ 1096.53 and 1096.75, such milk shall be deemed to have been received by such handler at the pool plant to which all other producer milk in the same tank truck was delivered.

(d) The following conditions shall apply to milk diverted from a pool plant to a nonpool plant that is not a producer-handler plant:

(1) Such milk shall be accounted for as received by the diverting handler at the location of the nonpool plant;

(2) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 6 days' production of such person as a producer is received at a pool plant;

(3) The total quantity of milk diverted by a cooperative association that is greater than 15 percent of the total quantity of producer milk received at all pool plants during the month from the cooperative association shall not be producer milk;

(4) The total quantity of milk diverted by the operator (other than a cooperative association) of a pool plant that is greater than 15 percent of the total quantity received at such plant during the month from producers who are not members of a cooperative association shall not be producer milk;

(5) The diverting handler shall designate the dairy farmers' deliveries that are not producer milk pursuant to this paragraph. If the handler fails to make such designation, no milk diverted by him to a nonpool plant shall be producer milk; and

(6) Milk diverted to an other order plant shall be producer milk only if a Class II or Class III classification is designated for such milk pursuant to the provisions of another order issued pursuant to the Act and such milk is not subject to the pricing and pooling provisions of such order.

5. In § 1096.41, paragraph (b)(5)(i) is revised as follows:

§ 1096.41 Classes of utilization.

* * * * *

(b) * * *

(5) * * *

(i) Two percent of receipts directly from producers, excluding milk diverted pursuant to § 1096.16; plus

* * * * *

6. In § 1096.46, the introductory sentence and paragraph (a)(9) are revised as follows:

§ 1096.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 1096.45, the market administrator shall determine the classification of producer milk for each handler for each month as follows:

(a) * * *

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk received in fluid milk products from pool plants of other handlers according to the classification assigned pursuant to § 1096.44(a); and

* * * * *

7. In § 1096.53, paragraph (a) is revised as follows:

§ 1096.53 Location adjustments to handlers.

(a) For milk received from producers at a plant located more than 50 miles, by the shortest hard-surfaced highway distance as determined by the market administrator, from the nearer of the City Hall in Minden or Monroe, Louisiana, and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section and for other source milk for which a location adjustment is applicable, the price computed pursuant to § 1096.51(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof that such plant is from the nearer of the City Hall in Minden or Monroe; and

* * * * *

8. In § 1096.70, the introductory sentence is revised as follows:

§ 1096.70 Computation of the net pool obligation of each pool handler.

The net pool obligation of each handler pursuant to § 1096.8 (a), (c), and (d) shall be a sum of money computed by the market administrator each month as follows:

* * * * *

9. In § 1096.71, paragraph (a) is revised as follows:

§ 1096.71 Computation of aggregate value used to determine uniform prices.

* * * * *

(a) Combine into one total the values computed pursuant to § 1096.70 for all handlers who made reports prescribed by § 1096.30 for the month, except those in default of payments required pursuant to § 1096.82 for the preceding month;

* * * * *

10. In § 1096.75, the section title and paragraph (a) are revised as follows:

§ 1096.75 Location adjustments to producers and on nonpool milk.

(a) The uniform price for producer milk shall be reduced according to the location of the plant at which the milk was physically received, at the rates set forth in § 1096.53; and

* * * * *

11. In § 1096.80, the introductory sentence in paragraph (f) is revised and a new paragraph (g) is added as follows:

§ 1096.80 Time and method of payment for producer milk.

* * * * *

(f) Each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler pursuant to § 1096.8(a) as follows:

* * * * *

(g) Each handler shall make payment to a cooperative association for milk received from such association in its capacity as a handler pursuant to § 1096.8 (d), including the milk of producers who are not members of such association and who the market administrator determines have authorized such cooperative association to collect for their milk 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 II price for the preceding month; and

(2) On or before the 13th day after the end of each month at not less than the uniform price adjusted by applicable butterfat and location adjustments, less payment made pursuant to paragraph (g) (1) of this section.

Signed at Washington, D.C., on September 6, 1973.

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.73-19353 Filed 9-11-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 10]

FOOD STANDARDS FOR CERTAIN TYPES OF EDIBLE OILS

Termination of Proposal To Develop U.S. Standards of Identity Based on International Codex Standards

Correction

In FR Doc. 73-16470 appearing at page 21499 in the issue of Thursday, August 9, 1973, in paragraph 3 make the following changes: In the fourth line the word "as" should read "are"; and in the 11th line the figure "183-" should read "188-".

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73-CE-15]

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 Lees Summit, Missouri.

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, Central Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. All communications received on or before October 12, 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, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106.

A new public use instrument approach procedure is being developed for the McComas Airport, Lees Summit, Missouri. Consequently, it is necessary to provide controlled airspace protection for aircraft executing this new approach procedure by designating a transition area at Lees Summit, Missouri.

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:

LEES SUMMIT, MISSOURI

That airspace extending upward from 700' above the surface within a 6.5-mile radius of the McComas Airport (latitude 38°57'50" N., longitude 94°22'25" W.); and within 3 miles either side of the 48° bearing from the airport extending from the 6.5-mile radius to 9 miles northeast, excluding those portions which overlie Richards Gebaur, East Kansas City and the Kansas City Municipal Airport's 700' transition areas, and that airspace extending upwards from 1,200' above the surface 5 miles northwest of and 9.5 miles southeast of the 48° bearing from the Blue Springs VOR extending from 6.5 miles southwest to 18.5 miles northeast of the VOR, excluding that portion which overlies the Kansas City, Missouri transition area.

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

Issued in Kansas City, Missouri, on August 23, 1973.

JOHN R. WALLS,
Acting Director, Central Region.

[FR Doc.73-19303 Filed 9-11-73;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1700]

CHILD PROTECTION PACKAGING REQUIREMENTS FOR CERTAIN PRESCRIPTION DRUGS

Proposed Exemption of Isosorbide Dinitrate-Containing Sublingual Tablets and Chewable Preparations

In the FEDERAL REGISTER of April 16, 1973 (38 FR 9431), and pursuant to provisions of the Poison Prevention Packaging Act of 1970, the Commissioner of Food and Drugs promulgated a regulation (21 CFR 295.2(a)(10)) establishing child protection packaging requirements for human prescription drugs in oral dosage forms, effective April 16, 1974.

In the document's preamble, the Commissioner announced that he would consider requests for exemptions from the packaging requirements and, if reasonable grounds were furnished, would publish proposed exemptions in the FEDERAL REGISTER.

Effective May 14, 1973, section 30(a) of the Consumer Product Safety Act (Public Law 92-573, 86 Stat. 1231; 15 U.S.C. 2079(a)) transferred from the Secretary of Health, Education, and Welfare (and thereby from the Commissioner of Food and Drugs) to the Consumer Product Safety Commission functions under the Poison Prevention Packaging Act of 1970.

Subsequently, the Consumer Product Safety Commission received a request from ICI America, Inc., to exempt from said packaging requirements tableted sublingual and chewable preparations containing isosorbide dinitrate (each available in 2.5-milligram and 5-milligram dosage strengths).

A copy of the exemption request from ICI America, Inc., may be seen at the Office of the Secretary, Consumer Product Safety Commission, Air Rights Building, seventh floor, 7315 Wisconsin Avenue, Bethesda, Md.

Grounds given in support of the requested exemption are that both the sublingual and chewable forms of the drug are indicated for the prevention and treatment of angina pectoris. Because of the need of certain individuals to obtain rapid access to the drug for the management of angina pectoris in times of stress, the sublingual and chewable forms of the drug should be exempted from the child protection packaging requirements.

The order promulgating 21 CFR 295.2 (a)(10) excluded sublingual forms of nitroglycerin from the packaging requirements for the same reason.

Having considered the exemption request and other relevant material, the Consumer Product Safety Commission concludes that the exemption should be proposed as set forth below. Due to the revision and transfer of the Poison Prevention Packaging Act of 1970 regulations (from 21 CFR, Part 295 to 16 CFR, Part 1700) published in the FEDERAL REGISTER of August 7, 1973 (38 F.R. 21247), the amendment proposed below involves 16 CFR 1700.14(a)(10) instead of 21 CFR 295.2(a)(10).

Accordingly, pursuant to provisions of the Poison Prevention Packaging Act of 1970 (secs. 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (sec. 30(a), 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission proposes that 16 CFR 1700.14(a)(10) be revised to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) *Prescription drugs.*—Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug, except sublingual dosage form of nitroglycerin, and except both sublingual and chewable forms of isosorbide dinitrate in dosage strengths of 5 milligrams or less, shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c).

* * * * *

Interested persons are invited to submit, on or before November 12, 1973, written comments regarding this proposal. Comments and any accompanying material or data should be submitted, preferably in sextuplicate, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the Office of the Secretary, seventh floor, Air Rights Building, 7315 Wisconsin Avenue, Bethesda, Md., during working hours Monday through Friday.

Dated September 4, 1973.

SAMUEL M. HART,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc.73-19307 Filed 9-11-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 83]

[Docket No. 19665; FCC 73-885]

INDUSTRIAL AND MARITIME MOBILE SERVICES

Frequencies, Standards and Procedures for Onboard Communications

Further notice of proposed rulemaking. In the matter of Amendments of Parts 2, 81, 83, and 91—to provide frequencies, standards and procedures for on-board communications in the Industrial and Maritime Mobile Services.

1. Further notice of proposed rulemaking in the above-captioned matter is hereby given.

2. A notice of proposed rulemaking in the above-captioned matter was released on January 9, 1973, and was published in the FEDERAL REGISTER on January 15, 1973 (38 FR 1513). The First Report and Order was released on August 31, 1973.

3. In the comments filed by the American Institute of American Shipping (AIMS) and Central Committee on Communication Facilities of the American Petroleum Institute (API) in the Notice of Proposed Rulemaking, the Commission was urged to also authorize the use of emission F2 for certain intra-ship non-voice functions. In particular, AIMS and API set forth the need, by use of the non-voice (F2) emission, to anchor towed barges under adverse environmental conditions, when those conditions require that the tug and tow be separated. AIMS and API state that under these conditions the safety of life, property and environment are directly affected. This proposal was discussed in some detail in Paragraphs 8 through 11 of the First Report and Order (FCC 73-884).

4. As discussed in the First Report and Order, the coded information for the F2 transmitted signal must be unambiguous and distinctive in order that the actuating instructions are limited to the vessel concerned. To assure that the coded information is distinctive and unambiguous, the Commission intends to include in Part 83 rules to prescribe the coding and technical standards applicable to this signalling system. The system being proposed provides for the generation and keying of two audio tones with 15 characters of binary coded alpha-numeric information, taken from a standardized alphabet, which is introduced into the modulator section of the frequency modulated (FM) radiotelephone transmitter, transmitted at a rate of 300 bits per second (bps). Further brief discussion is set forth in the following paragraphs.

5. With regard to coding of the signal, we propose that the following information be transmitted in the sequence shown:

(a) The control character "SYN", transmitted twice, to establish system synchronization;

(b) Six characters, conforming to the documentation number of the vessel transmitting the command (200000–299999 & 500000–599999);

(c) Three letters selected and changed at will by the vessel operator, as a means of providing company operational or secrecy control (AAA through ZZZ);

(d) Two letters, setting forth the actuation instructions[1] (AA through ZZ); and

(e) The control character "EM", transmitted twice, to indicate termination of transmission.

6. The alphabet proposed is that referred to as USASCII[2] (United States of America Standard Code for Information Interchange). This alphabet, with minor differences, is also designated by the International Telegraph and Telephone Consultative Committee (CCITT) as Alphabet No. 5. Also, it has been adopted by the International Standards Organization (IOS). Further, within the last two years a number of maritime service electronic systems have been considered by the Radio Technical Commission for Marine Services (RTCM) for use with this alphabet. Thus, to the extent it is practicable to do so, we believe it desirable to minimize the number of alphabets which are employed in the maritime services.

7. The attached Appendix also sets forth standards with regard to:

(a) Bit sequence;
(b) Character structure;
(c) Character parity; and
(d) Sense of character parity.

These proposed standards are taken from United States of America Standards Institute publications USAS X3.15–1966 and USAS X3.25–1968.

8. We propose also a standard signaling rate of 300 bps. While this rate appears to be relatively slow, it is our understanding that modulator/demodulator (MODEM) units for operation at 300 bps. are readily available as "off the shelf" items at a nominal cost. The avoidance of premium quality MODEMs, such as may be required at the higher signaling rates, should facilitate the early development of practicable hardware. At 300 bps, the time required to transmit the 120 bits of information described in Paragraph 5, above, is 0.4 seconds.

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[1] It is suggested that these letters be taken from the U.S. Naval Hydrographic Office publication "International Code of Signals." As an example, the letters "QV" indicate: "I am anchoring in position indicated." This would appear to be close enough to fulfill an instruction: "drop anchor."

[2] See page 6 and 7, USAS Institute publication USAS X3.4–1068.

9. Since the basic system is frequency modulated radiotelephony, we are proposing that two-tone frequency-shift keying (F2) be employed. As to the tones, we propose 1070 Hz, corresponding to "0" (low), and 1270 Hz, corresponding to "1" (high), be employed. Information is not available to indicate that the system employed will require or should provide for confirmation of command from the tow back to the tug. If provision for such confirming feature is required, and we look to the comments in this proceeding for information in that regard, standards for such transmission would also be included in Part 83.

10. The proposed amendments to the rules, as set forth in this Notice and Appendix, are issued pursuant to authority contained in Sections 4(i) and 303(a), (b), (c), (d), (e), (f), and (r) of the Communications Act of 1934, as amended.

11. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before October 12, 1973 and reply comments on or before October 23, 1973. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision in this proceeding, the Commission may take into account other relevant information before it, in addition to the specific comments invited by this notice.

12. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 14 copies of all statements, briefs, or comments filed shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

Adopted August 29, 1973.

Released September 6, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] VINCENT J. MULLINS,
Acting Secretary.

APPENDIX

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

A. Part 83, Stations on Shipboard in the Maritime Services, is amended as follows:

1. A new § 83.835 is added to read as follows:

§ 83.835 Remote control for maneuvering or navigation.

(a) An on-board communication channel may be used for remote control of maneuvering or navigational control systems aboard the same vessel or another vessel. The remote control system employed shall conform to the standards set forth in this section.

(1) The emission employed shall be F2. The provisions in this part applicable to the use of F3 emission are also applicable to the use of F2 emission. The transmitter must be adjusted and operated so that the instantaneous frequency deviation does not exceed the maximum value allowed for F3 emission.

(2) The binary information shall be applied to the carrier as modulation by frequency-shift keying (FSK) of the standard tones 1070 and 1270 Hz. Expressed in terms of positive logic, "0" (low) shall correspond to 1070 Hz and "1" (high) shall correspond to 1270 Hz.

(3) The alphabet employed shall be the United States Standard Code for Information Interchange (USASCII), set forth in the United States of America Standards Institute publication USAS X3.4–1968.

(4) The bit sequence shall be least significant bit first to most significant bit (bit 1 through bit 7) in ascending (consecutive) order.

(5) The character structure shall consist of 8 bits (seven bits plus one character parity bit) having equal time intervals.

(6) The character parity bit shall be transmitted and shall follow the most significant bit, bit 7, of the character to which it applies.

(7) The sense of character parity shall be odd over the eight bits, i.e., and odd number of "1."

(8) The signalling rate shall be 300 bits per second.

[1] Commissioners Johnson and Reid absent.

[FR Doc.73–19376 Filed 9–11–73;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.

SELECTIVE SERVICE SYSTEM

REGISTRANTS PROCESSING MANUAL

The Registrants Processing Manual is an internal manual of the Selective Service System. The following portions of that Manual are considered to be of sufficient interest to warrant publication in the FEDERAL REGISTER. Therefore these materials are set forth in full as follows:

CHAPTER 621 (REV SEP 10, 1973)—PREPARATION FOR CLASSIFICATION BY THE LOCAL BOARD

INDEX

Sec.
621.1 Introduction.
621.2 Classification prior to the lottery drawing.
621.3 Selection for classification.
621.4 Preparation for classification.
621.5 Claims for, or information relating to, deferments or exemption.
621.6 Special form for conscientious objector.
621.7 Securing information from welfare and Governmental agencies.
621.8 Use of the current information questionnaire (SSS Form 127).
table 621–1 Table guide for obtaining pre-classification information.

CHAPTER 621—PREPARATION FOR CLASSIFICATION BY THE LOCAL BOARD

SECTION 621.1 *Introduction.*—Preparation for classification by the local board includes all procedures necessary for (1) identification and selection of registrants for classification in the order of their liability for induction into the armed forces or alternate service in lieu of induction and (2) the collection of information and documentation necessary to provide the most appropriate classification for each registrant.

SEC. 621.2 *Classification prior to the lottery drawing.*—1. Preparation for classification out of the administratively assigned 1–H classification will not be initiated for any registrant who has not been assigned a random sequence number unless review of information in his file indicates that he may qualify for Class 2–M or a class lower than 1–H, or he has been enlisted or inducted as a volunteer.

a. When it appears that a registrant may qualify for a classification lower than 1–H, he will be requested to submit the proper SSS form or other documentary evidence in accordance with Table 621–1.

b. Upon receipt of the necessary information, his file will be placed before the local board for classification.

SEC. 621.3 *Selection for classification.*—1. Immediately following the lottery drawing for the appropriate year group, the Computer Service Center (CSC) will assign a random sequence number (RSN) to each registrant in that year group. The CSC will furnish to each local board a "Registrant RSN Report by SSN", which will be used to post the assigned RSN to the Registrant File Folder (SSS Form 101) and the Classification Record (SSS Form 102) for registrants in that year group. The RSN will be posted to the SSS Form 101, and on the SSS Form 102 in red ink in the left margin next to each registrant's SSN. Following the posting of RSN's for his year group, any correspondence relating to a registrant will include his RSN, shown in the following manner: RSN (73) 065.

2. An Administrative Processing Number (APN) will be designated by the Director at the time of the lottery drawing to apply against each year's First Priority Selection Group (FPSG). The designation of an APN by the Director for a First Priority Selection Group is a basis for reopening the classification of those registrants in Class 1–H in that selection group whose RSN's are equal to or below that APN, unless the Director establishes an RSN temporary processing number below the APN, limiting the processing activities as set forth in Section 621.4 to those registrants with that RSN or below. In this event, a "Registrant RSN Report" will be furnished to each local board by the CSC when the RSN temporary processing number is established or revised upward. The "Registrant RSN Report" will be used as provided in RIB Report Guide No. 152.

SEC. 621.4 *Preparation for classification.*—1. In reviewing files of registrants selected for classification, local boards shall start with the lowest RSN.

2.a. A Current Information Questionnaire (SSS Form 127) will be mailed to each registrant eligible for classification out of 1–H.

b. Upon the return of the completed SSS Form 127, the file will be reviewed by the local board compensated personnel to determine whether any other forms or requests for documentation should be mailed to the registrant. (See Table 621–1)

c. When a registrant's SSS Form 127, as submitted to the local board, has apparent errors or omissions which would preclude the local board from making a proper determination in his case, the local board shall furnish another SSS Form 127 or a written request for specific information to the registrant. Upon receipt of the requested information it will be reviewed by local board compensated personnel for completeness and clarity prior to presentation to the local board members for classification action. If necessary, additional information will be requested from the registrant.

d. If the registrant fails to return any form or submit information having a bearing on his classification prior to the time the local board considers his classification, he shall be classified on the basis of the information contained in his file.

e. The receipt and mailing of correspondence, including forms, pertaining to each registrant, shall be recorded on page 2 of the SSS Form 101.

SEC. 621.5 *Claims for, or information relating to, deferments or exemption.*—The registrant shall be entitled to present appropriate information which he believes necessary to assist the local board in determining his proper classification. Such information may include documentation, affidavits or depositions, which shall be as brief as possible. The receipt of such information shall be recorded on page 2 of the SSS Form 101.

SEC. 621.6 *Special form for conscientious objector.*—A registrant who claims to be a conscientious objector shall be given the opportunity to offer information in substantiation of his claim on a Special Form for Conscientious Objector (SSS Form 150). The local board, upon request, shall furnish to any registrant a copy of the SSS Form 150 and shall not establish any fixed time limit for its completion and return. However, the furnishing of an SSS Form 150 will not be reason for the local board to delay normal processing of the registrant, including consideration of any claims for deferment or exemption which he has made.

SEC. 621.7 *Securing information from welfare and Governmental agencies.*—The local board is authorized to request and receive information from welfare and governmental agencies whenever such information will assist in determining the proper classification of a registrant.

SEC. 621.8 *Use of the current information questionnaire (SSS Form 127).*—In addition to the use of the Current Information Questionnaire (SSS Form 127) at the time a registrant is selected for classification as provided in section 621.3, the SSS Form 127 should also be used for registrants in deferred classifications whose expiration or review dates are approaching, or whenever the local board has reason to believe that the registrant is eligible for reclassification. The SSS Form 127 should normally not be issued to registrants in lower priority selection groups nor to registrants in classes 1–C, 1–D, 1–W, 4–A, 4–F, 4–G, or 4–W.

The following table is provided as a guide for steps necessary in obtaining pre-classification information from registrants prior to submitting their file to the local board for consideration.

	From information submitted to the Board or "Yes" Box entered on—		Action required—		
	SSS Form 100, series: and/or SSS Form 127, part:		Send him SSS Form	or	Send Letter requesting
If the registrant has indicated eligibility for consideration as a:					
Member of armed forces on active duty.		V 1			DD Form 53.
Man with completed military service with United States.	I 1	V 1			DD Form 214.
Man with completed military service with another country.	I 2				Verification of this service (In English).
Member of a Reserve or National Guard component—other than ROTC.	I 3	V 2			DD Form 44.
Man in ROTC or other officer procurement program.	I 3	V 3			DD Form 46.
Man whose deferment is advisable because of dependency.	II	IX 4	SSS Form 118		
Student preparing for the ministry.	III	VII 1	SSS Form 172		
Full-time minister	III	VII 2	SSS Form 175		
Conscientious objector	IV	VIII	SSS Form 150		
Man with a physical or mental condition which he believes, would disqualify him for military service.	V	II			Doctor's statement or other medical evidence confirming his condition.
Man with court record	VI	VI	SSS Form 173		
Surviving son	VII	X	SSS Form 174		
Alien or dual citizen	VIII	XI 1 and 2	SSS Form 131		
Student in one of the designated medical specialist fields.		IV 1	SSS Form 168		

CHAPTER 631 (REV. SEPT. 1, 1973)—ALLOCATIONS OF INDUCTIONS

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CHAPTER 631—ALLOCATION OF INDUCTIONS

SECTION 631.1 *Random selection sequence.*—1. The Director of Selective Service shall establish a random selection sequence for the processing of registrants for induction. Such random selection sequence will be established by a drawing to be conducted in Washington, D.C., once each year on a date the Director shall fix, and shall be applied nationwide. The random selection method shall use 365 days or, when appropriate, 366 days to represent the birthdays (month and day only) of all registrants who, during the calendar year of the drawing, shall have attained their nineteenth but not their twentieth year of age. The drawing, commencing with the first day selected and continuing until all 365 days or, when appropriate, 366 days are drawn, shall be accomplished impartially.

2. The random selection sequence of numbers established by a lottery drawing shall determine the order of selection of those registrants included in that drawing. The random sequence number thus determined for any registrant shall apply to him so long as he remains subject to induction for military training and service by random selection. A registrant's random sequence number shall be based upon the birth date given at the time of registration and entered on his Registration Card (SSS Form 1). However, should a registrant furnish documentation establishing a new date of birth, prior to the day of the lottery drawing, it is will be entered on the Classification Record (SSS Form 102), corrected on the Registration Card (SSS Form 1), corrected on page 1 and entered on page 2 of the Registrant File Folder (SSS Form 101), and the verifying evidence placed in the file folder. This corrected date of birth shall be used in establishing the registrant's random sequence number. A random sequence number established for a registrant shall be equivalent, for purposes of selection, to the same random sequence number established for other registrants in other drawings. The random sequence numbers obtained shall be determine the order of selection of the registrants covered thereby.

3. All registrants born in the years 1944 through 1950 shall be assigned a birth date sequence based upon the results of the drawing held on December 1, 1969, identified as 1970 Random Selection Sequence. Registrants born during 1951 shall be assigned a similar sequence based on the drawing of July 1, 1970, identified as 1971 Random Selection Sequence, while those born in 1952 shall receive a number from the drawing of August 5, 1971, identified as 1972 Random Selection Sequence, and those born in 1953 shall receive a number from the drawing of February 2, 1972, identified as 1973 Random Selection Sequence. Charts showing the random selection sequence for each of these years are attached to this chapter. A drawing will be held annually to establish the random sequence numbers for each succeeding year of birth.

4. The applicable random sequence number is to be placed on the Registrant File Folder (SSS Form 101) in the appropriate box, and on the Classification Record (SSS Form 102) in this manner: (70) 041. The number in parentheses ( ) is used by the local board for identification of the year after the drawing was held which established the registrant's random sequence number, and indicates the first year he could be vulnerable for induction.

TABLE 631-1.—Assignment of Random Sequence Number (RSN)

	A	B	C		D		E
			Identify Random Selection Sequence (RSS) (the year in which he attains age 20) by parens		Follow the registrants RSS (taken from column C, (2)) with his birth date sequence		
Rule	If registrant was born in	Assign RSN based on lottery held	(1)	(2)	(1)	(2)	And his RSN will be recorded as
			If he reached age 20 in	His RSS is	If he was born on	His birth-date sequence would be	
1	1944-50	Dec. 1, 1969 (see Table 631-3).	1964-70	(70)	Apr. 1, 1950	032	(70)032
2	1951	July 1, 1970 (see Table 631-5).	1971	(71)	June 2, 1951	304	(71)304
3	1952	Aug. 5, 1971 (see Table 631-7).	1972	(72)	July 4, 1952	142	(72)142
4	1953	Feb. 2, 1972 (see Table 631-9).	1973	(73)	Aug. 5, 1953	063	(73)063

SEC. 631.3 *Calls by the Secretary of Defense.*—The Secretary of Defense may from time to time place with the Director of Selective Service a call or requisition for men required for induction into the Armed Forces. The Secretary of Defense may also from time to time place with the Director of Selective Service a call or requisition for men in any medical, dental, or allied specialist category required for induction into the Armed Forces.

SEC. 631.4 *Allocations by the Director of Selective Service.*—1. The Director of Selective Service shall, upon receipt of a call or requisition from the Secretary of Defense for men to be inducted into the Armed Forces, issue a call or requisition to the several States.

2. Upon receipt of a call or requisition from the Secretary of Defense for men in a medical, dental, or allied specialist category to be inducted into the Armed Forces, the Director of Selective Service shall issue a call or requisition to the several States as provided for in Chapter 680, RPM.

3. When the Director of Selective Service issues an induction call, he will establish an induction RSN cut-off number in a given priority group, which will apply nationally. All available registrants with RSN's equal to or below that number will be subject to induction under that call.

Sec. 631.5 *Allocations by State Director of Selective Service.*—The State Director of Selective Service shall direct each local board to select and deliver men for induction in accordance with the call or requisition received from the Director of Selective Service.

SEC. 631.6 *Action by Local Board upon receipt of allocation.*—1. When an allocation is received from the State Director of Selective Service, any member or compensated employee of the local board or any compensated employee of the Selective Service System whose official duties include the performance of administrative duties at a local board, shall, as provided by this Section, select and issue orders to report for induction to those men required to fill the call from among its registrants who have been classified in Class 1–A or Class 1–A–O and have been found acceptable for service in the armed forces and to whom a Statement of Acceptability (DD Form 62) has been mailed and who are fully available for induction, except that:

a. when a registrant in any classification has refused or otherwise failed to comply with an order of his local board to report for and submit to an armed forces examination, he may, at such time as he is in Class 1–A or 1–A–O and reached for induction, be selected and ordered to report for induction to fill an induction call even though he has not been found acceptable for service in the armed forces and a Statement of Acceptability (DD Form 62) has not been mailed to him. In such case the armed forces examination shall be performed after he has reported for induction as ordered and he shall not be inducted until he has been found acceptable for service in the Armed Forces, and

b. a registrant who has volunteered for induction may be selected and ordered to report for induction to fill an induction call even though he has not had an armed forces examination. In such case the armed forces examination shall be administered to him after he has reported for induction as ordered and he shall not be inducted until he has been found acceptable for service in the Armed Forces.

2. *Order of call*—a. *Rescheduling of postponed registrants.*—Registrants to whom orders to report for induction have previously been issued will be given a rescheduled reporting date which is the earliest possible date after expiration of the postponement.

b. *Selection of registrants not yet ordered.*—A registrant who has been identified as one who will become a member of category (2) or (3) below, on the next January 1, may, prior to December 31, be selected and ordered to report for induction in January. A registrant must be in Class 1–A or 1–A–O (except for a volunteer who may be in Class 1–H) and must have been found acceptable, or is to have his acceptability determined upon reporting for induction, in accordance with paragraphs 1, 1a, or 1b of this section, in order to be issued an induction order. Registrants who have not already been ordered and given postponements shall be selected and ordered to report for induction in the following categories and in the order indicated:

(1) Volunteers who have not attained the age of 26 years in the sequence in which they have volunteered for induction.

(2) Nonvolunteers in the Extended Priority Selection Group in the order of their random sequence number, with those registrants with lower numbers being selected first.

(3) Nonvolunteers in the First Priority Selection Group in the order of their random sequence number.

(4) Nonvolunteers in each of the lower priority selection groups, in turn, in the order of their random sequence number in each group as it is reached.

(5) Nonvolunteers who have attained the age of 19 years during the calendar year, in the order of their random sequence number.

(6) Nonvolunteers, over the age of 26 years, by year group with the youngest year group first, and within the year group by ascending RSN: Provided, that the RSN established on December 1, 1969, will apply to any registrant born prior to January 1, 1944.

(7) Nonvolunteers who have attained the age of 18 years and 6 months and who have not attained the age of 19 years in the order of the random sequence number established by the most recent lottery drawing.

3. No local board shall order an alien for induction into the Armed Forces of the United States unless the alien shall have resided in the United States for more than one year, regardless of whether he volunteers for induction. When an alien has been within the United States for two or more periods and the total of such time exceeds one year, he shall be deemed to have remained in the United States for more than one year. In computing the length of such time, any portion of one day shall be counted as one full day.

4. A registrant's random sequence number will be deemed to have been "reached" if it is equal to or lower than the highest random sequence cutoff number established by the Director of Selective Service for induction of registrants in the same priority selection group in that calendar year.

5. *Priority selection groups*—a. *Assignment to priority selection groups.*—Each registrant shall be assigned to a priority selection group, from January 1 of the year in which he attains the age of 20 until the 26th anniversary of his date of birth. Such assignment shall be based upon the registrant's year of birth. If a registrant receives a deferment or exemption while a member of any priority selection group, such deferment or exemption will not affect his priority selection group assignment.

b. *Changing priority selection groups.*—Registrants who are issued an order for induction or alternate service while in the EPSG, and who remain under such order on January 1 of the following year, will not change priority selection groups. All other registrants who were in a Priority Selection Group during the previous year will change Priority Selection Groups on January 1.

c. *The extended priority selection group (EPSG).*—There will be no EPSG in 1973. In 1974 and later years, the EPSG shall consist of registrants, regardless of their current classifications, who were members of the First Priority Selection Group in the previous calendar year, whose random sequence numbers were reached during that year, but who did not enter upon military or alternate service during that calendar year and complete sufficient srevice to qualify for Class 4–A or Class 4–W.

d. *The first priority selection group (FPSG).*—Shall consist of registrants, regardless of their current classifications, who during the calendar year have reached or will reach the twentieth anniversary of the date of their birth. For example, during 1973, the FPSG will consist only of registrants born in 1953.

e. *The second priority selection group.*—Shall consist of registrants, regardless of their current classifications, who during the calendar year have reached or will reach the twenty-first anniversary of the date of their birth, and who do not qualify for the Extended Priority Selection Group under the provisions of paragraph 5c. For example, registrants born in 1952 are assigned to the Second Priority Selection Group in 1973.

f. *The third and lower priority selection groups.*—Shall consist of registrants, regardless of their current classifications, who during the calendar year have reached or will reach consecutively higher birth date anniversaries above the twenty-first, and who do not qualify for the Extended Priority Selection Group under the provisions of paragraph 5c. For example, registrants born in 1951 are assigned to the Third Priority Selection Group in 1973.

g. *Transfer from the EPSG to a lower PSG.*—A registrant shall be transferred from the EPSG to a lower PSG when,

(1) He remains in the EPSG for one year and during that year the Secretary of Defense fails to place an induction call, or

(2) He remains in the EPSG for one year during which an induction call is placed by the Secretary of Defense, but the registrant is not issued an order to report for induction or alternate service, or

(3) He remains in the EPSG for one year during which an induction call is placed by the Secretary of Defense, and the registrant is issued an order to report for induction or alternate service which is later cancelled, and he is not issued a new order, or is issued a new order which is cancelled after the end of that calendar year.

6. *Administrative processing of selection groups.*—a. Each phase of local board administration—reclassification, orders for armed forces examination, personal appearance, appeals and so forth—shall be done in order of random sequence number and priority group insofar as practicable, so that registrants will be processed in the order of their vulnerability for induction.

b. If the Director of Selective Service, or a State Director of Selective Service with respect to registrants of his state, determines that a registrant has been assigned to an incorrect priority selection group, he may direct the reassignment of the registrant to a designated priority selection group.

SEC. 631.8 *Extended liability of deferred registrants.*—1. *Extension of liability.*—The Military Selective Service Act provides that certain registrants who have been or are deferred incur extended liability beyond age 26 for training and service in the Armed Forces.

2. A registrant must have liability for induction in order for that liability to be extended by his deferment. Liability cannot be extended when the registrant was never liable for induction. If a registrant was entitled to an exemption, but was given a deferment instead because it was a lower class, he does not incur extended liability.

3. *Classifications which extend liability to age 35.*—Classification of a registrant into any of the following classes before he has attained the age of twenty-six extends his

liability for training and service until he reaches the age of thirty-five:

(1) Class 1–D for persons who prior to attaining the age of twenty-six enlist or accept appointment on or after September 3, 1963, in the Ready Reserve including the National Guard.

(2) Class 1–D for members of the Reserve Officers' Training Corps and other officer training programs.

(3) Class 1–D for persons commissioned upon graduation from an Officers' Candidate School.

(4) Class 1–D for accepted aviation cadet applicants.

(5) Class 1–D for members of reserve components of the Armed Forces who are serving satisfactorily, except for those who enlisted in the National Guard prior to reaching the age of 18, and who were originally classified in 1–D prior to September 3, 1963.

(6) Class 1–S.
(7) Class 1–Y.
(8) Class 2–A.
(9) Class 2–AM.
(10) Class 2–C.
(11) Class 2–D.
(12) Class 2–M.
(13) Class 2–S.
(14) Class 3–A, except for those covered in paragraph 4.
(15) Class 4–B.
(16) Class 4–F, except for those covered in paragraph 4.

4. *Classifications Which Do not Extend Liability.*—The classification of a registrant in any of the following classes does not extend his liability.

(1) Class 1–A.
(2) Class 1–AM.
(3) Class 1–A–O.
(4) Class 1–A–OM.
(5) Class 1–C.
(6) Class 1–D, except for those covered in paragraph 3, (1) through (5).
(7) Class 1–H.
(8) Class 1–O.
(9) Class 1–OM.
(10) Class 1–W.
(11) Class 3–A under the former provisions of the law and regulations when the deferment was solely by reason of the registrant having a wife with whom he maintained a bona fide family relationship in their home and no hardship or other elements of dependency were involved.
(12) Class 4–A.
(13) Class 4–C.
(14) Class 4–D.
(15) Class 4–F relating to the exemption of medical, dental, and allied specialists whose applications for appointment as reserve officers have been rejected solely because of their physical disqualification.
(16) Class 4–G.
(17) Class 4–W.
(18) Class 5–A.

NOTE.—Table 631–2 (Rev. Jan. 1, 1973) is obsolete; Tables 631–3 through 631–12 remain in effect.

Portions of Chapter 632, Delivery and Induction, have been revised September 1, 1973, as follows:

CHAPTER 632—DELIVERY AND INDUCTION

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Sec.
632.1 Order to report for induction.
632.2 Induction of registrants distant from their own local boards.
632.3 Postponement of induction.
632.4 Cancellation of induction orders.
632.5 Directed transfer for induction.
632.6 Duty of registrant to report for and to submit to induction.
632.7 Forwarding registrants for induction.
632.8 Induction.
632.9 Records returned to the local board.
632.10 Disposition of registrants inducted or found not qualified.
632.11 Enlistment of registrants in the armed forces.
632.12 Enlistment of registrants ordered for induction.

Attachment 632–1 Sample delivery list (SSS Form 261).
Attachment 632–2 Summary of postponement provisions.
Attachment 632–3 Sample letter regarding RBJ.

CHAPTER 632—DELIVERY AND INDUCTION

SECTION 632.1 *Order to report for induction.*—1. Upon receipt of Notice of Call on Local Board (SSS Form 201), any member or compensated employee of the local board, or any compensated employee of the Selective Service System whose official duties require him to perform administrative duties at the local board shall review the file folder of each nonvolunteer registrant selected for induction to insure:

a. That his RSN is no higher than the induction cutoff established by the Director,

b. That he is assigned to the correct priority selection group and that his group has been selected,

c. That his procedural rights have been granted, or he has failed to exercise his procedural rights within the period allowed,

d. That he has been examined and found qualified, or has failed to report for or submit to an armed forces examination as ordered,

e. That, if an alien, he has an obligation,

f. That he is not eligible for a deferred or exempt class, or Class 1–O, and

g. That he will not have reached the 26th anniversary of his date of birth prior to his scheduled date of induction.

2. The scheduling and delivery of the registrant shall be in accordance with instructions of the State Director. If the registrant is a member of a recognized church, religious sect or religious organization which has historically observed certain religious holidays, and the registrant is scheduled to report for induction on one of those holidays, his induction shall be rescheduled if he so requests.

3. After it has been determined that the registrant has been properly selected for induction, any member or compensated employee of the local board, or any compensated employee of the Selective Service System whose official duties require him to perform administrative duties at the local board shall prepare for each registrant selected an Order to Report for Induction (SSS Form 252). The date specified to report for induction shall be at least 30 days after the date the order to report for induction is mailed, except that a registrant who has volunteered for induction may be selected and ordered to report for induction on any date after he has volunteered.

4. The date of mailing of the order to report for induction shall be entered on page 2 of the Registrant File Folder (SSS Form 101) or page 8 of the Classification Questionnaire (SSS Form 100) and a copy of the order to report for induction will be placed in the file folder.

5. One copy of "Before You Enter the Army" (DA Pamphlet 608–32) will be mailed with the registrant's order to report for induction.

6. A Statement of Personal History (DD Form 398) with instruction sheet will also be mailed to each registrant, except for a medical specialist, along with his order to report for induction.

* * * * *

SEC. 632.3 *Postponement of induction.*—

* * * * *

20. All postponements of induction shall be recorded on the Minutes of Local Board Meeting (SSS Form 112).

21. Any postponement granted to a registrant shall be terminated prior to the scheduled termination date if information is received by the postponing authority which reveals that the cause for the postponement has ceased to exist.

SEC. 632.4 *Cancellation of induction orders.*—1. Any order to report for induction may be cancelled by the Director of Selective Service at any time prior to the registrant's induction, his failing to report therefor, or his refusing to submit to induction.

2. Any order to report for induction which has been issued to a registrant either during the period in which he may make a timely request for a personal appearance before the local board, or during the period such personal appearance is pending, shall be cancelled by the local board.

3. Any order to report for induction which has been issued to a registrant shall be cancelled by the local board whenever the classification is reopened and considered anew, except when the registrant has failed to comply with his induction order, the reopening of his classification by the local board for the purpose of placing him in or removing him from Class 4–C shall not cancel the order with which he failed to comply.

4. Any order to report for induction which has been issued to a registrant during either the period afforded the registrant to take an appeal to the appeal board or to the National Appeal Board, or during the period such an appeal is pending, shall be cancelled by the local board.

5. Whenever an appeal has been taken by the Director or a State Director, any order to report for induction which has previously been issued to the registrant for whom the appeal has been taken shall be cancelled by the local board.

6. Any cancellation of an induction order, except where the registrant has enlisted, shall be prepared on the Notice of Cancellation (SSS Form 255) in accordance with its procedural directive. The date of cancellation and mailing shall be noted on page 2 of the SSS Form 101 or page 8 of the SSS Form 100.

SEC. 632.10 *Disposition of registrants inducted or found not qualified.* 1. Upon receiving notice from the AFEES that a registrant who has been forwarded for induction has been inducted or has received a final determination of unacceptability for service in the armed forces, the local board shall reopen his classification and classify him anew.

2. A registrant who has been found unacceptable by the AFEES at his *induction* examination with "Reexamination Believed Justified" (RBJ) indicated on the Statement of Acceptability (DD Form 62) shall not be classified into Class 4–F until he is reexamined and again found unacceptable. When a local board receives a registrant's DD Form 62 with RBJ indicated, following his *induction* examination, it shall:

a. Retain the registrant in his present classification, and cancel the outstanding induction order.

b. Mail the registrant's copy of the DD Form 62, the Record of Results of Armed Forces Examination (SSS Form 220), and the Notice of Cancellation (SSS Form 255), and a letter explaining his RBJ status. A sample letter for this purpose is Attachment 632–3 to this chapter.

c. Enter on page 2 of the SSS Form 101 or page 8 of the SSS Form 100 "RBJ letter mailed" and the date.

d. Schedule the registrant for reexamination in accordance with Chapter 628.

If found acceptable upon reexamination, he will again be subject to selection for induction in accordance with Chapter 631.

SEC. 632.12 *Enlistment of registrants ordered for induction.*—1. Whenever a local board receives a DD Form 53 or a DD Form 44 evidencing that one of its registrants to whom an induction order has been issued, has been enlisted or appointed in the Armed Forces of the United States, including the Reserve components thereof, and the date of enlistment or appointment is at least 10 days prior to his scheduled reporting date for induction, it shall reopen his classification and cancel his order to report for induction.

2. In the case of a registrant whose induction reporting date has been postponed under any provisions of this chapter, the enlistment or appointment will be valid if it is accomplished at least 10 days prior to the rescheduled reporting date. If such a registrant's induction reporting date has not yet been rescheduled,

* * * * *

SAMPLE LETTER REGARDING RBJ

(Local Board Stamp)

To: _____ _____
Date of Mailing

SSN: _____

Dear _____:

You have been found unacceptable for induction into the armed forces during your armed forces examination performed on _____. It has been recommended, (date)
however, that you be reexamined in ____ months, as your physical condition may have improved sufficiently by that time to qualify you for service.

You are no longer under orders to report for induction; however, you will be retained in your present classification until a final determination is made regarding your acceptability for induction, or until it is determined you will not be reexamined.

If you have a question concerning your status, please contact your local board.

_____
Authorized Signature

Portions of Chapter 641 DUTY OF REGISTRANTS have been revised as of September 10, 1973, as follows:

1641.6 *Duty to have unaltered documents in personal possession.*—(a) Every registrant who has not discharged his current military obligation under the Military Selective Service Act [1] shall, until his liability for training and service [2] has terminated, have in his personal possession except while he is on active duty (other than active duty for training or for the sole purpose of undergoing a physical examination) in the Armed Forces (1) his Registration Certificate (SSS Form 2) and Notice of Classification (SSS Form 110) showing his current classification or (2) his Status Card (SSS Form 7) most recently issued by the local board.

(b) The failure of any person to have his Registration Certificate (SSS Form 2) or Status Card (SSS Form 7) in his personal possession as required in paragraph (a) of this section shall be prima facie evidence of his failure to register.

(c) When a registrant is inducted into the Armed Forces, or enters upon active duty in the Armed Forces, other than active duty for training only or active duty for the sole purpose of undergoing a physical examination, he shall surrender his documents listed in paragraph (a) of this section to the commanding officer of the Armed Forces Examining and Entrance Station or to the responsible officer at the place to which he reports for active duty. Such officer shall return the documents to the local board that issued them.

1641.7 *Duty of registrant separated from active duty in Armed Forces.*—Every registrant who is separated from active duty in the Armed Forces prior to the 26th anniversary of the date of his birth, who has not discharged his current military obligation under the Military Selective Service Act,[1] and who does not have a Registration Certificate (SSS Form 2) or Status Card (SSS Form 7) shall, within 10 days after the date of his separation, request in writing his local board to return his Registration Certificate (SSS Form 2) or Status Card (SSS Form 7), if available, or to issue to him a duplicate thereof.

1641.8 *Duty to return Registration Certificate to local board.*—Whenever a registrant at the time he receives a duplicate Registration Certificate (SSS Form 2) from his local board has in his possession any such certificate previously issued to him by the local board or thereafter finds or regains possession of any such certificate previously issued to him, it shall be the duty of the registrant to immediately return to the local board the certificate previously issued to him upon his receipt of the duplicate certificate or upon his thereafter finding or regaining possession of such certificate previously issued to him."

SEC. 641.2 *Explanation of terms.*—1. "Liability for training and service": As used in Section 1641.6 of the Regulations, a person's responsibility for service imposed by the Military Selective Service Act. This liability commences when he reaches the age of 18 years and 6 months after having been required to register. This liability terminates when he reaches the age of 26 unless extended to age 35.

2. "Current military obligation under the Military Selective Service Act": As used in sections 1641.6 and 1641.7 of the Regulations, for Selective Service purposes a person will be considered to have discharged his current military obligation if he is separated after having served honorably for 6 months or more on active duty other than active duty for training. Twenty-four months of assigned alternate service is required of conscientious objectors to satisfy their obligation, unless sooner released by the Director or State Director of Selective Service after not less than six months of alternate service. Twenty-four months of service is also required for commissioned officers in the National Oceanic and Atmospheric Administration or the Public Health Service. Service in the Public Health Service after June 30, 1967, must have been in an office or bureau of the Public Health Service, including the National Institutes of Health, or on assignment to the Coast Guard, the Bureau of Prisons of the Department of Justice, the Environmental Protection Agency, or the National Oceanic and Atmospheric Administration.

[1] See paragraph 2 of section 641.2 for definition of "current military obligation under the Military Selective Service Act."

[2] See paragraph 1 of section 641.2 for definition of "liability for training and service."

[1] See paragraph 2 of Section 641.2 for definition of "current military obligation under the Military Selective Service Act."

CHAPTER 680 (REV SEP 10, 1973)—MEDICAL SPECIALISTS

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CHAPTER 680—MEDICAL SPECIALISTS

SECTION 680.1 *Purpose.*—The purpose of this chapter is to establish procedures for the processing of medical specialists.

SEC. 680.2 *Definition.*—The term "medical specialists" refers to doctors of medicine, doctors of osteopathy, dentists, veterinarians, optometrists, podiatrists, and registered nurses.

SEC. 680.3 *Random sequence number.*—Medical specialists shall be assigned a Random Sequence Number (RSN) in accordance with Chapter 631 of the RPM, with the addition that all medical specialists born before 1944 shall be assigned a birthdate sequence (Random Sequence Number) based upon the results of the drawing held on December 1, 1969, identified as the 1970 Random Selection Sequence. The fact that a registrant's RSN was not reached under a regular call does not preclude its being reached, and his being called, under a special call for medical specialists.

SEC. 680.4 *Classification.*—1. Every registrant who is or becomes a medical specialist, as defined in Section 680.2, shall be placed in Class 1-AM (Medical, Dental, or Allied Specialist) unless otherwise eligible for a lower classification.

2. A medical specialist eligible for classification in Class 1-A-O, were he not a medical specialist, will be placed in Class 1-A-OM. A medical specialist eligible for classification in Class 1-O, were he not a medical specialist, will be placed in Class 1-OM.

3. Medical specialists who are classified in Class 1-AM, 1-A-OM, or 1-OM, shall be identified in correspondence and on Selective Service forms as follows:

Medical specialty	Class 1-AM	1-A-OM	1-OM
Doctor of medicine	1-AMM	1-A-OMM	1-OMM
Doctor of osteopathy	1-AMO	1-A-OMO	1-OMO
Dentist	1-AMD	1-A-OMD	1-OMD
Doctor of optometry	1-AME	1-A-OME	1-OME
Doctor of podiatry	1-AMP	1-A-OMP	1-OMP
Veterinarian	1-AMV	1-A-OMV	1-OMV
Registered nurse	1-AMN	1-A-OMN	1-OMN

4. Medical specialists who are classified in classes other than 1-AM, 1-A-OM, or 1-OM shall be identified on Selective Service forms by placing the appropriate letter designating their specialty after the class designation in the same manner as shown in paragraph 3 above. (For example, a dentist in

Class 3–A would be shown as 3 AD; a doctor of medicine in Class 4–G would be shown as 4 GM.)

5. Through the submission of Status Cards (SSS Form 7)[1] to the Computer Service Center, the Registrant Information Bank (RIB) will receive notice of each medical specialist, identified by specialty. This will enable the RIP to print out reports of medical specialists. (See Attachment 680–2.)

SEC. 680.5 *Examinations.*—1. Local boards shall forward medical specialty registrants for armed forces examinations in accordance with Chapter 628 of the RPM. A registrant who has previously been examined as a regular registrant shall, after being identified by the local board as a medical specialist, be forwarded for examination, regardless of a previous examination. Medical specialists are examined under Medical Specialists Medical Fitness Standards rather than under standards applicable to registrants subject to regular call.

2. At the time of his armed forces examination at the Armed Forces Examining and Entrance Station (AFEES), a medical specialist's professional qualifications are determined. If the registrant is found to be professionally disqualified, his Notice of Acceptability (DD Form 62) will indicate whether the disqualification is permanent or temporary with "reexamination believed justified" (RBJ). The registrant shall then be processed under either (a), (b), or (c) below:

a. In the case of a medical specialist found not acceptable because of a permanent professional disqualification (as indicated in the "Remarks" block of the DD Form 62 or by the appearance of a "Z" in the third element of the qualification symbol in the upper right-hand corner of the Report of Medical Examination (SF 88)), block 4 of Record of Results of Armed Forces Examination (SSS Form 220) should be completed by entering the "Z" symbol in the third (administrative) box of line 1, block 4, to denote permanent disqualification (entries must also be typed in boxes 1 and 2, line 1, block 4). The registrant should then be considered for classification in Class 4–F.

b. In the case of a medical specialist found not acceptable because of a temporary professional disqualification, RBJ (as indicated in the "Remarks" block of the DD Form 62, or by the appearance of a "Y" in the third element of the qualification symbol in the upper right-hand corner of the SF 88), the registrant shall not be reclassified 4–F but shall be retained in his current classification as long as he continues to qualify for that class. If no RBJ period is indicated on the DD Form 62, an RBJ period of six months should be used. The termination date of the RBJ period should be entered in boxes 1–3, line 2 of block 4, and the registrant should be processed for reexamination at the termination of the period. In such RBJ cases, the "Y" qualification symbol will be entered in the third box of line 1, block 4, of SSS Form 220. (Entries must also be typed in boxes 1 and 2, line 1, block 4.)

c. Any case in which it is not clear whether the disqualification is permanent or temporary should be processed as a temporary disqualification, RBJ, and processed as in paragraph 2b.

3. When a medical specialist fails to report for or refuses to submit to an armed forces examination or any part of the examination, he shall be processed in accordance with Chapter 628 of the RPM. Notification of the medical specialist's failure to submit to armed forces examination should be forwarded by the local board through the appropriate State Director to Headquarters, Health Services Command, Attention: HSC–PE–P, Fort Sam Houston, Texas 78234.

SEC. 680.6 *Induction Calls by the Secretary of Defense.*—The Secretary of Defense may from time to time place with the Director of Selective Service a call or requisition for men in any medical specialist category required for induction into the armed forces. This is referred to as a "Special Call."

SEC. 680.7 *Issuance of call by the Director of Selective Service.*—Upon receipt of a call or requisition from the Secretary of Defense for men in a medical specialist category to be inducted into the armed forces, the Director of Selective Service shall issue a call or requisition to the several states. The issuance of a call for the delivery of registrants shall specify the priority group and the highest RSN to be reached for registrants in the appropriate specialty who shall be selected for induction.

SEC. 680.8 *Issuance of call by the State Director of Selective Service.*—The State Director of Selective Service shall issue a call for the delivery of registrants as prescribed by the Director of Selective Service in accordance with section 680.7 of this chapter.

SEC. 680.9 *Action by Local Board upon receipt of a call.*—1. When an induction call is received from the State Director of Selective Service, any member or compensated employee of the local board, or any compensated employee of the Selective Service System whose official duties include the performance of administrative duties at a local board shall, as provided by this section, select and issue orders to report for induction to those men required to fill the call, from among its registrants who have been classified in Class 1–AM or Class 1–A–OM, who have been found fully acceptable for service in the armed forces and to whom a DD Form 62 has been mailed and who are fully available for induction, except:

a. If a medical specialist in any classification has refused or otherwise failed to comply with an order of his local board to report for and submit to an armed forces examination, he may, at such time as he is in Class 1–AM or Class 1–A–OM and reached for induction, be selected and ordered to report for induction to fill a special call as issued by the Department of Defense even though he has not been found acceptable for service in the armed forces and a DD Form 62 has not been mailed to him. In such case, the armed forces examination shall be performed after he has reported for induction as ordered, and he shall not be inducted until he has been found acceptable for service in the armed forces, or

b. A registrant in Class 1–AM or 1–A–OM who has volunteered for induction and who has not had his acceptability determined shall be forwarded for armed forces examination at the earliest practicable date. If the registrant is found acceptable, he shall be issued an order to report for induction under the provisions of the outstanding special call.

2. *Order of call.*—Fully available medical specialist registrants who have not already been ordered and given postponements shall be selected and ordered to report for induction in the following categories and in the order indicated:

(1) Volunteers, in the sequence in which they have volunteered for induction;

(2) Nonvolunteers in the First Priority Selection Group—Medical, in the order of their Random Sequence Number (RSN) established by random selection procedures prescribed in accordance with section 680.3 of this chapter;

(3) Nonvolunteers in the Second Priority Selection Group—Medical, in the order of their RSN established by random selection procedures prescribed in accordance with section 680.3 of this chapter;

(4) Nonvolunteers in the Third Priority Selection Group—Medical, in the order of their RSN established by random selection procedures prescribed in accordance with section 680.3 of this chapter;

(5) Nonvolunteers in each succeeding Priority Selection Group—Medical, in turn, after the First Priority Selection Group—Medical, in the order of their RSN established by random selection procedures prescribed in accordance with section 680.3 of this chapter, until attainment of age 35.

3. A registrant's RSN will be deemed to have been "reached" if it is equal to or lower than the highest random sequence cutoff number established by the Director of Selective Service for induction of medical specialists in the same Prority Selection Group-Medical and medical specialty for the announced special call.

4. *Identification of and assignment to priority selection groups-medical.*—a. An alien who enters the United States after he has completed his first professional degree will enter the First Priority Selection Group-Medical (1PSG–M) immediately following his first year of residing in the United States. All other medical specialists will enter the 1PSG–M immediately following the attainment of the first appropriate professional degree or diploma, or completion of internship or one year of equivalent training, whichever is later. The internship or one year of equivalent training must follow immediately upon the attainment of the appropriate professional degree.

Example 1.—A dentist who attained his professional degree on June 15, 1973, entered the 1PSG–M on June 16, 1973, as internship is normally not required of a dentist.

Example 2.—A doctor of medicine or osteopathy who attained his professional degree on June 15, 1973, and who will complete his internship on June 30, 1974, would enter the 1PSG–M on July 1, 1974.

Example 3.—A medical specialist who was admitted to the United States as a permanent resident alien after he received the first appropriate professional degree, and who had resided for one year in the United States as of July 1, 1973, entered the 1PSG–M on July 2, 1973.

b. Upon completion of one year in the 1PSG–M, a registrant will be assigned to the Second Priority Selection Group-Medical (2PSG–M) and will become less vulnerable for special call selection. He will be assigned to the next lower Priority Selection Group each year thereafter, in the same manner. Notation will be made on the Registrant File Folder (SSS Form 101) to show when a registrant enters the 1PSG–M and also when he enters the 2PSG–M and subsequent years of further reduced vulnerability (3PSG–M, 4PSG–M, etc.).

Example.—A medical specialist who entered his 1PSG–M on July 1, 1973, would enter his 2PSG–M on July 1, 1974, his 3PSG–M on July 1, 1975, his 4PSG–M on July 1, 1976, etc.

c. Initial assignment to a PSG–M for a medical specialist who is beyond his 1PSG–M year at the time this chapter is issued will be based upon the number of years which have elapsed since he met the criteria for 1PSG–M as stated in paragraph 4a.

Example.—A doctor of medicine completed his year of internship on June 30, 1968. His local board reclassified him into Class 1–AMM on August 21, 1973. He would be shown as being in 6PSG–M, because it is the 6th year

[1] Filed as part of the original document.

since his completion of his internship. He will enter the 7PSG–M on July 1, 1974.

d. Because the dates when individual medical specialists will enter the 1PSG–M and lower Priority Selection Groups-Medical will vary, local boards are instructed to use care in filing the SSS Form 101 by RSN within the Priority Selection Group-Medical.

5. *Administrative processing.*—a. When an Order to Report for Induction (SSS Form 252) is issued under a special call to a medical specialist, in accordance with section 680.9 of this chapter, copy 3 of SSS Form 252 shall be forwarded through the State Director to Headquarters, Health Services Command, Attention: HSC–PE–P, Fort Sam Houston, Texas 78234. The State Director shall reproduce two copies of SSS Form 252, forward one copy to the Director of Selective Service, Attention, Operations Division, and retain one copy. The induction order shall contain the Special Call number under which the registrant is being processed, and the registrant's medical specialty (such as doctor of medicine, doctor of osteopathy, dentist, veterinarian, optometrist, podiatrist, or registered nurse). These entries shall be typed in the upper right-hand corner of the SSS Form 252.

b. Upon receipt of the induction order of a medical specialist, Headquarters, Health Services Command, will allocate the registrant to a military service. The armed force to which the registrant is allocated will contact him regarding a Reserve commission. Upon the registrant's acceptance of the commission, a Record of Military Status of Registrant (DD Form 44) will be sent to the local board.

c. When a registered nurse has been ordered for induction, Headquarters, Health Services Command, will, upon receipt of the copy of the induction order, forward the registrant's preinduction papers to the Office of The Surgeon General, Department of the Army, Washington, D.C. The Office of The Surgeon General will then determine the registrant's rank and will allocate him to one of the armed forces which is participating in the call. The appropriate armed force will contact him regarding a Reserve Commission. Upon acceptance of a commission by the registrant, a DD Form 44 will be forwarded to the local board.

d. The scheduled induction date of a medical specialist will be at least 30 days after the date of mailing of the order to report for induction. No medical specialist will be issued an induction order with a scheduled reporting date later than the last date specified for filling the special call.

e. Notification of Entry Into Active Military Service (DD Form 53) will be forwarded to the State Director by the appropriate armed force when a medical specialist enters upon active duty.

f. The State Director shall routinely postpone the induction of any medical specialist who is ordered for induction under a special call and who cannot be commissioned prior to the date scheduled for the registrant's induction. If the postponement is for 60 days or less, the registrant shall be issued a Notice of Rescheduled Reporting Date (SSS Form 253). If the postponement is in excess of 60 days, the registrant shall be issued a Postponement of Induction (SSS Form 264) and shall subsequently be issued an SSS Form 253 not less than 30 days nor more than 60 days prior to the rescheduled reporting date. Copies of the SSS Form 253 and/or 264 shall be forwarded to National Headquarters, Attention: Operations Division, through the State Headquarters by the local board.

g. Headquarters, Health Services Command, shall be notified by fastest mail, by the State Director, of the cancellation of any induction order for a medical specialist. A copy of the Notice of Cancellation (SSS Form 255) shall be forwarded to National Headquarters by the local board.

h. Each madical specialist ordered to report for induction under the authority of a special call will be sent an explanatory letter relative to his processing (See Attachment 680–1).

6. *Report of availability of medical specialists.*—This report will be prepared only when requested by the Director of Selective Service.

7. *Reserve obligation.*—Medical specialists who accept Reserve commissions under the provisions of a special call before attaining the age of 26 will have a minimum military obligation consisting of two years of active military service, three years Ready Reserve, and one year of Standby Reserve. Those who accept a Reserve appointment after attaining the age of 26 have no further Reserve obligation after completing two years of active duty, unless otherwise obligated, provided they resign their commissions at the completion of their active duty period.

8. *Appointments for medical specialists in a reserve or National Guard unit.*—Any medical specialist selected for induction under the provisions of a special call, for whom convincing evidence is received verifying that a current application for appointment as a commissioned officer in an organized unit of the Reserve or National Guard in a medical specialist capacity was in process at the time of his selection for special call, shall have his induction postponed pending completion of processing. Upon receipt of DD Form 44, announcing the appointment, the registrant's classification shall be reopened and considered anew.

9. *Delivery for induction.*—Any medical specialist who has been ordered under the provisions of a special call and subsequently refuses an appointment as a commissioned officer in one of the military services, as tendered, will be inducted in an enlisted status. If a medical specialist fails to report for or submit to induction, his file will be processed in accordance with the provisions of Chapter 642 of the RPM.

SEC. 680.10 *Postponement of induction.*—1. Postponement of induction will be accomplished in accordance with Chapter 632 of the RPM. The Director of Selective Service or the appropriate State Director of Selective Service may postpone the induction of a medical specialist who applies or has applied for an appointment as a Reserve officer in one of the armed forces, in a medical, dental, or allied specialist category, until final action is taken on his application.

2. The Director or appropriate State Director of Selective Service may postpone, in substantiated cases of proven community need, the induction of a medical specialist for a period of approximately 90 days, or less, to assist the community in its efforts to obtain additional medical assistance.

3. Medical specialists to whom orders to report for induction have been issued, and whose inductions are postponed for a period of 60 days or less for purposes other than the obtaining of a commission, shall be rescheduled at the time of postponement, to a date certain within the 60-day period. If the medical specialist registrant is postponed for over 60 days, the local board shall give him not less than 30 days, nor more than 60 days notice of the rescheduled reporting date.

4. *Berry Plan and Osteopathic Residency Deferment.*—A physician who has been reached for induction under the provisions of a special call, for whom information has been submitted from the Department of Defense verifying that he is being considered for appointment in the Berry Plan or the Osteopathic Residency Deferment (ORD) Program, shall have his induction postponed. Upon receipt of verification (DD Form 44) that he has been appointed a Reserve commissioned officer participating in the Berry Plan or the ORD Program, the registrant's classification will be reopened and considered anew.

5. *Commissioned Officers Residency Deferment Program (CORD) of the Public Health Service.*—a. On the local board's receipt of Verification of Status of Commissioned Officers of the Public Health Service (PHS Form 1867) indicating that a medical specialist to whom an induction order has been issued has been appointed in the Reserve Corps of the Public Health Service, the board shall postpone the registrant's induction pending his entry upon active duty.

b. On the local board's receipt of Public Health Service Form 1867 for a medical specialist to whom an induction order has not been issued, indicating his participation in the CORD program, the issuance of an order to report for induction shall be postponed.

c. Upon receipt of Public Health Service Form 1867 indicating that the registrant has actually entered on active duty, the registrant's classification will be reopened and considered anew.

d. Unlike medical specialists who have been appointed as Reserve officers as members of the Berry Plan or ORD programs, and therefore entitled to classification in Class 1–D, Reserve Commissioned Officers of the Public Health Service participating in the CORD (Commissioned Officers Residency Deferment Program) are not eligible for classification in Class 1–D, but should remain in Class 1–AM or 1–A–OM.

SEC. 680.11 *State Medical Advisory Committees.*—Each State Director shall appoint a Medical Advisory Committee for his state, which shall advise local boards on the eligibility for deferment of medical specialist registrants.

Each State Medical Advisory Committee shall consist of five or more residents of the state who are medical specialists including at least one doctor of medicine and at least one dentist.

SEC. 680.12 *Deferments.*—1. A medical specialist should be classified in the lowest classification for which he is qualified except that a medical specialist will not be eligible for occupational deferment (Class 2–AM) while in the 1PSG–M.

2. Medical specialists who were classified into Class 2–A (occupational deferment) prior to January 7, 1973, on the basis of community essentiality, may be classified in Class 2–AM so long as they qualify under paragraph 3 of this section, and so long as they remain in the same position. Internship is not a basis for occupational deferment.

3. As of January 7, 1973, a medical specialist may be granted an occupational deferment only after he has entered the Second or lower PSG–M and *only* if his occupation has been found by the State Medical Advisory Committee of the state in which the registrant is practicing, to represent an especially critical community service in which the specialist is directly involved in patient care.

4. Requests for occupational deferment (Class 2–AM) by registrants who are no longer in the 1PSG–M should be forwarded by the local board, along with any supporting documentation received, through the appropriate State Director(s), to the Medical Advisory Committee (MAC) of the state in which the registrant is practicing. Upon receipt of the recommendation of the MAC, the local board should review the information submitted, giving consideration to the recommendation of the MAC with regard to whether the registrant's classification should be reopened.

Sec. 680.13 *Alternate Service.*—A medical specialist registrant in Class 1–OM will be ordered to alternate service in lieu of induction, in accordance with Chapter 660 of the RPM, at the time he would be ordered for induction if he were in Class 1–AM or 1–A–OM.

Sec. 680.14 *Volunteers.*—1. During the period of a special call, registrants in the designated medical specialty who are not already under the jurisdiction of a medical program of the armed forces or otherwise under an armed forces commitment, may volunteer for that special call by written request to the local board, if they have not attained the age of 35. Aliens admitted for temporary residence may not volunteer.

2. Medical specialists interested in joining a Medical Department of one of the military services in the absence of a special call may be directed to the following sources:

General information with regard to the Berry Plan or ORD Program:

The Assistant Secretary of Defense (Health and Environment), Attention: Berry Plan Office (or ORD Program), The Pentagon, Washington, D.C. 20301.

Information requests with regard to individual services should be directed as follows:

Army: Office of The Surgeon General, Department of the Army, Attention: DASG–PTP–D, Washington, D.C. 20314.

Navy: Office of The Surgeon General, Department of the Navy, Attention: Professional Division, Washington, D.C. 20390.

Air Force: Air Force Military Personnel Center/SG–SP, Department of the Air Force, Randolph Air Force Base, Texas 78148.

Commissioned Officer Corps of the Public Health Service: Commissioned Personnel Division, Employment Operations Division, P.H.S., Parklawn Building (Room 4–35), 5600 Fishers Lane, Rockville, Maryland 20852.

SAMPLE LETTER TO MEDICAL SPECIALIST REGISTRANT SELECTED FOR SPECIAL CALL

(Local Board Stamp)

_____
Date of Mailing

To:_____

SSN:_____

Dear_____:

The Health Services Command, Fort Sam Houston, Texas 78234, is the custodian of your records as a medical specialist registrant who has been selected for military service. Health Services Command will contact you very soon relative to your obtaining a commission.

If you already have applied for a commission in one of the armed forces, you should immediately inform the military office with which you are corresponding that you have received an order to report for induction. Also notify the Health Services Command of your pending application.

Until you are actually commissioned in the armed forces, however, you are not within military jurisdiction, and the armed forces cannot consider any requests from you regarding your selective service status, such as a delay in call to active duty. If you have questions related to your selective service processing, you should contact any local board.

If you accept the commission tendered you, Selective Service should be notified promptly so that you can be advised not to report for induction as directed on the enclosed order.

Please notify this local board immediately if you accept a commission.

_____
Authorized Signature

REPORTING MEDICAL SPECIALISTS TO RIB

1. Any medical specialist for whom the local board retains accountability will have a record established in RIB through submission of a Status Card (SSS Form 7) to the Computer Service Center (CSC).

2. Upon reclassification of medical specialists into any classification, an SSS Form 7 will be prepared using the medical identifiers shown in section 680.4 of this chapter. (For example, a dentist reclassified into Class 1–AM will be shown as Class 1 AMD; a veterinarian reclassified into 3–A will be shown as Class 3 AV).

3. For deferred or exempt medical specialists who do not require reclassification by the local board at this time, an "original" SSS Form 7 will be prepared for the Computer Service Center only, showing the registrant's current class, followed by the medical specialist identifier. (For example, a doctor of medicine in Class 3–A will be shown as Class 3 AM). The registrant's copy will be destroyed and the "date of mailing" will be the date of preparation.

4. Most medical specialists were born prior to 1953. Therefore, the SSS Form 7 will establish a new record for them in RIB. In order for this to be accomplished, it will be necessary, after completing block 1, to type "XXX" in the "Month" box of the "DATE OF THIS LOCAL BOARD MEETING" field, leaving the "DAY" and "YEAR" boxes blank and completing the remainder of block 2 only if the registrant's current class resulted from a local board action.

5. When preparing the SSS Form 7, for a registrant in Class 1–AM, 1–A–OM, or 1–OM, block 1, line 1, box 10, (PSG) must be completed to reflect his PSG–M as of the date of mailing. When completing this block for doctors of medicine and doctors of osteopathy who are in their internship, the number 0 (zero) will be typed in this box. (The letter O will *not* be used in this box). When completing the form for any other medical specialist in Class 1–AM, 1–A–OM, or 1–OM, this box must contain the number reflecting his PSG–M. (For example, the PSG box will show the numeral 1 for a medical specialist in the 1PSG–M. The numeral 10 will be shown for a registrant in the 10PSG–M). Where it is necessary to show the PSG–M with two digits, the second digit will be placed on the SSS Form 7 in the white field of the PSG block and the first digit in the blue field, immediately preceding the second digit. The PSG box will be left blank for any medical specialists in classes other than Class 1–AM, 1–A–OM, or 1–OM.

6. When the PSG box is completed, the form must also reflect the termination date of the current PSG–M. The termination date of the medical specialist's PSG–M will be entered in block 2, line 1, immediately following box 4, the "Previous Class" box. The month of termination will be entered two spaces past the field separator of the Previous Class box. After the month is entered, enter a field separator, the day of termination, a field separator, the year of termination, and a field separator. In the case of doctors of medicine or doctors of osteopathy who are performing their internship, the termination date of the internship will be entered in this space.

7. Do not place an "X" in the previously examined box unless the registrant has completed an armed forces examination *as a medical specialist.*

8. If an Individual Appeal Record (SSS Form 120) is prepared for a medical specialist, the class, with medical identifier, may be typed without spaces between the characters in order to fit into the class box.

9. Any OCR form that does not have a "Classified In" box will not have a registrant's class typed on the form.

10. This revised Chapter makes certain changes in the information to be entered on the SSS Form 7 for a medical specialist. Therefore, upon receipt of this revision, each local board shall:

(1) Submit a deletion SSS Form 7 for each medical specialist for whom an SSS Form 7 has previously been submitted to the Computer Service Center, and

(2) Submit a new SSS Form 7 in accordance with the provisions of this attachment.

[Temporary Instruction No. 603–1; 619–1]

RECORDS RELATING TO MILITARY SERVICE

1. Due to a recent fire involving certain military records, the Selective Service System has been requested to suspend destruction of any records related to an individual's military service. Therefore, all local boards are instructed to search all Registrants File Folders (SSS Form 101) which are, or become, eligible for destruction under the provisions of Chapter 619 of the RPM, and remove all military records, such as DD Forms 214, 215, 44, 53, or 1300; SF 88, 89, or 93 if issued at time of separation; or any other document related to an individual's military service. These records, together with any military records which the local board may have on hand which do not pertain to one of their accountable registrants, will be sent to the State Headquarters for retention. All records pertaining to an individual registrant will be stapled together. The State Headquarters will store these documents until they receive further instructions from National Headquarters.

2. The telegram to all State Directors dated July 17, 1973, is rescinded.

This Temporary Instruction will terminate when amended or rescinded.

Issued August 6, 1973.

[Temporary Instruction No. 642–2]

REPORTING LATE REGISTRATIONS

1. New procedures for reporting late registrations to the United States Attorney are contained in a revision of Chapter 642 which will be distributed in the near future. Until that revision is received, local boards will not report as violators registrants who have registered late.

2. Files of registrants previously reported as violators because of late registration shall be returned to the local board, unless the case has been referred to the United States Attorney.

3. Upon receipt of revised Chapter 642, local boards will review the files of all registrants referred to in paragraphs 1 and 2 above, in accordance with the procedures outlined in the revised chapter.

This Temporary Instruction will terminate when the revised Chapter 642 is received and the actions specified above have been taken.

Issued July 6, 1973.

[Temporary Instruction No. 642–4]

REPORTING LATE REGISTRATIONS

1. The requirement for reporting of late registrations to the Director of Selective Service on a monthly basis as provided in paragraph 5 of Section 642.9 of the Registrants Processing Manual is rescinded.

2. Local boards, in session with a quorum present, will continue to make determinations as provided in paragraph 3 of Section 642.9. Determinations will be made only in the case of a registrant who has registered or will register subsequent to January 1, 1973, whose registration occurred:

a. Later than 60 days after the eighteenth anniversary of the date of his birth, or

b. Later than seven months from the date on which he entered the United States in

the case of an alien who enters after attaining the age of 18.

3. When the local board determines that a registrant's late registration was the result of a deliberate intent not to register in a timely manner, the registrant shall be reported on a Report of Violation (SSS Form 301) addressed "United States Attorney", with no further address. The SSS Form 301 shall be mailed to National Headquarters, Attention: General Counsel, together with the registrant's file folder.

4. When the local board determines that a registrant's late registration is not the result of a deliberate intent not to register in a timely manner, or is due to circumstances beyond his control, the registrant shall not be reported on an SSS Form 301, but a notation of the local board's determination shall be made and placed in the registrant's file folder.

5. Temporary Instruction No. 642-3 was rescinded prior to distribution.

This Temporary Instruction will terminate upon receipt of a revision to Chapter 642.

Issued August 22, 1973.

[Temporary Instruction No. 631-13, 621-4]

PROCESSING REGISTRANTS BY RSN

1. Effective September 1, 1973, all registrants born in 1954, with RSN 001 through 095, classified in Class 1-H are no longer eligible for Class 1-H and shall have their classifications reopened and considered anew, under the provisions of the RPM.

2. A Registrant RSN Report listing registrants born in 1954 with RSN 001 through 095 will be distributed during the last week in August. It will be used in the processing of registrants born in 1954 in RSN sequence through RSN 095, the Administrative Processing Number (APN) established for the 1954 year of birth group.

3. The APN for registrants born in 1953 continues to be RSN 100.

4. Temporary Instruction No. 631-10/621-3 is rescinded.

This Temporary Instruction will terminate upon amendment or rescission.

Issued August 15, 1973.

BYRON V. PEPITONE,
Director.

SEPTEMBER 5, 1973.

[FR Doc.73-19236 Filed 9-11-73;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

LOAN TO THE GOVERNMENT OF BRAZIL GUARANTEED BY THE UNITED STATES

Public Notice of Invitation To Bid By Financial Institutions

I. INVITATION TO BID—CLASSES OF BIDDERS

The Secretary of the Treasury, acting for the Secretary of Defense by this notice and under the terms and conditions hereof invites bids on the interest rate on a $15,000,000 loan to the Government of Brazil, hereinafter referred to as the Borrower. The loan is described in Section II hereof. Bidding hereunder shall be subject to the "Regulations Governing the Sales of Treasury Bonds Through Competitive Bidding" (31 CFR 340) insofar as applicable.

The purpose of the loan is to provide private financing for the purchase by the Borrower of defense articles and services from United States sources in furtherance of the Foreign Military Sales Act, as amended, P.L. 90-626, October 22, 1968, 82 Stat. 1326; 22 U.S.C. 2571-2793 and Executive Order 11501, December 22, 1969, 34 F.R. 20169.

Bids will be received only from incorporated banks, trust companies, recognized dealers in investment securities, and other financial institutions doing business in the United States. Bids must be submitted to the Federal Reserve Bank of New York in accordance with the provisions of the last section hereof.

II. DESCRIPTION OF LOAN AGREEMENT—COMMITMENT FEE

(a) The principal features of the loan are as follows:

(1) There will be a commitment fee payable semiannually of one-quarter of one percent (¼ of 1 percent) per annum on the daily average unused amount of the commitment. The commitment fee will be calculated on a 365-day basis and actual days elapsed.

(2) There will be a commitment period from the "date of execution" of the loan agreement to and including June 30, 1974, or such earlier date as the entire commitment of the lender shall have been utilized. For this purpose, the "date of execution" will be the date on which the loan agreement is signed on behalf of the Borrower or the date on which the Department of Defense executes the guaranty agreement, whichever is later.

(3) The minimum drawdown under the loan agreement will be 1/100th of the principal amount bid.

(4) The principal is to be repayable in seven consecutive annual installments commencing on May 31, 1975, as indicated in Exhibit C attached to the loan agreement. Interest is payable on a fixed semiannual basis beginning on November 30, 1973, and thereafter on May 31 and November 30 of each year until the entire principal has been repaid. Interest is payable with the principal beginning on May 31, 1975.

(b) Bidders should fill in the blanks in the loan agreement and should furnish three signed copies when submitting the bids. Most of the blanks are self-explanatory, but the following guides are to be used for the others:

(1) At section 4.2(a). The maximum aggregate liability under the Government guaranty will be 100 percent of the principal amount bid plus 60 percent of one year's interest thereon.

(2) At section 7.1. The guaranty fee will be 1/400th of the amount of liability under the guaranty.

III. UNITED STATES GOVERNMENT GUARANTY OF LOAN—GUARANTY FEE

The loan agreement provides that the obligation of the lender is to be conditioned upon the issuance by the United States of a guaranty of timely payment of principal and interest by the borrower. The guaranty will further provide that the United States agrees that any claim which it may now or hereafter have against any beneficiary for any reason whatsoever shall not affect in any way the right of any other beneficiary to receive full and prompt payment of any amount otherwise due under this guaranty.

In addition, the borrower covenants at section 5(b) of the loan agreement that:

> Any claim which it may now or hereafter have against any person, corporation, firm or association or other entity (including without limitation, the United States, DOD, any Bank, any assignee of any Bank, and any supplier of the Defense Items) in connection with any transaction, for any reason whatsoever, shall not affect the obligation of the Borrower to make the payments required to be made to the Undersigned under this Loan Agreement, or under the Notes, and shall not be used or asserted as a defense to the payment of such obligation or as a setoff, counterclaim, or deduction against such payments.

The guaranty, which is authorized by the Foreign Military Sales Act, will be made by the Government of the United States acting through the Department of Defense. The Act provides that "any guaranties issued hereunder shall be backed by the full faith and credit of the United States".

IV. TAX EXEMPTIONS

(a) There will be *no*—

(1) Federal income tax resulting from Section 7.1 of the loan agreement which will provide that the Borrower shall pay to the lender the guaranty fee charged to the latter by the Department of Defense; (The lender will be acting merely as a conduit.)

(2) Federal stamp tax;

(3) interest equalization tax; or

(4) tax imposed by the Borrower.

(b) The interest paid on the loan by the Borrower will constitute income from sources without the United States in the hands of the lender or any holder of the promissory notes or participations in the loan. Since the interest is foreign source income, there will be no United States witholding under any circumstances.

V. THE LOAN PROMISSORY NOTES, PARTICIPATIONS—ELIGIBILITY FOR PURCHASE BY NATIONAL BANKS AS COLLATERAL FOR TREASURY TAX AND LOAN ACCOUNTS, ETC.

(a) Because of the guaranty, the loan, the promissory notes and the participations are deemed to be fully and unconditionally guaranteed obligations of the United States backed by its full faith and credit. Accordingly, they will not be subject to the lending limits of national banks or to the limitations and restrictions concerning dealing in, underwriting and purchase of investment securities.

(b) Section 1.4 of the loan agreement authorizes the sale of participations to legal entities doing business in the United States. Such participations will be acceptable from special depositaries of public money at their face amount to secure deposits under Department of the Treasury Circular No. 92, current revision (31 CFR 203), provided that they

adequately identify the loan and meet the following conditions:

(1) The participation certificate contains the following provision: "Participant may assign or endorse over this participation certificate to the (*Name of the Federal Reserve Bank or Branch of the territory in which the participant is located*) in connection with a pledge of collateral security to protect a Treasury tax and loan account under Treasury regulations published at Title 31 Code of Federal Regulations, Part 203. In the event that this participation certificate is assigned to (*Same bank or branch as above*), it shall not be further assigned or sub-divided without prior written notice to that bank and the prior written consent of this bank."

(2) The participation certificate is supported by the original or certified copies of the guaranty agreement relating to the basic loan and the necessary power of attorney and resolution in favor of the Reserve Bank as prescribed in 31 CFR 203.8(d).

(3) The guaranty agreement provides that the guaranty referred to therein is transferable to any participant or beneficiary.

VI. Submission of Bids—Acceptance and Opening of Bids

Each bid shall be submitted in triplicate on the letter head of the bidder and shall specify a single annual rate of interest which shall apply on a 365-day basis only to the portion of the loan in use. The rate shall be expressed as a percent per annum not to exceed three decimals, for example, 5.125 percent. Each bidder may submit a bid for the entire amount of the loan or portions thereof in multiples of $5,000,000.

The bids must be enclosed and sealed in envelopes and must be received in the Securities Department of the Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045, not later than 11 a.m., e.d.t., on September 28, 1973.

Bids will be opened at the Federal Reserve Bank at 11 a.m., e.d.t., on September 28, 1973. In determining successful bids, those specifying the lowest rate of interest will be accepted to the extent required to attain the aggregate amount of the loan. Upon the award of bids, the Government of the United States will promptly secure the signature of the borrower to the loan agreement, as well as to necessary copies thereof, and will return one copy.

[SEAL] George P. Shultz,
Secretary of the Treasury.

September 6, 1973.

Supplementary Notice

Please note the following:

(1) With the respect to Exhibit B of the Loan Agreement, the bidder should not fill in the model promissory note when submitting its bid. This model promissory note will be used at the time of individual drawdowns by the borrower.

(2) It is anticipated that the initial drawdown on the loan, which will be made prior to November 15, 1973, will be in the amount of about $2,000,000. There will be another drawdown of about $4,000,000 before the end of 1973.

(3) Section II(b)(1) of the Invitation to Bid states that the aggregate liability under the Government guaranty will be 100 percent of the principal amount plus 60 percent of one year's interest. This is really a 100 percent guaranty of both principal and interest because if, in case of default, the lender exercises its rights under sec. 6 of the loan agreement the interest liability could not possibly exceed the stated 60 percent.

(4) Any questions concerning the invitation to bid or related documents should be telephoned, mailed or wired to the Department of the Treasury, Bureau of the Public Debt, Room 200, Washington Building, Washington, D.C. 20220. The telephone number is 202-964-2992 or 202-964-2247.

(5) If bidders desire to have representatives at the announcement of the results of the bidding, they should give to the Federal Reserve Bank Securities Department at the Liberty Street address (see Sec. VI, p. 7) timely notice of those they intend to have present at the opening. However, this is not essential to the award of bids.

(6) The results of the bidding will be announced in the Press Room on the 10th Floor. Bank representatives should enter the Bank at the Liberty Street entrance.

Loan Agreement

LOAN AGREEMENT made and entered into the ____ day of _____ 1973, between the Government of Brazil (hereinafter sometimes referred to as the "Borrower") and _____, (hereinafter sometimes referred to as the "Undersigned").

WHEREAS by public notice (which notice is incorporated in this agreement as if fully set forth herein) the Secretary of the Treasury has invited bids on a loan in the amount of $15,000,000 to the Borrower at the lowest basis cost of money;

WHEREAS the Undersigned has submitted a bid in the amount of $_____ for the hereinafter more fully described loan at an interest rate of ____ percent per annum;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

Section 1. Commitment

1.1 Subject to the terms and conditions of this Loan Agreement the Undersigned agrees to make loans to the Borrower at any time and from time to time from the date of this Loan Agreement to and including 30 June 1974 or such earlier date as the entire amount of the loan bid by the Undersigned shall have been utilized.

1.2 Each borrowing hereunder shall be made on such date (hereinafter referred to as a "Disbursement Date") as may be designated by the Borrower upon three (3) days' concurrent written notice from the Borrower to the Undersigned. The initial borrowing hereunder shall be made prior to 15 November 1973. Except for the last borrowing, each such notice shall request a borrowing aggregating at least 1/100th of the principal amount bid. Each notice requesting disbursement (a) shall specify the amount of the loan to be made by the Undersigned on the Disbursement Date; (b) shall be delivered to the Undersigned at its address set forth in section 7.3 hereof; (c) shall specify the account of the Borrower at such Bank to which the proceeds of each loan are to be credited; and (d) shall have annexed thereto the documentation set forth in Exhibit A (Disbursement Procedures) annexed hereto.

1.3 The Borrower hereby agrees to pay to the Undersigned a commitment fee computed at the rate of one-quarter of one percent (¼%) per annum on the daily average unused amount of the Commitment from the date of execution of this Loan Agreement to and including 30 June 1974, or such earlier date as the entire Commitment of the Undersigned shall have been utilized. Such commitment fee shall be calculated on a 365-day basis and actual days elapsed.

1.4 The Undersigned may sell participations in the loan to legal entities doing business in the United States.

1.5 At the time at which the Borrower shall send the notices required by section 1.2 above to the Undersigned it shall deliver thereto a promissory note (which shall be substantially in the form of Exhibit B annexed hereto (with the blanks appropriately filled in)) evidencing the obligation of the Borrower to repay the amount of the loan from the Undersigned with interest thereon as hereinafter set forth. Upon request by the Undersigned at any time, the Borrower shall deliver to the Undersigned, in place of any such promissory note, two or more separate promissory notes in such amounts, aggregating not more than the amount of the note such notes shall replace, as shall be specified by the Undersigned. The promissory notes hereinabove referred to are hereinafter referred to as the "Notes" and individually as a "Note".

Section 2. Repayment

2.1 The Borrower hereby agrees:

(a) To pay interest on the outstanding balance of the principal of the loans made under this Loan Agreement on a fixed semi-annual basis, such interest payments to begin 30 November 1973, and thereafter on 31 May and 30 November of each year following, until the entire principal of the loans shall have been repaid; and

(b) To repay the principal of the loans made under this Loan Agreement in accordance with the Principal Repayment Schedule set forth in Exhibit C annexed hereto.

(i) If on any installment repayment date set forth in the Principal Repayment Schedule the Borrower shall not have availed itself of the Commitment of the Undersigned in an aggregate amount (less repayments previously made) equal to the aggregate installment of principal which is repayable on such date to the Undersigned, the Borrower shall, on such installment repayment date, repay to the Undersigned the full amount (less repayments previously made) to which it has availed itself of the Commitment of the Undersigned to such date, together with the interest accrued thereon. If at any time thereafter the Borrower shall avail itself of the Commitment of the Undersigned in an amount which would have been payable on a prior installment repayment date but for the provisions of the immediately preceding sentence, such amount, together with interest accrued thereon, shall be repayable on the next succeeding installment date of the Principal Repayment Schedule occurring after the disbursement of such amount and the said aggregate installment of principal repayable under the Principal Repayment Schedule to the Undersigned on that date shall be increased by such amount.

(ii) If by the date specified in paragraph 1.1 above, the Borrower shall not have availed itself of the entire amount of the Commitment, the installments of principal repayable to the Undersigned set forth in the Principal Repayment Schedule shall be reduced in the inverse order of the maturity thereof to the extent of the unused balance of the Commitment.

2.2 The Undersigned may sell or assign, at any time, in whole or in part, any one or more of the Notes and/or its rights to receive repayments.

2.3 Each Note shall be dated the Disbursement Date of the loan which such Note evidences and shall bear interest at a rate of ____ percent (____ %) per annum on the unpaid principal amount of such Note until such amount shall be paid in full. Such interest on each Note shall be payable as provided in 2.1. The Notes shall be completed by the Borrower in such a manner that repayment of such loans shall be made in the order of their disbursement, utilizing the Principal Repayment Schedule set forth in Exhibit C (as the same may be adjusted in accordance with sections 2.1(b)(i) and 2.1(b)(ii) hereof), and, in determining whether a particular loan is payable in one or more installments, utilizing a particular installment payment date only after the full utilization of the next preceding installment date.

2.4 The Borrower may, with the prior written consent of the Undersigned, which consent will not be unreasonably withheld, prepay any of the Notes held by the Undersigned, in whole or in part, on any repayment date, with accrued interest to the date of such prepayment on the amount prepaid.

2.5 Whenever any payments hereunder or under any Note shall be due on a Saturday, Sunday or public holiday under the laws of the District of Columbia, such payment may be made on the next succeeding business day, and such extension of time shall, in such case, be included in computing interest in connection with such payment, but excluded from the next interest period.

2.6. All payments by the Borrower to the Undersigned under this Loan Agreement and on the Notes, including without limitation payments of principal of, and interest on, the Notes and payment of any commitment fees or other fees or expenses hereunder, shall be payable to the Undersigned at the address set forth in section 7.3 hereof in U.S. dollars and in immediately available funds.

SECTION 3. REPRESENTATIONS AND WARRANTIES

The Undersigned has entered into this Loan Agreement and will make the loans provided for herein on the basis of the following representations and warranties of the Borrower:

3.1 The Borrower has full power, authority and legal right to incur the indebtedness contemplated in this Loan Agreement on the terms and conditions contained herein, and to execute, deliver and perform this Loan Agreement and the Notes;

3.2 The execution, delivery and performance of this Loan Agreement and the Notes will not violate any provisions of, and have been duly and validly authorized under, the laws of the Borrower, and all actions necessary to authorize the borrowings hereunder and the execution, delivery and performance of this Loan Agreement and the Notes have been duly taken; and

3.3 This Loan Agreement has been, and each of the Notes when issued will be, duly executed and delivered by persons thereunto duly authorized, and this Loan Agreement constitutes, and each of the Notes when issued will constitute, the valid, legally binding, direct and unconditional general obligation of the Borrower, enforceable in accordance with its respective terms.

SECTION 4. CONDITIONS OF LENDING

4.1 The obligation of the Undersigned to make the initial loan to be made by it hereunder is subject to the condition precedent that, prior to the first Disbursement Date, it shall have received an opinion in the English language of the Legal Adviser to the Ministry of Defense of the Government of the Borrower, dated the date of the initial Disbursement Date, to the same effect as sections 3.1, 3.2, and 3.3 hereof, and to the further effect that specified officials of the Borrower identified by name and title in such opinion are duly authorized to execute and deliver this Loan Agreement, the Notes and such other documents as may be required hereunder on behalf of the Borrower, to establish and draw upon an account of the Borrower, at the Bank to which account the Undersigned shall disburse the proceeds of all borrowings hereunder, and to certify to such Bank on behalf of the Borrower the identity, names and titles of any other or additional officials of the Borrower who thereafter may be so authorized.

4.2 The obligation of the Undersigned to make the initial loan to be made by it hereunder is subject to the further conditions precedent that, prior to the first disbursement, it shall have received:

(a) The guaranty of the United States (the "Guaranty"), executed by DOD, guarantying it against all political and credit risks of nonpayment of the obligations of the Borrower to the Undersigned hereunder (including the entire amount of the principal loaned by the Undersigned hereunder and interest thereon at the rate determined as specified herein, but excluding any amounts owing for commitment fees or other fees or expenses), up to a maximum aggregate liability to the Undersigned under the Guaranty on the part of the United States of $_____ dollars (U.S. $_____), pursuant to the Act; and

(b) An opinion of the General Counsel of DOD, to the effect that (i) DOD has full power, authority and legal right to execute, deliver and perform the Guaranty, (ii) the Guaranty has been executed in accordance with and pursuant to the terms and provisions of the Act and DOD has not, in issuing the Guaranty, exceeded the maximum amount of guaranties authorized to be issued under the Act, (iii) the Guaranty has been duly executed and delivered by a duly authorized representative of DOD, and (iv) the Guaranty constitutes the valid and legally binding obligation of the United States, enforceable in accordance with the terms thereof and backed by the full faith and credit of the United States.

4.3 The obligation of the Undersigned to make any loan to be made by it hereunder, including the initial loan, is subject to the further conditions precedent that:

(a) No event of default within the meaning of section 6 of this Loan Agreement, and no other default with respect to any of the Notes, shall have occurred;

(b) The Undersigned shall have received a Note or Notes payable to its order (or to the order of such other person or persons as the Undersigned may specify) in the amount of the particular loan, executed by the duly authorized representatives of the Borrower;

(c) The Undersigned shall have received the documentation specified in Exhibit A annexed hereto, executed by the duly authorized representatives of the Borrower; and

(d) All legal matters incident to the Guaranty and the transactions contemplated by this Loan Agreement shall be satisfactory to the counsel of the Undersigned.

SECTION 5. COVENANTS

The Borrower covenants and agrees that from and after the date of this Loan Agreement and so long as any amounts remain unpaid on account of the Notes or otherwise under this Loan Agreement:

(a) All payments on account of the principal of, and interest on, the Notes, commitment fees and other fees and expenses shall be made free and clear of, and without deduction for, any and all taxes, levies, imposts, duties, fees, charges, deductions, withholdings, restrictions or conditions of any nature whatsoever now or hereafter imposed, levied, collected or assessed with respect thereto by the Borrower of any central or local authority thereof or therein;

(b) Any claim which it may now or hereafter have against any person, corporation, firm or association or other entity (including without limitation, the United States, DOD, any Bank, any assignee of any Bank, and any supplier of the Defense items) in connection with any transaction, for any reason whatsoever, shall not affect the obligation of the Borrower to make the payments required to be made to the Undersigned under this Loan Agreement, or under the Notes, and shall not be used or asserted as a defense to the payment of such obligation or as a setoff, counterclaim, or deduction against such payments;

(c) It will pay any and all stamp taxes and other taxes of similar character, if any, now or hereafter in effect, imposed with respect to this Loan Agreement or the Notes (including, without limitation, any United States Interest Equalization Tax or similar future tax), and will save the holder of any Note harmless from any and all losses or liabilities with respect to or resulting from any delay or omission to pay such taxes.

(d) Any legal action or proceeding against it by the Undersigned with respect to this Loan Agreement or the Notes may be brought in the Superior Court of the District of Columbia or in the United States District Court for the District of Columbia or in the Courts of the Borrower, as the Undersigned may elect, and by execution and delivery of this Loan Agreement, the Borrower submits to each such jurisdiction. In the case of the Superior Court of the District of Columbia or of the United States District Court for the District of Columbia, the Borrower consents to the service of process out of said Courts by mailing copies of such process by registered United States mail, postage paid, to it at its address set forth in section 7.3 hereof; and

(e) All loans made hereunder shall be utilized solely for the procurement of the Defense items pursuant to Purchase Arrangements authorized by DOD.

SECTION 6. DEFAULTS

Upon the occurrence of any of the following events or default:

(a) If the Borrower fails for a period of ten (10) days to make any payment of principal of, or interest on, any Note or of any commitment fee hereunder, when due; or

(b) If any representation or warranty made by the Borrower herein or in any certificate furnished by the Borrower pursuant hereto, proves to be at any time incorrect in any material respect; or

(c) If the Borrower defaults in the performance of any other term, covenant or agreement contained in this Loan Agreement, and such default shall continue unremedied for thirty (30) days after written notice thereof shall have been given to the Borrower by the Undersigned;

then, and in any such event, the holder of any Note may declare immediately due and payable the unpaid principal of, and accrued interest on, all Notes held by such holder and such amounts shall become immediately due and payable without protest, presentment, notice or other demand of any kind, all of which are hereby expressly waived

by the Borrower, and the Undersigned may terminate its Commitment hereunder.

SECTION 7. MISCELLANEOUS

7.1 Upon the execution of this Loan Agreement, the Borrower shall pay to the Undersigned the aggregate sum of $_____ in payment of the fee charged by DOD with respect to the Guaranty.

7.2 No failure to exercise and no delay in exercising on the part of the Undersigned, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof, or the exercise of any other power or right. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided in this Loan Agreement.

7.3 Except as otherwise provided in this Loan Agreement, all notices, requests or demands hereunder shall be deemed to have been given or made upon the mailing of the same by air mail, postage prepaid, or in the case of telegraphic notice, on delivery to the telegraph company, addressed in the case of the Borrower to the Embassy of Brazil, Attention: Brazilian Air Attache, 3006 Massachusetts Avenue NW., Washington, D.C. 20016 and in the case of the Undersigned to or to such other addresses as any party may from time to time hereafter designate in writing to the other.

7.4 This Loan Agreement and the Notes shall be construed and interpreted in accordance with the laws of the District of Columbia, United States of America, unless prior to the execution of this Loan Agreement and the Notes the parties hereto have by written stipulation agreed that the laws of another jurisdiction of the United States shall be applied.

7.5 This Loan Agreement shall be binding upon and inure to the benefit of the Borrower and the Undersigned and their respective successors and assigns, except that the Borrower may not assign its rights hereunder without the prior written consent of the Undersigned. All agreements, covenants, representations and warranties made herein shall survive the delivery of the Notes and the making of the loans hereunder.

7.6 This Loan Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute a single instrument. Exhibits A and B attached hereto are, by this reference, made a part of this Loan Agreement.

7.7 In case any one or more of the provisions contained in this Loan Agreement or in any of the Notes should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and therein shall not in any way be affected or impaired thereby.

In witness whereof, the parties hereto have caused this Loan Agreement to be executed and sealed by their duly authorized officers and representatives on the day and year first above written.

_____[Seal]

_____[Seal]

EXHIBIT A

DISBURSEMENT PROCEDURES

The following procedures and conditions shall be complied with prior to each disbursement to be made by the Undersigned to the Borrower:

1. The designated representative of the Government of Brazil shall execute and deliver each request for disbursement to the Undersigned at its address set forth in section 7.3 of the foregoing Loan Agreement.

2. Each request shall be accompanied by a copy of the written communication from DOD authorizing the Borrower to enter into the Purchase Arrangement(s) pursuant to which the disbursement is requested.

3. Each request also shall be accompanied by a certification of the Borrower as follows:

"The Government of Brazil confirms that the proceeds of this disbursement will be applied entirely to the payment of amounts that have become properly due pursuant to the Purchase Arrangement(s) authorized by the Department of Defense of the United States of America in the attached written communication. This disbursement is requested by the Government of Brazil pursuant to the terms of the Loan Agreement of _____ between the Government of Brazil and the Undersigned, and confirms that the said Purchase Arrangement(s) (was/were) authorized by the Department of Defense of the United States of America pursuant to the aforesaid Loan Agreement. The Government of Brazil further confirms that the Undersigned to which this certification is addressed is authorized to make this disbursement by crediting the amount thereof to Account Number _____, at such Bank, and that _____, whose signature appears below, is (and, until further written notice, shall continue to be) authorized to draw upon such account on behalf of the Government of Brazil.

"Signature of the representative of the Government of _____ who is authorized to draw upon its account:

"Government of_____

"By _____"

(Name and Title Typed)

EXHIBIT B

PROMISSORY NOTE

New York, N.Y. _____
(Date)

U.S. $_____

FOR VALUE RECEIVED, the undersigned, the Government of _____, hereby promises to pay to the order of _____, or its assigns, the principal sum of _____ United States dollars (U.S. $_____) as follows:

_____

(Amounts) (Dates)

together with interest on any and all amounts remaining unpaid hereunder from time to time from the date hereof until this Note shall be paid in full, payable semi-annually on _____ and _____ of each year from the date hereof, commencing _____, 197__, at the rate of ____ percent (____%), per annum. Such interest shall be calculated using a 365-day factor, both principal and interest to be payable in immediately available funds in lawful money of the United States of America at the office of the payee at _____, or at the principal place of business of the assignee. All payments made on account of the principal amount hereunder shall be endorsed by the payee, or its assigns, on the reverse side of this Note.

Whenever any payment to be made shall be due on a Saturday, Sunday, or a public holiday under the laws of the District of Columbia, such payment shall be made on the next succeeding business day, and such extension of time shall in such case be included in computing interest in connection with such payment, but excluded from the next interest period.

This note is one of the Notes referred to in the Loan Agreement dated _____, 197__, between the Government of _____ and _____. It is entitled to the benefits of and may be prepaid on the terms and conditions specified in said Loan Agreement. Prepayments shall be applied to the installments hereof in the inverse order of their maturity.

All payments of principal of, and interest on, this Note are payable free and clear of, and without deduction for, any taxes, levies, imposts, duties, fees, charges, deductions, withholdings, restrictions or conditions of any nature whatsoever now or hereafter imposed, levied, collected or assessed with respect thereto by the Government of _____ or any central or local authority thereof or therein.

Upon the occurrence of any event or default specified in said Loan Agreement, the entire unpaid principal hereof and interest hereon to the date of payment may be declared to be forthwith due and payable as provided in said Loan Agreement. The Government of _____ promises to pay all out-of-pocket costs and expenses (including the reasonable fees and out-of-pocket expenses of counsel) in connection with collection after default of this Note.

GOVERNMENT OF

By _____ [Seal]
(Name and Title Typed)

EXHIBIT C

PRINCIPAL REPAYMENT SCHEDULE

The First $2,000,000 of Disbursements are Repayable on 31 May 1975.

The Next $2,000,000 of Disbursements are Repayable on 31 May 1976.

The Next $2,000,000 of Disbursements are Repayable on 31 May 1977.

The Next $2,250,000 of Disbursements are Repayable on 31 May 1978.

The Next $2,250,000 of Disbursements are Repayable on 31 May 1979.

The Next $2,250,000 of Disbursements are Repayable on 31 May 1980.

The Next $2,250,000 of Disbursements are Repayable on 31 May 1981.

GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT, made and entered into on the _____, (hereinafter called the "Guaranty"), between the _____, doing business under the laws of _____, (hereinafter called the "Lender(s)"), on the one part, and the Government of the United States of America (hereinafter called the "United States"), acting through the Department of Defense of the United States (hereinafter called "DOD"), on the other part;

WITNESSETH:

WHEREAS, the Government of _____ (hereinafter called the "Borrower") desires to purchase certain defense articles and defense services (hereinafter called "defense items") from United States sources; and

WHEREAS, the Lender(s) has entered into a Loan Agreement dated _____, (hereinafter called the "Loan Agreement"), with the Borrower to provide for the extension of credit to the Borrower of up to U.S. $_____; and

WHEREAS, the Lender(s) Obligation under the Loan Agreement to make the initial loan thereunder is to be conditioned upon the issuance of a guaranty from the United States against all political and credit risks of nonpayment by the Borrower of its obligations under the Loan Agreement to pay the principal of and interest on all extensions of credit by the Lender(s) under the Loan Agreement; and

WHEREAS, it is intended that each loan under the Loan Agreement will be repaid by the Borrower in seven (7) annual installments the first of which shall be due May 31, 1975, and the remaining six (6) installments shall be due and payable successively annually thereafter on May 31 of each year with interest payable semi-annually at the interest rate set forth in the Notes; and

WHEREAS, the aforesaid credit will be available only to finance the purchase of defense items from United States sources; and

WHEREAS, the Loan Agreement will provide for the issuance by the Borrower to the Lender(s) of promissory notes evidencing the loans made by the Lender(s) from time to time under the Loan Agreement (herein called the "Notes"); and

WHEREAS, the Loan Agreement by the Lender(s) will facilitate and will be in furtherance of the purposes of the Foreign Military Sales Act, Public Law 90-629, as amended (hereinafter called the "Act").

NOW THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

The United States, acting through DOD, in consideration of the fee specified in Article IV of this Guaranty, and except as otherwise specified in this Guaranty Agreement, hereby unconditionally and irrevocably severally guarantees each Lender under the authority of Section 24 of the Act, the due and punctual payment in United States Dollars of all amounts payable by the Borrower as principal of all loans made by the Lender(s) under the Loan Agreement and as interest at the rate set forth in the Notes whether or not such obligations are evidenced by Notes. Any disbursement by the Lender(s) shall be considered for the purpose of this Guaranty, to be a loan made by such Lender(s) under the Loan Agreement if in fact the funds so disbursed are applied to the purchase of articles or services approved in writing by the Department of Defense for purchase by the Borrower under the Loan Agreement, or if such disbursement is made in accordance with the procedures to be specified in the Loan Agreement and the Lender(s) is in receipt of documents that on their face conform to such requirements and indicate that DOD has approved in writing the purchases by the Borrower for which the disbursement is requested.

This Guaranty is a guaranty of payment covering all political and credit risks of nonpayment, including any nonpayments arising out of any claim which the Borrower may now or hereafter have against any person, corporation, firm or association, or other entity (including, without limitation, the United States, the Lender(s) and any supplier of Defense Items) in connection with any transaction, for any reason whatsoever. This Guaranty shall inure to the benefit of and shall be enforceable severally by each of the Lender(s), its respective successors by operation of law, or its respective endorsees, assignees or transferees (the Lender(s) and any such successor by operation of law, endorsee, assignee or transferee being hereinafter individually sometimes called a "Beneficiary" and collectively the "Beneficiaries".) All provisions of this Guaranty shall be severally applicable to any Beneficiary acting in its own right in connection with the Notes, the Loan Agreement or this Guaranty.

The United States hereby waives diligence, demand, protest, presentment, and any requirement that any Beneficiary of this Guaranty exhaust any right or power to take any action against the Borrower and any notice of any kind whatsoever other than the demand for payment required to be given to DOD hereunder in the event of default on a payment due under the Notes.

The United States further agrees that any claim which it may now or hereafter have against any Beneficiary for any reason whatsoever shall not affect in any way the right of any other Beneficiary to receive full and prompt payment of any amount otherwise due under this Guaranty.

The full faith and credit of the United States is pledged to the performance of this Guaranty.

The United States represents and warrants that (a) it has full power, authority and legal right to execute, deliver and perform this Guaranty, (b) this Guaranty has been executed in accordance with and pursuant to the terms and provisions of the Act and DOD has not, in issuing this Guaranty, exceeded the maximum amount of guarantees authorized to be isued under the Act, (c) this Guaranty has been duly executed and delivered by a duly authorized-representative of DOD, and (d) this Guaranty constitutes the valid and legally binding obligation of the United States, enforceable in accordance with the terms thereof.

ARTICLE II

Notwithstanding the provisions of Article I above, the maximum liability of DOD under this guaranty shall not exceed $----------.

ARTICLE III

Payment by DOD in the event of a default in the payment of any Note, or any portion thereof, by the Borrower shall be made promptly to the Beneficiary in New York Federal Reserve Funds at the address specified by the Beneficiary (which in the case of the Lender(s) shall be its address set forth opposite its signature below) upon demand to DOD by the Beneficiary after such default has continued for more than 15 days. The amount payable under this Guaranty shall be the amount of any principal and interest then in default, together with interest at the rate then applicable to the defaulted note from the date of default to the date of payment by DOD. No interest shall be payable by DOD for any period following 30 days after default if the Beneficiary fails to make such demand within 30 days after default. DOD reserves the right to make payments due to a Beneficiary from the Borrower whether or not demand to DOD by the Beneficiary therefore has been made. Upon payment by DOD to a Beneficiary, such Beneficiary will assign to the United States, without recourse to or warranty by such Beneficiary, the corresponding amount of such Beneficiary's rights to such payment from the Borrower.

ARTICLE IV

The Lender(s) shall communicate to DOD the date and amount of each disbursement made by the Lender(s) and the date and amount of each payment of principal and interest made by the Borrower under the Loan Agreement within thirty (30) days after each such disbursement and each such payment. Each such communication shall be sent to the Comptroller, Defense Security Assistance Agency, The Pentagon, Washington, D. C. 20301.

ARTICLE V

DOD acknowledges receipt from the Lender(s) of payment of a guaranty fee of $ ----------.

ARTICLE VI

So long as this Guaranty Agreement is in effect and the United States is not in default hereunder, in the event of a default under the Loan Agreement or in the payment of any Note, or any portion thereof, by the Borrower—

(a) The Lender(s) shall not accelerate of reschedule payment of the principal amount of or interest on any of the Notes except with the written approval of DoD; and

(b) The Lender(s) shall, if so directed by DOD, invoke the default provisions of the Loan Agreement, and shall suspend any further disbursements to, or on behalf of, the Borrower until the Lender(s) has been advised by DoD that it may resume payments under its Commitment.

ARTICLE VII

The Lender(s) will not agree to any material amendment of the Loan Agreement or consent to any material deviation from the provisions thereof without the prior written consent of DoD.

ARTICLE VIII

Any Beneficiary's rights under this Guaranty may be assigned to any individual, corporation, partnership, or other association doing business in the United States of America. In the event of such assignment DoD shall be promptly notified.

ARTICLE IX

Any notice, demand, request or the like on behalf of the United States hereunder will be effective for the purposes hereof if signed by the Director, or Deputy Director, Defense Security Assistance Agency, or their respective successors in office and delivered to the Lender(s) at its address set forth opposite its signature below. Any notice, demand, request or the like on behalf of any Beneficiary of this Guaranty will be effective for the purposes hereof if signed by an authorized official of any such Beneficiary and delivered to the Director, Defense Security Assistance Agency.

IN WITNESS WHEREOF, the parties hereto have caused this Guaranty to be duly executed and sealed on the date first mentioned above.

Address:

By ---------- [Seal]

Government of the United States of America Acting through the Department of Defense

By ---------- [Seal]

[FR Doc.73-19328 Filed 9-11-73;8:45 am]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 73-14]

LEXINGTON ECONOMY DRUG CO.

Notice of Prehearing Conference

Notice is hereby given that on May 31, 1973, the Drug Enforcement Administration (formerly the Bureau of Narcotics and Dangerous Drugs), Department of Justice, issued to Lexington Economy Drug Company, an Order to Show Cause as to why the Bureau of Narcotics and Dangerous Drugs should not deny the application for registration under the Controlled Substances Act of 1970, of the Respondent, executed on February 7, 1973, pursuant to sec. 303 of the Controlled Substances Act (21 U.S.C. 823).

Thirty days having elapsed since said Order was received by Lexington Economy Drug Company, and written request

for a prehearing conference having been filed with the Drug Enforcement Administation, in accordance with 21 CFR 316.54, Notice is hereby given that a prehearing conference in this matter will be held commencing at 10:00 a.m. on September 12, 1973, in room 1211 of the Drug Enforcement Administration, 1405 I Street NW., Washington, D.C. 20537.

Dated September 6, 1973.

JOHN R. BARTELS, Jr.,
Acting Administrator,
Drug Enforcement Administration.

[FR Doc.73-19350 Filed 9-11-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

CALIFORNIA STATE ADVISORY BOARD

Notice of Meeting

Notice is hereby given that the California State Multiple-Use Advisory Board to the Bureau of Land Management will hold a meeting September 26–27, 1973.

The two-day meeting will be a field review of progress on development of the management plan for the King Range National Conservation as required by Public Law 91–476. Areas to be visited include Bureau of Land Management campgrounds in the King Range, Shelter Cove and Honeydew Creek, with overnight stops at Piercy, California. A business meeting will be held at 7:30 a.m. at the Bridgewood Lodge, Piercy, California on September 27.

Any interested person may file a written statement with the board for its consideration. The Advisory Board co-chairmen are Dr. Gerhard N. Rostvold, P.O. Box 312, Claremont, California 91711, and J. R. Penny, California State Director, Bureau of Land Management.

Written statements or requests for additional information should be submitted to the Board, c/o State Director (912), Bureau of Land Management, 2800 Cottage Way, Room E–2841, Sacramento, California 95825, telephone (916) 484–4724.

J. R. PENNY,
State Director, California.

[FR Doc.37-19349 Filed 9-11-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Forest Service

WINEMA NATIONAL FOREST GRAZING ADVISORY BOARD

Notice of Meeting

The Winema National Forest Grazing Advisory Board will meet at 2 p.m. September 21, 1973, in the Post Office Building, Klamath Falls, Oregon.

The purpose of this meeting is to determine the future of the Board.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Post Office Building, Klamath Falls, Oregon, Telephone No. 882–7761. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rule for public participation: Public members may speak up at anytime.

THADDEUS YAROSH,
Acting Forest Supervisor.

SEPTEMBER 4, 1973.

[FR Doc.73-19308 Filed 9-11-73;8:45 am]

Office of the Secretary

SPOKANE AND COLVILLE INDIAN LANDS IN WASHINGTON STATE

Notice of Feed Grain Donations

Pursuant to the authority set forth in section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), and Executive Order 11336, I have determined that:

1. The chronic economic distress of the needy members of the Spokane and Colville Indian Lands in Washington has been materially increased and become acute because of severe and prolonged drought creating a serious shortage of livestock feeds. These lands are reservation or other lands designated for Indian use and are utilized by members of the Indian tribe for grazing purposes.

2. The use of feed grain or products thereof made available by the Commodity Credit Corporation for livestock feed for such needy members of the tribes will not displace or interfere with normal marketing of agricultural commodities.

Based on the above determinations, I hereby declare the reservation and grazing lands of these tribes to be acute distress areas and authorize the donation of feed grain owned by the Commodity Credit Corporation to livestockmen who are determined by the Bureau of Indian Affairs, Department of the Interior, to be needy members of the tribe utilizing such lands. These donations by the Commodity Credit Corporation may commence upon signature of this notice and shall be made available through the duration of the existing emergency or to such other time as may be stated in a notice issued by the Department of Agriculture.

Signed at Washington, D.C. on September 7, 1973.

EARL L. BUTZ,
Secretary.

[FR Doc.73-19401 Filed 9-11-73;8:45 am]

DEPARTMENT OF COMMERCE

National Bureau of Standards

COMMERCIAL STANDARD, PORCELAIN-ENAMELED STEEL UTENSILS

Action on Proposed Withdrawal

In accordance with § 10.12 of the Department's "Procedures for the Development of Voluntary Product Standards" (15 CFR Part 10, as revised; 35 FR 8349 dated May 28, 1970), notice is hereby given of the withdrawal of Commercial Standard CS 100–47, "Porcelain-Enameled Steel Utensils."

This action is taken in furtherance of the Department's announced intention, as set forth in the public notice appearing in the FEDERAL REGISTER of July 24, 1973 (38 FR 19850), to withdraw this standard.

The effective date for the withdrawal of this standard will be on November 12, 1973. This withdrawal action terminates the authority to refer to this standard as a voluntary standard developed under the Department of Commerce Procedures.

Dated September 6, 1973.

RICHARD W. ROBERTS,
Director.

[FR Doc.73-19366 Filed 9-11-73;8:45 am]

FEDERAL INFORMATION PROCESSING STANDARDS COORDINATING AND ADVISORY COMMITTEE

Notice of Meeting

Pursuant to Public Law 92–463 and Executive Order 11686, notice is hereby given that the Federal Information Processing Standards Coordinating and Advisory Committee (FIPSCAC) will hold a meeting from 10 a.m. to 1 p.m. on Tuesday, September 18, 1973, in Room B–255, Building 225, of the National Bureau of Standards in Gaithersburg, Maryland.

The purpose of the meeting is to review the actions of the Federal Information Processing Standards (FIPS) Task Groups and to consider other matters relating to Federal information processing standards.

The public will be permitted to attend, to file written statements, and, to the extent that time permits, to present oral statements. Persons planning to attend should notify the Office of Information Processing Standards, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234 (Phone 301–921–3551).

Dated September 6, 1973.

RICHARD W. ROBERTS,
Director.

[FR Doc.73-19365 Filed 9-11-73;8:45 am]

National Technical Information Service

GOVERNMENT-OWNED INVENTIONS

Notice of Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for licensing in accordance with the GSA Patent Licensing Regulations.

Copies of Patent applications, either paper copy (PC) or microfiche (MF), can be purchased from the National Technical Information Service (NTIS), Springfield, Virginia 22151, at the prices cited. Requests for copies of patent applications must include the PAT–APPL number and the title. Requests for licensing information should be directed to the address cited with each copy of the patent application.

Paper copies of patents cannot be purchased from NTIS but are available from the Commissioner of Patents, Washington, D.C. 20231, at $0.50 each. Requests

for licensing information should be directed to the address cited below for each agency.

DOUGLAS J. CAMPION,
Patent Program Coordinator, National Technical Information Service.

U.S. DEPARTMENT OF TRANSPORTATION, Patent Counsel, 400 7th Street SW., Washington, D.C. 20590.

Patent Application 300,250: Hydraulic Energy Absorber, filed October 24, 1972; PC $3.25/MF $0.95.

Patent Application 325,392: Resonance Tire Inspection Unit; filed January 22, 1973; PC $3.00/MF $0.95.

U.S. DEPARTMENT OF COMMERCE, Assistant General Counsel for Administration, Washington, D.C. 20230.

Patent 3,239,758: System for Measuring Peak Pulse Power Using Sampling and Comparison Techniques; filed September 10, 1962, Patented March 8, 1966; not available NTIS.

Patent 3,360,262: Apparatus for Moving and Aligning Limp Pieces of Material; filed June 16, 1966, Patented December 26, 1967; not available NTIS.

Patent 3,463,256: Double Piston Gage; filed April 2, 1962, Patented September 2, 1969; not available NTIS.

Patent 3,515,089: Rudder; filed September 30, 1968, Patented June 2, 1970; not available NTIS.

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE; National Institutes of Health; Chief, Patent Branch; Westwood Building, Bethesda, Maryland 20014.

Patent Application 289,369: Antibodies and Plasma Anti-Platelet Factor in Patients with Idiopathic Thrombocytopenic Purpura; filed August 31, 1972; PC $3.00/MF $0.95.

Patent Application 302,600: Micro Miniature Flow Check Valve Assembly; filed October 31, 1972; PC $3.00/MF $0.95.

Patent Application 314,508: Switch Failure Monitoring Device; filed December 13, 1972; PC $3.00/MF $0.95.

Patent Application 328,075: Regenerative Heat Engine; filed January 30, 1973; PC $3.00/MF $0.95.

Patent Application 344,416: Gas Mixing Device; filed March 23, 1973; PC $3.00/MF $0.95.

Patent Application 348,666: A Stable Hemagglutination Technique for Measuring Morphine and Morphine Derivatives; filed April 6, 1973; PC $3.00/MF $0.95.

Patent Application 354,098: Isolation and Purification of Active Principle of Fruit of Synsepalum Dulcificum and Method of Treatment of Obesity; filed April 24, 1973; PC $3.00/MF $0.95.

Patent Application 354,673: Respirator; filed April 26, 1973; PC $3.00/MF $0.95.

Patent 3,719,763: Binary Amino Ovicidal Composition; filed September 29, 1969, Patented March 6, 1973; not available NTIS.

Patent 3,733,132: Collimator for Finocular Instruments; filed October 26, 1971, Patented May 15, 1973; not available NTIS.

U.S. DEPARTMENT OF THE INTERIOR, Branch of Patents, 18th and C Streets NW., Washington, D.C. 20240.

Patent Application 335,397: Copper Ion Selective Sensor; filed February 23, 1973; PC $3.00/MF $0.95.

Patent Application 339,687: Continuous Process for Mechanically Separating Materials Contained in Urban Refuse; filed March 9, 1973; PC $3.00/MF $0.95.

Patent Application 342,920: Decomposition of Chalcopyrite; filed March 19, 1973; PC $3.00/MF $0.95.

Patent Application 343,919: Pretreatment of Saline Water Prior to Desalination; filed March 19, 1973; PC $3.00/MF $0.95.

Patent Application 344,697: Product Separator; filed March 26, 1973; PC $3.00/MF $0.95.

Patent Application 356,221: Combined Noise Exposure Meter and Readout Unit; filed May 1, 1973; PC $3.00/MF $0.95.

Patent 3,734,989: Fiber Bundle Assembly; filed August 13, 1971, Patented May 22, 1973; not available NTIS.

Patent 3,736,239: Neutralization of Metal Containing Wastes; filed March 18, 1971, Patented May 29, 1973; not available NTIS.

Patent 3,736,250: Catalytic Hydrogenation Using Zinc Chloride Molten Salt Mixture as a Catalyst; filed November 17, 1971, Patented May 29, 1973; not available NTIS.

Patent 3,736,908: System for Starting A Fluidized Bed Boiler; filed October 8, 1970, Patented June 12, 1973; not available NTIS.

Patent 3,738,746: Automatic Stereoscopic Profiling System; filed December 8, 1970, Patented June 12, 1973; not available NTIS.

Patent 3,737,384: Decomposition of Halogenated Organic Compounds Using Metallic Couples; filed December 23, 1970, Patented June 5, 1973; not available NTIS.

Patent 3,738,290: Dual Pulse Jet System for the Combustion of High Ash Fuel; filed October 14, 1971, Patented June 12, 1973; not available NTIS.

Patent 3,739,061: Manufacture of Synthetic Rutile; filed August 10, 1971, Patented June 12, 1973; not available NTIS.

[FR Doc.73-19369 Filed 9-11-73;8:45 am]

[Department Organization Order 30-2B; Amdt. 4]

Office of the Secretary
NATIONAL BUREAU OF STANDARDS
Organization and Functions

This order effective August 1, 1973, amends the material appearing at 37 FR 14423 of July 20, 1972, 37 FR 24202 of November 15, 1972, 38 FR 3208 of February 2, 1973 and 38 FR 9450 of April 16, 1973. Department Organization Order 30-2B dated June 12, 1972, is hereby further amended as follows:

1. *SECTION 4. STAFF UNITS REPORTING TO THE DIRECTOR.* Paragraph .03 is deleted. Paragraph .04 is renumbered .03.

2. *SECTION 8. OFFICE OF THE ASSOCIATE DIRECTOR FOR INFORMATION PROGRAMS.* a. Paragraph .03 is amended to read:

".03 *The Office of Information Activities* shall serve as the point of Bureau communication with the public and trade press, coordinate liaison with the press, radio, and television, prepare releases directed to general, trade, and semi-technical audiences, provide graphic arts and scientific illustration services to the technical staff of the bureau, provide services for scientific photography (both still and motion), prepare feature articles and motion picture scripts, and manage tours, conferences, and exhibits."

b. A new paragraph .06 is added to read as follows:

".06 *The Office of Technical Publications* shall provide the executive secretariat for the Washington Editorial Review Board, process NBS technical papers for publication, maintain the NBS Manual for Scientific and Technical Communications, and manage computer assisted printing activities, cataloging and referencing of NBS reports, and the announcement and distribution of technical publications."

3. The organization chart attached to this amendment supersedes the organization chart dated March 30, 1973 which is attached to Amendment 3. Copy of the Organization Chart is attached to the original of this document on file in the Office of the Federal Register.

Effective date: August 1, 1973.

HENRY B. TURNER,
Assistant Secretary for Administration.

[FR Doc.73-19291 Filed 9-11-73;8:45 am]

[Department Organization Order 15-3]

Department Organization Order
OFFICE OF COMMUNICATIONS
Organization and Functions

This order effective August 22, 1973, supersedes the material appearing at 37 FR 6720 of April 28, 1970.

SECTION 1. *Purpose.*—This order establishes the position of Special Assistant for Public Affairs, abolishes the Office of Public Affairs, establishes the Office of Communications and prescribes the general functions of the Office.

SEC. 2. *General.*—.01 The position of Special Assistant for Public Affairs is hereby established, to report and be responsible to the Secretary of Commerce. The Special Assistant for Public Affairs shall serve as the Secretary's principal officer in all matters relating to public affairs and shall exercise general Departmental public affairs policy guidance. He shall also serve as the primary liaison for the Department of Commerce to the White House Office of Communications and to the counterpart offices in the other Departments and Agencies.

.02 The Office of Public Affairs is hereby abolished. Its functions, and the duties heretofore assigned to the Director, Office of Public Affairs, are herewith reassigned to the Director, Office of Communications as provided in this order, and to the Special Assistant for Public Affairs.

.03 The Office of Communications is hereby established as a Departmental office, to be headed by a Director who shall report and be responsible to the Secretary of Commerce through the special Assistant for Public Affairs.

SEC. 3. *Functions.*—The Office of Communications shall:

a. Plan, develop and implement a coordinated public information program throughout the Department;

b. Exercise functional supervision of the public information activities of the

operating units, whether performed by information staffs or otherwise, and review and advise on the effectiveness of the operating units in public affairs matters;

c. Perform the public affairs services required by the Under Secretary, other officials in the Office of the Secretary, and, as appropriate, other officials of the Department. Such services shall include handling of news conferences, arranging radio and television broadcasts, preparing speeches, and arranging personal appearances;

d. Review and approve for release all Commerce news items and other informational material, including speeches, news releases, and publications, and review and approve all graphics, films, exhibits, and advertising or promotional programs of the Department's public affairs offices; and

e. Assist the Office of the Secretary, and other offices as appropriate, by providing timely media information and analysis and by providing regular news or information services as appropriate.

Effective date.—August 22, 1973.

HENRY B. TURNER,
Assistant Secretary for Administration.

[FR Doc.73-19290 Filed 9-11-73;8:45 am]

[Department Organization Order 30-3B; Amdt. 1]

PATENT OFFICE

Organization and Functions

This order, effective August 1, 1973, amends the material appearing at 38 FR 1068 of January 8, 1973.

Department Organization Order 30-3B, dated December 15, 1972 is hereby amended as follows:

1. SEC. 7. *OFFICES REPORTING TO THE ASSISTANT COMMISSIONER FOR LEGAL AFFAIRS.* a. Paragraph .04 is amended to read:

.04 The *Office of Legislation and International Affairs* shall make studies and advise the Commissioner on policy and action concerning matters which may require legislation and on international patent and trademark matters; develop and direct the implementation of related programs; maintain liaison with the Office of the Secretary, the Department of State, and appropriate congressional committees; and conduct negotiations in technical patent and trademark matters in establishing or implementing international agreements.

b. Paragraph .05 is deleted.

2. The organization chart of December 15, 1972 is superseded by the organization chart attached to this amendment. Copy of the Organization Chart is attached to the original of this document on file in the Office of the Federal Register.

Effective date.—August 1, 1973.

HENRY B. TURNER,
Assistant Secretary for Administration.

[FR Doc.73-19292 Filed 9-11-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ETHYLENE OXIDE

Safety and Efficacy Review; Request for Data and Information

Ethylene oxide has been used for a number of years in sterilization procedures involving human and veterinary drugs, including biologics and devices. Ethylene oxide has also been used to control microorganism contamination in cosmetics and as a fumigant in certain foods.

The Food and Drug Administration has recently received several reports of serious irritation of skin and mucous membrane after contact with products, primarily medical devices, that had been sterilized with ethylene oxide. Improper hospital sterilization procedures have usually been involved. Ethylene oxide and/or reaction products such as ethylene glycol and ethylene chlorohydrin have been implicated in these adverse reactions. Ethylene chlorohydrin (2-chloroethanol) is formed by the reaction of ethylene oxide with chloride ions in certain drugs and ethylene glycol is formed by the reaction of ethylene oxide with water present in certain drugs. In addition, ethylene oxide may also react with functional groups in drugs forming compounds of undetermined biological activity and toxicity.

FDA is also aware of reports of decreased antibiotic potency attributed to the effects of ethylene oxide sterilization under experimental conditions. Further, there are questions regarding the effectiveness of the sterilization process using ethylene oxide since a number of factors, for example, relative humidity, are known to affect the adequacy of the process. There is also evidence that contaminating microorganisms occluded or trapped within crystalline material are not sterilized by ethylene oxide.

Because questions have been raised regarding the effectiveness and safety of ethylene oxide, more data is needed regarding the use of ethylene oxide to treat drugs, devices, cosmetics and foods. After review of such data and other relevant information, the Commissioner of Food and Drugs will consider the need for proposing formal policy in this area.

So as to provide all interested persons with an opportunity to present relevant data and information regarding such uses of ethylene oxide, the Commissioner invites submission of published and unpublished data concerning the use, performance, toxicity of ethylene oxide or reaction products, and any other data having a bearing on the safety and effectiveness of ethylene oxide.

It is requested that the data and information be submitted in six copies and where appropriate (i.e., in the case of large submissions) that the submission be indexed and summarized. Where applicable, the following format is suggested:

A. Efficacy of Ethylene Oxide Sterilization of:

1. Drug crystals or other solid forms that contain known and varied kinds and numbers of occluded microorganisms. Include available data on every kind of drug product including biologics.

2. Drugs that are surface-contaminated with certain known and varied kinds and numbers of microorganisms. Include available data on every kind of drug product.

3. Liquid drug formulations treated with ethylene oxide.

4. Drugs under various conditions of time, temperature, ethylene oxide concentration, and relative humidity.

5. Drug containers sterilized with ethylene oxide prior to aseptic filling with a drug.

B. Residues of the following compounds in drugs including levels before and after aeration or other procedures intended to remove or reduce such residues; include description of the analytical methodology used in determining residues:

1. Ethylene oxide.

2. Ethylene chlorohydrin (2-choloroethanol).

3. Ethylene glycol.

4. Reaction products of (1), (2), or (3) with active ingredient(s) and/or excipients in each drug formulation separately and with the final formulation.

C. Toxicity Data on:

1. Ethylene oxide.

2. Ethylene chlorohydrin (2-chloroethanol).

3. Ethylene glycol.

4. Reaction products of (1), (2), and (3) with active ingredient(s) and/or excipients in each drug formulation separately and with the final formulation.

D. Manufacturing Controls and Stability Data Including:

1. The effects of ethylene oxide sterilization on the appearance, properties and potency of each drug product.

2. Stability of the product for prolonged time periods after ethylene oxide sterilization.

E. Specifications of all materials used in sterilization procedures in the above studies.

F. Data showing the rationale for the selection of ethylene oxide sterilization rather than other methods of sterilization.

G. Data and Information regarding ethylene oxide treatment and testing of cosmetics, devices and foods should be submitted in the above format where appropriate.

Submissions of all data and information should be forwarded on or before December 11, 1973 to:

Food and Drug Administration, Bureau of Drugs, Office of Scientific Evaluation (BD-100), 5600 Fishers Lane, Rockville, MD 20852.

Dated September 5, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-19351 Filed 9-11-73;8:45 am]

[GRASP 3G0026]

NOVO ENZYME CORP.

Filing of Petition for Affirmation of GRAS Status

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201 (s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1786; 21 U.S.C. 321(s), 348, 371(a)) and the regulations for affirmation of GRAS status (21 CFR 121.40), published in the FEDERAL REGISTER of December 2, 1972 (37 FR 25705), notice is given that a petition (GRASP 3G0026) has been filed by Novo Enzyme Corp., Post Office Box 189, Mamaroneck, N.Y. 10543, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration, proposing affirmation that carbohydrase and protease enzyme preparations derived from nonpathogenic strains of *Bacillus licheniformis*, formerly referred to as the Ford strain of *Bacillus subtilis*, are generally recognized as safe (GRAS) for use in food.

Interested persons may, on or before November 12, 1973, within 60 days after publication hereof, review the petition and/or file comments (preferably in quintuplicate) with the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, Md. 20852. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, address given above, during working hours, Monday through Friday.

Dated August 31, 1973.

VIRGIL O. WODICKA,
Director, Bureau of Foods.

[FR Doc.73-19352 Filed 9-11-73;8:45 am]

Office of Education

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Notice of Meeting

Notice is hereby given, pursuant to Federal Advisory Committee Act, P.L. 92–463, that the next meeting of the National Advisory Council on Extension and Continuing Education will be held on October 25–26, 1973, at the Statler-Hilton Hotel in Boston, Massachusetts. The meetings on both days will begin at 9 a.m. local time.

The National Advisory Council on Extension and Continuing Education is authorized under Public Law 89–239. The Council is directed to advise the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Title I, and to report annually to the President on the administration and effectiveness of all federally supported extension and continuing education programs, including community service programs.

The meeting of the Council shall be open to the public. Complete agenda and records shall be kept of all Council proceedings and they will be available for public inspection at the office of the Council's Executive Director, located in Room 710, 1325 G Street NW., Washington, D.C.

EDWARD A. KIELOCH,
Executive Director.

SEPTEMBER 4, 1973.

[FR Doc.73-19304 Filed 9-11-73;8:45 am]

Social Security Administration

ADVISORY COMMITTEE ON MEDICARE ADMINISTRATION, CONTRACTING, AND SUBCONTRACTING

Notice of Public Meeting

Notice is hereby given, pursuant to Public Law 92–463, that the Advisory Committee on Medicare Administration, Contracting, and Subcontracting, established pursuant to section 1114(f) of the Social Security Act, as amended, which advises the Secretary of Health, Education, and Welfare on Medicare matters, will meet on Friday, September 28, 1973, at 9 a.m. in the conference room on the 31st floor at 299 Park Avenue, New York, New York. The meeting is open to the public. The Committee will consider matters relating to subcontracting.

Further information on the Committee may be obtained from Mr. Max Perlman, Executive Secretary of the Committee, Room 585 East Building, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–9134. Members of the public planning to attend should send written notice of intent to the Executive Secretary.

(Catalog of Federal Domestic Assistance Program No. 13.800, Health Insurance for the Aged—Hospital Insurance, and 13.801, Health Insurance for the Aged—Supplementary Medical Insurance.)

Dated: September 7, 1973.

MAX PERLMAN,
Executive Secretary, Advisory Committee on Medicare Administration, Contracting, and Subcontracting.

[FR Doc.73-19397 Filed 9-11-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket No. 23287]

AIR FREIGHT FORWARDERS' CHARTERS INVESTIGATION

Notice of Supplemental Conference

Notice is hereby given that a supplemental conference in the above-entitled proceeding will be held on September 13, 1973, at 10 a.m. (local time), in Room 726, Universal Building, 1825 Connecticut Avenue NW., before the undersigned administrative law judge.

Dated at Washington, D.C., September 7, 1973.

[SEAL] RICHARD M. HARTSOCK,
Administrative Law Judge.

[FR Doc.73-19396 Filed 9-11-73;8:45 am]

[Docket No. 25577]

EASTERN AIR LINES, INC., AND SEABOARD WORLD AIRLINES, INC.

Notice of Prehearing Conference Regarding Equipment Interchange Agreement

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on September 25, 1973, at 10 a.m. (local time), in Room 911, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before Administrative Law Judge Ross I. Newmann.

In order to facilitate the conduct of the conference parties are instructed to submit one copy to each party and four copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) requests for information; (4) statement of positions of parties; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before September 11, 1973, and the other parties on or before September 18, 1973. The submissions of the other parties shall be limited to points on which they differ with the Bureau of Operating Rights, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., September 6, 1973.

[SEAL] ROBERT L. PARK,
Associate Chief Administrative Law Judge.

[FR Doc.73-19395 Filed 9-11-73;8:45 am]

[Docket 24961 *et al.*]

UNIVERSAL AIRLINES, INC. TRANSFER OF CERTIFICATES TO PHOENIX AIRLINES, INC.

Notice of Postponement of Hearing Regarding Fitness Investigation

Notice is given pursuant to the Federal Aviation Act of 1958, as amended, that the public hearing in the above-entitled proceeding now scheduled to commence on September 18, 1973, (38 FR 22909) is hereby postponed until further notice.

Dated at Washington, D.C., September 6, 1973.

[SEAL] LOUIS W. SORNSON,
Administrative Law Judge.

[FR Doc.73-19394 Filed 9-11-73;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF COMMERCE

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of Commerce to fill by noncareer executive assignment in the excepted service the position of General Counsel, Office of General Counsel, National

Oceanic and Atmospheric Administration.

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

[FR Doc.73-19384 Filed 9-11-73;8:45 am]

DEPARTMENT OF COMMERCE

Notice of Revocation of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of Commerce to fill by noncareer executive assignment in the excepted service the position of Special Assistant for Regional Economic Coordination, Office of the Secretary.

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

[FR Doc.73-19383 Filed 9-11-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary—Land and Water Resources, Office of the Secretary.

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

[FR Doc.73-19380 Filed 9-11-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Director, Office of Water Resources Research, Office of the Secretary.

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

[FR Doc.73-19381 Filed 9-11-73;8:45 am]

DEPARTMENT OF THE NAVY

Notice of Grant of Authority To Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Navy to fill by noncareer executive assignment in the excepted service the position of Principal Deputy General Counsel, Office of the General Counsel, Executive Office of the Secretary.

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

[FR Doc.73-19382 Filed 9-11-73;8:45 am]

LICENSED PRACTICAL NURSE, BOSTON, MASSACHUSETTS

Notice of Adjustment of Minimum Rates and Rate Ranges; Correction

In the FEDERAL REGISTER of August 20, 1973 (FR Doc. 73-17199) appearing on page 24427 in the heading "Brockton" was put in by mistake. It should read "Boston" as in the heading above.

The following last paragraph was omitted from the document:

"Special salary rates authorized for Licensed Practical Nurse GS-621-3 and 4, Brockton, Massachusetts are terminated effective the beginning of the first pay period which commences on or after August 19, 1973."

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

[FR Doc.73-19379 Filed 9-11-73;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

CERTAIN WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS PRODUCED OR MANLFACTURED IN THE REPUBLIC OF CHINA

Entry or Withdrawal From Warehouse for Consumption

SEPTEMBER 10, 1973.

On October 4, 1972, there was published in the FEDERAL REGISTER (37 FR 20883) a letter of September 29, 1972 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, implementing those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of December 30, 1971, as amended, between the Governments of the United States and the Republic of China which establish specific export limitations, among other categories, on man-made fiber textile Category 219; and consultation levels, among other wool and man-made fiber textile categories, for wool textile categories 103, 121, 122, and 125 which do not have specific export limitations, for the agreement year which began on October 1, 1972. The agreement further provides that consultation levels, initially controlled by the Government of the Republic of China, may at a later date be controlled by the United States Government like those categories having specific export limitations. By directive of November 14, 1972 (37 FR 24212) the group ceilings applicable to wool apparel (Categories 111-125) and wool fabric, made-up and miscellaneous textiles (Categories 101-110 and 126-132) were so controlled. On December 19, 1972 (37 FR 28446), the bilateral agreement was amended to adjust the wool group ceilings. The purpose of this notice is to announce that pursuant to paragraph 12 of the Bilateral Wool and Man-Made Fiber Textile Agreement of December 30, 1971, as amended, it has been agreed in consultations between the Governments of the United States and the Republic of China to increase the charges made during the current year in wool textile categories 103, 121, 122, and 125 within the wool group ceilings and to reduce charges against the specific limit in man-made fiber textile Category 219 to reflect the increments of compensation due in the current agreement year for overshipments which occurred in these categories during the previous agreement year.

Accordingly, there is published below a letter of September 10, 1973, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs revising the charges in wool textile Categories 103, 121, 122, and 125, and man-made fiber textile Category 219. These levels have been adjusted to reflect entries made through August 31, 1973.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COMMISSIONER OF CUSTOMS,
Department of the Treasury, Washington, D.C.

SEPTEMBER 10, 1973.

DEAR MR. COMMISSIONER: To facilitate implementation of the Wool and Man-Made Fiber Textile Agreement of December 30, 1971, between the Governments of the United States and the Republic of China it would be appreciated if you would increase the charges made against the following wool textile categories to the indicated levels within the established wool group ceilings:

Category:	*Revised charges*	
103	pounds	37,529
121	numbers	158,736
122	do	3,618
125	pounds	435,860

The charges against man-made fiber textile Category 219 should be reduced to reflect entries of 4,191,549 dozen. All of these levels have bbeen adjusted to reflect entries through August 31, 1973.

Thank you for your assistance. This letter will be published in the FEDERAL REGISTER.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.73-19474 Filed 9-11-73;8:45 am]

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED

SEPTEMBER 7, 1973.

Effective on October 1, 1973, the Part 6 Statistical Headnote 1 for Schedule 3 of the Tariff Schedules of the United States Annotated will be revised to read as follows:

Merchandise imported in sets, consisting of two or more separate articles and determined dutiable under a single 5-digit item number as an entirety, shall be reported statistically as separate articles under the most appropriate 7-digit reporting numbers within that same 5-digit grouping (including the provision for "other"), provided that this instruction shall not apply to statistical annotations specifically providing for the set, as in the case of suits.

During a period of transition lasting from October 1, 1973 through November 30, 1973, both the previous classification and the new classification regarding entireties will be acceptable.

Shipments of entireties from the Republic of China and the Republic of Korea which require a visa and correct classification will be permitted entry with either classification during the transition period.

Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs implementing this revision.

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

SEPTEMBER 6, 1973.

DEAR MR. COMMISSIONER: The following Part 6 Headnote is scheduled to be printed on October 1, 1973, to become effective on that day:

Merchandise imported in sets, consisting of two or more separate articles and determined dutiable under a single 5-digit item number as an entirety, shall be reported statistically as separate articles under the most appropriate 7-digit reporting numbers within that same 5-digit grouping (including the provision for "other"), provided that this instruction shall not apply to statistical annotations specifically providing for the set, as in the case of suits.

Since many countries are presently classifying goods as entireties rather than separate articles, the Committee for the Implementation of Textile Agreements wishes to put into effect a period of transition to prevent any goods from being held up at ports because of classification difficulties. You are, therefore, directed, effective as soon as possible, and until November 30, 1973, to accept either the previous classification or the new classification regarding entireties as envisioned by the Statistical Headnote.

Goods from Taiwan and Korea which require a visa and a correct classification to be permitted entry, may be entered with either classification until the transition period ends on midnight November 30, 1973.

This letter will be published in the FEDERAL REGISTER.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.73-19475 Filed 9-11-73;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

CERTAIN SPRAY ADHESIVES PRESENTING AN IMMINENT HAZARD

Amendment of Banning Order

In the FEDERAL REGISTER of August 29, 1973 (38 FR 23355), the Consumer Product Safety Commission published an order declaring that nine additional spray adhesive products presented an imminent hazard to the public health and were therefore deemed to be "banned hazardous substances" pursuant to section 2(q)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)(2)). The order was based on the Commission's finding that these spray adhesive products have the same or similar chemical formulations as those products found by the Commission to present an imminent hazard to the public health in the order published August 22, 1973 (38 FR 22569).

The ninth product listed in the banning order of August 29, 1973, is "Tri Chem Spray Mist Adhesive" manufactured by the Minnesota Mining and Manufacturing Company, St. Paul, Minnesota (distributed by Tri Chem, Incorporated, Distributors, Belleville, New Jersey). On the basis of new information, the Commission now finds that only "Tri Chem Spray Mist Adhesive" distributed during the period commencing October 1, 1968, and ending December 31, 1969, in 11-ounce cans has the same or similar chemical formulations as those products found earlier to present an imminent hazard. All other cans of "Tri Chem Spray Mist Adhesive" therefore should not be declared banned hazardous substances.

Accordingly, the Consumer Product Safety Commission hereby amends the list of spray adhesive products found to present an imminent hazard to the public health in the FEDERAL REGISTER of August 29, 1973 (38 FR 23356), by revising the ninth item to read as follows:

(9) "Tri Chem Spray Mist Adhesive" manufactured by the Minnesota Mining and Manufacturing Company, St. Paul, Minnesota (distributed from October 1, 1968, through December 31, 1969, in 11-ounce cans by Tri Chem, Incorporated, Distributors, Belleville, New Jersey).

Dated September 7, 1973.

SAMUEL M. HART,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc.73-19371 Filed 9-11-73;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

AMERICAN SPICE TRADE ASSOCIATION

Notice of Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), notice is given that a petition (FAP 4H5042) has been filed by the American Spice Trade Association, 580 Sylvan Avenue, Englewood Cliffs, NJ 07632, proposing establishment of an interim food additive tolerance (21 CFR, Part 121) for residues of the insecticide BHC (benzene hexachloride) at 7 parts per million in imported paprika.

Dated August 31, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-19310 Filed 9-11-73;8:45 am]

DIMETHYL TETRACHLOROTEREPHTHALATE

Filing of Petition Regarding Pesticide Chemical

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408(d)(1), 68 Stat. 512; 21 U.S.C. 346a(d)(1)), notice is given that a petition (PP 3F1417) has been filed by Diamond Shamrock Chemical Co., 1100 Superior Avenue, Cleveland, OH 44114, proposing establishment of tolerances (40 CFR, Part 180) for combined residues of the herbicide dimethyl tetrachloroterephthalate and its metabolites monomethyl tetrachloroterephthalate and tetrachloroterephthalic acid (calculated as dimethyl tetrachloroterephthalate) in or on the raw agricultural commodities alfalfa at 30 parts per million; horseradish at 2 parts per million; asparagus, lima beans, peas, and the vines or hay of field beans, lima beans, mung beans, snap beans, garden peas, Southern peas and soybeans at 1 part per million; and eggs, milk, and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.02 part per million (negligible residue).

The analytical method proposed in the petition for determining residues of the herbicide is a procedure in which the metabolites are separated from the parent compound by extraction and then esterified with 1-*n*-propyl-3-*p*-tolyltriazine. Dimethyl tetrachloroterephthalate and the propylated derivatives of the metabolites are determined by gas chromatography using electron capture detection.

Dated August 31, 1973.

HENRY J. KORP,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.73-19309 Filed 9-11-73;8:45 am]

EFFLUENT STANDARDS AND WATER QUALITY INFORMATION ADVISORY COMMITTEE

Notice of Meeting and Agenda

Notice is hereby given of a meeting of the Effluent Standards and Water Quality Information Advisory Committee (the Committee) established under sec. 515 of the Federal Water Pollution Control Act (the Act; 33 U.S.C. 1374; Public Law 92-500) to be held at 2 p.m. September 20, 1973, in Room 519, Building 2, Crystal City, Arlington, Virginia. This is a regularly scheduled meeting of the Committee.

The Committee will discuss quantitative analytic methods for determining effluent limitation guidelines and cost effectiveness curves for industrial point source dischargers.

The meeting will be under the direction of the Committee Chairman and open to the public. Any member of the public wishing to attend or participate should contact Dr. Martha Sager, Chairman, Effluent Standards and Water Quality Information Advisory Committee, Environmental Protection Agency, room 821, Crystal Mall, Building 2, Washington, D.C. 20460, telephone 703-557-7390.

Dated September 7, 1973.

MARTHA SAGER,
Chairman, Effluent Standards and Water Quality Information Advisory Committee.

[FR Doc.73-19484 Filed 9-11-73;8:45 am]

FEDERAL MARITIME COMMISSION

DELAWARE RIVER PORT AUTHORITY, ET AL.

Notice of Agreements Filed

Notice is hereby given that Delaware River Port Authority, the City of Philadelphia, Philadelphia Port Corporation, Philadelphia Marine Trade Association and Port of Philadelphia Marine Terminal Association, Philadelphia District Council, International Longshoremen's Association, have jointly and severally entered into identical agreements with each of the following companies: Atlantic Container Lines, Ltd., American President Lines, Ltd., Container Marine Lines, Dart Container Line, Inc., Fabre Line, "K" Line, Mediterranean Marine Lines. These 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 copies 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, New York, 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 2, 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 also be forwarded to the parties filing the agreements (as indicated hereinafter), and the statement should indicate that this has been done.

Notice of agreements filed by:

Martin A. Hecksher, Esquire, Counsel for Delaware River Port Authority Duane, Morris & Hecksher, 100 South Broad Street, Philadelphia, Pennsylvania 19110.

Martin Weinberg, City Solicitor, Herbert Smalen, Assistant City Solicitor, Counsel for City of Philadelphia, 15th Floor, Municipal Services Building, Philadelphia, Pennsylvania 19107.

M. Carton Dittman, Esquire, Counsel for Philadelphia Port Corporation, Ballard, Spahr, Andrews & Ingersoll, 1035 Land Title Building, Philadelphia, Pennsylvania 19110.

Francis A. Scanlan, Esquire, Counsel for Philadelphia Marine Trade Association, and Port of Philadelphia Marine Terminal Association, Kelly, Deasey & Scanlan, 926 Four Penn Center Plaza, Philadelphia, Pennsylvania 19103.

Abraham E. Freedman, Esquire, Counsel for International Longshoremen's Association, Philadelphia District Council, Freedman, Borowsky & Lorry, 8th Floor, Lafayette Building, Philadelphia, Pennsylvania 19106.

George F. Galland, Counsel for Atlantic Container Lines, Ltd., Galland, Kharasch, Calkins & Brown, 1054 Thirty-First Street NW., Washington, D.C. 20007.

Robert T. Basseches, Counsel for American President Lines, Ltd., Shea & Gardner, 734 15th Street NW., Washington, D.C. 20005.

James N. Jacobi, Counsel for Container Marine Lines and Mediterranean Marine Lines, Kurrus and Jacobi, 2000 K Street NW., Washington, D.C. 20006.

Edwin J. Longcope, Counsel for Dart Container Line, Hill, Betts & Nash, One World Trade Center, Suite 5215, New York, New York 10048.

Alfred J. Kuffler, Counsel for Fabre Line, Rawle & Henderson, 1900 Packard Building, Fifteenth and Chestnut Streets, Philadelphia, Pennsylvania 19102.

Charles P. Warren, Counsel for "K" Line, 1100 Connecticut Avenue NW., Washington, D.C. 20036.

The agreements, numbered respectively, 10081 (Atlantic Container Lines, Ltd.), 10082 (American President Lines, Ltd.), 10083 (Container Marine Lines), 10084 (Dart Container Lines, Inc.), 10085 (Fabre Line), 10086 ("K" Line), 10087 (Mediterranean Marine Lines), are stipulations among the named parties, settling for the present their disputes found in Docket No. 71-70—*Delaware River Port Authority, et al. v. United States Lines, et al.*, whereby the particular carrier agrees not to absorb, or by solicitation or advertising represent that it will absorb, overland transportation charges to or from the Port of Philadelphia on import or export cargoes discharged or loaded at other U.S. ports without giving prior written notice in the amount of 30 days. In return, the complainants Delaware River Port Authority, et al. agree jointly and severally to discontinue, without prejudice, Docket No. 71-70 and to refrain from instituting any proceeding against the particular carrier in which the principle issue is the diversion of cargo from the Port of Philadelphia by absorption of overland transportation charges, except if a carrier engages in absorption practices or gives notice of intent to engage in such practices. The agreement is to last until July 1, 1974.

By Order of the Federal Maritime Commission.

Dated September 7, 1973.

JOSEPH C. POLKING,
Assistant Secretary.

[FR Doc.73-19358 Filed 9-11-73;8:45 am]

[Agreement No. 17-34]

FAR EAST CONFERENCE

Notice of Intention To Approve Application

The member lines of the Far East Conference have entered into Agreement No. 17-34, which has been filed with the Commission for approval under section 15. This agreement contains an application by the member lines for permission to: (a) Extend the geographic scope of the Conference to include inland points in the United States and inland points in Japan, Okinawa, Korea, Taiwan (Formosa), Siberia, Manchuria, China, Hong Kong, the Philippines, Vietnam, Cambodia, and Laos; (b) establish point-to-point, port-to-point, and point-to-port rates from or via U.S. Atlantic and Gulf ports, in addition to the presently established port-to-port rates; (c) enter into intermodal arrangements with carriers of other transportation modes; and (d) adopt a uniform bill of lading incidental thereto.

Notice of the filing of Agreement No. 17-34 was published in the FEDERAL REGISTER on February 14, 1973. Comments pursuant to such notice were received from Seatrain Lines, Inc. (Seatrain).[1]

[1] The Delaware river Port Authority (Delaware) had also filed comments, based upon its concern that Agreement No. 17-34 might be used to divert to either Baltimore or New York, through the use of inland carriers, cargo which is naturally tributary to Philadelphia. Delaware, however, withdrew its objection to the agreement upon written assurrance from the Conference's member lines that "[it] was never intended that Agreement No. 17-34 would authorize inland transportation from one Atlantic or Gulf port to another, and thence by conference vessel to the Far East with the ocean carrier absorbing the cost of overland haulage."

Seatrain objects to approval of the agreement on the grounds that it presents "important questions relating to interconference competition, conference control of as yet undeveloped intermodal services, and the novel question of the relationship of dual rate agreements to such intermodal services." It additionally contends that the Conference could not accomplish its objective of an intermodal service since "at present there is no conference ability to consummate agreements with carriers or rate bureaus of other transportation modes because of the lack of statutory antitrust immunity." Based upon the above assertions, Seatrain "suggests" that the Commission order an investigation and hearing with respect to the approvability of Agreement No. 17-34.

Seatrain's comments do not, on their face, appear sufficient to activate the hearing requirement with respect to the subject agreement. Seatrain does not allege that it is a competitor or even a potential competitor with respect to the cargo which would move under the agreement. Nor does it allege that its operations will in any way be affected by the agreement. The comments contain neither a statement of the "grounds of interests in the subject matter, [nor] the facts relied upon * * *" as required by Rule 5(i) of our rules of practice and procedure (46 CFR 502.69). In fact, the comments, although evincing Seatrain's "belief" that the Commission must investigate the agreement to determine "whether it is unjustly discriminatory, detrimental to commerce, contrary to the public interest or violative of the Shipping Act, 1916", fail to present, as required of those desiring a hearing by the FEDERAL REGISTER notice, "a clear and concise statement of the matters upon which they desire to adduce evidence * * *, a statement describing the discrimination * * * with particularity * * *, [or] the acts and circumstances said to constitute such violation [of the Act] or detriment to commerce."

Because, however, we do not wish to allow filing formalities to cause the Commission to overlook *bona fide* legal or factual problems where such do exist, we will allow Seatrain an additional opportunity to bring forward whatever it can with respect to Agreement No. 17-34 indicating why it should not be approved. In this regard, we wish to make clear precisely how and why we adopt such approach.

As Seatrain contends, there is a legal requirement that proponents of restrictive agreements bring forward information explaining and demonstrating the need for such agreements. *FMC* v. *Svenska Amerika Linien*, 390 U.S. 238, 243-6. The greater the restraint, of course, the greater the explanation and demonstration of need which would be required. Seatrain's suggestion, however, that such showing must be made in an evidentiary hearing is without foundation in law. There is no such requirement where, on the basis of materials furnished to the Commission, the "applicant for approval * * * [satisfies] the burden of demonstrating the need for anti-competitive restraints * * *." *Marine Space Enclosures* v. *FMC*, 420 F.2d 577, 583 (D.C. 1969).

We believe that the Far East Conference has presented a *prima facie* justification for the proposed agreement. In its letter transmitting Agreement No. 17-34 for section 15 consideration, and its reply to Seatrain's comments, the Conference indicates its belief that the agreement is necessary to provide a new, economical intermodal service to shippers in the central portion of the United States, and to prevent rate wars and rate instability.

Since the Far East Conference competes with the Pacific Westbound Conference for cargo originating at interior points within the United States to the extent that the latter offers OCP rates, and because of the geographic disadvantage of the Atlantic and Gulf ports in relation to the Pacific Coast with respect to cargo movements to the Far East, the denial of subject application would appear to deprive the Far East Conference with the necessary means to compete with the present all sea and minibridge services from the Pacific Coast to the Far East destinations within the scope of the competing conferences. This situation demonstrates a further need for the intermodal authority applied for in order that the Far East Conference will be in a position to maintain and/or improve its present services from the Atlantic and Gulf to the Far East.

The possibilities of the unlawful restrictive effects alluded to by Seatrain appear to be insubstantial. The proposed agreement would seem to have minimal effect upon either interconference competition or as yet undeveloped intermodal services. Agreement No. 17-34 contains no authority for any cooperative actions between the Far East Conference and the Pacific Westbound Conference, with which it competes for cargo originating in the interior of the United States, and any authority with respect to interconference arrangements relating to intermodal transportation would, of course, be required to be embodied in an agreement filed with the Commission for approval, with opportunity for hearing prior to such approval.[2] Furthermore, the restriction of Agreement No. 17-34 upon developing intermodal services appears to be removed by the provision therein authorizing the member lines individually to establish and publish through or combination rates to apply on cargo moving under transshipment or intermodal arrangements with carriers of other modes, until such time as through or joint rates are adopted and published by the Conference.

The impact of Agreement No. 17-34 on dual rate arrangements should also be nonexistent since, as the Conference admits, its agreement will not authorize the application of the Conference's dual rate system to intermodal rates and services. There appears to be no reason why, Agreement No. 17-34 having been approved, merchant signatories to the Conference's dual rate contracts could not use the services of Seatrain or any other carrier except with respect to the port-to-port transportation covered by the Conference's presently approved dual rate system.

Finally, insofar as antitrust immunity with respect to arrangements which might be entered into between conference members and carriers of other transportation modes is concerned, we have already determined that the possible absence of such antitrust immunity will not prevent approval of the authorization to enter into such arrangements. *Atlantic & Gulf/West Coast of South America Conference*, 13 F.M.C. 121, 131-132. Such action as may appear appropriate can be taken when such arrangements are, as required by the proposed agreement, submitted to us.

It would further appear to be in the public interest to limit the term of approval of the subject agreement to 18 months and to require information concerning the manner and extent of the implementation of the intermodal authority. Such, in fact, has been our practice with respect to intermodal authority generally.

Since, as noted above, there appears, *prima facie*, to be justification for the proposed agreement and explanation of its possibly restrictive effects, and since, before the Commission can disapprove an agreement pursuant to section 15 it must "adduce substantial evidence to support a finding under one of the four standards of section 15 * * *" (see *FMC* v. *Svenska Amerika Linien, Supra*, at 245), the Commission hereby gives notice of its intention to approve Agreement No. 17-34, unless any person is able to come forward with a clear and concise statement of material matters upon which he desires to adduce evidence and the facts which, if so adduced, could result in disapproval.

Therefore, take notice that, pursuant to section 15 of the Shipping Act, 1916, the Federal Maritime Commission intends to approve Agreement No. 17-34, conditioning such approval upon:

(1) Limitation of the agreement to a period of 18 months;

(2) The requirement that any conference uniform bill of lading shall be filed with the Commission for review 30 days prior to the effective date of implementation;

(3) The furnishing to the Commission of quarterly reports setting forth:

(a) A description of the intermodal services offered by the Conference as of the close of the reporting period;

(b) A description of actions taken during the reporting period to implement or further develop such intermodal services; and

(c) The volume of cargo carried in each of the following categories:

(i) Intermodal cargo moving under a through bill of lading;

[2] We construe Agreement No. 8200 between the Far East Conference and the Pacific Westbound Conference as relating only to port-to-port transportation of these Conferences.

(ii) Intermodal cargo not moving under a through bill of lading; and

(iii) All other cargo carried by the conference members;

(4) The requirement of notification to the Commission at least six months prior to such termination date, together with a full report setting forth the extent to which the intermodal authority granted under the agreement has been implemented and the positive transportation needs and public benefits which have resulted from operation under the agreement.

Any person submitting a statement as to why Agreement No. 17-34, as conditioned above, should not be approved should submit such matter on or before October 1, 1973. The member lines of the Far East Conference may reply to such matter on or before October 11, 1973. Absent receipt of such matter on or before October 1, 1973, Agreement No. 17-34, as conditioned herein, will be approved.

It is ordered, That a copy of this Notice of Intention to Approve be published in the FEDERAL REGISTER and that a copy thereof be mailed to Seatrain Lines, Inc. and the Far East Conference and its member lines as shown below.

By the Commission.

[SEAL] JOSEPH C. POLKING,
Assistant Secretary.

Elkan Turk, Jr., Counsel, Far East Conference, Burlingham Underwood & Lord, 25 Broadway, New York, New York 10004.
Seatrain Lines, Inc., Neal M. Mayer, Counsel, Coles & Goertner, 1000 Connecticut Avenue NW., Washington, D.C. 20036.
Far East Conference, Gerald J. Flynn, Chairman, 11 Broadway, Room 760, New York, New York 10004.
(Member Lines), American Export Lines, Inc., 17 Battery Place, New York, New York 10004.
American President Lines, Ltd., One World Trade Center, Suite 1225, New York, New York 10048.
Barber Lines, A/S Barber Steamship Lines, Inc., Agent, 17 Battery Place, New York, New York 10004.
Blue Sea Line—Joint Service, Furness, Withy Agencies (U.S.A.), General Agents, 5 World Trade Center, New York, New York 10048.
Japan Line, Ltd., Japan Line (New York) Services, Ltd., Agents, One World Trade Center, Suite 2867, New York, New York 10048.
Kawasaki Kisen Kaisha, Ltd., "K" Line-Kerr Corporation, General Agents, 29 Broadway, New York, New York 10006.
Lykes Bros. Steamship Co., Inc., 17 Battery Place, New York, New York 10004.
Maritime Company of the Philippines, Inc., North American Maritime Agencies, General Agents, 17 Battery Place, New York, New York 10004.
Mitsui O.S.K. Lines, Ltd., One World Trade Center, Suite 2211, New York, New York 10048.
A. P. Moller-Maersk Line, Moller Steamship Company, Inc., General Agents, One World Trade Center, Suite 3527, New York, New York 10048.
Nippon Yusen Kaisha, One World Trade Center, Suite 5031, New York, New York 10048.
Sea-Land Service, Inc., P.O. Box 1050, Elizabeth, New Jersey 07207.
States Marine Lines, States Marine-Isthmian Agency, Inc., General Agents, 80 Broad Street, New York, New York 10004.
Thai Mercantile Marine Limited States Marine-Isthmian Agency, Inc., General Agent, 80 Broad Street, New York, New York 10004.
United Philippine Lines, Inc., United States Navigation Co., Inc., General Agent, 17 Battery Place, New York, New York 10004.
United States Lines, Inc., One Broadway, New York, New York, 10004.
Waterman Steamship Corporation, 120 Wall Street, New York, New York 10005.
Yamashita-Shinnihon Steamship Co., Ltd., % Texas Transport & Terminal Co., Inc., 21 West Street, New York, New York 10006.
Zim Israel Navigation Co., Ltd., Zim-American Israeli Shipping Co., Inc., General Agent, One World Trade Center, Suite 2969, New York, New York 10048.

[FR Doc.73-19359 Filed 9-11-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. CI71-703]

AMOCO PRODUCTION CO.

Notice of Petition To Amend

SEPTEMBER 4, 1973.

Take notice on August 27, 1973, Amoco Production Co. (Petitioner), filed in Docket No. CI71-703 a petition to amend the Commission's order issuing a certificate of public convenience and necessity in said docket by authorizing the continuation of the sale of gas from the Ute Dome Dakota Field, San Juan County, New Mexico, to Southern Union Gathering Co. (Southern Union), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the Commission's order of June 2, 1971, in the subject docket, Petitioner was authorized to sell the subject gas to Southern Union for a three-year period commencing on the date of initial delivery when Southern Union resold such gas to El Paso Natural Gas Co. Petitioner states that this three-year period expired August 2, 1973, and now requests authorization to continue this sale. This sale has been made pursuant to Petitioner's FPC Gas Rate Schedule No. 566. The currently effective rate under said rate schedule is 15.0 cents per M c.f. at 14.73 cents per M c.f., the minimum rate under Commission Opinion No. 658 for sales from the Rocky Mountain Area.

Any person desiring to be heard or to make any protest with reference to said petition to amend 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19335 Filed 9-11-73;8:45 am]

[Docket No. CI74-124]

CASTLE, INC.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 17, 1973, Castle, Inc. (Applicant), 205 North Main, Butler, Pennsylvania, filed in Docket No. CI74-124 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sale of natural gas from the LaGloria Field, Jim Wells and Brooks Counties, Texas, to Transcontinental Gas Pipe Line Corp. (Transco), 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 has been selling gas to Transco from the subject field at a rate of 13.03921 cents per M c.f. at 14.65 p.s.i.a. under a contract dated September 12, 1947, on file as H. H. Phillips, Jr., FPC Gas Rate Schedule No. 3, which expired April 1, 1971. Applicant requests authorization to abandon this sale to Transco so that it may sell the gas to Natural Gas Pipeline Company of America (Natural). Applicant also requests authorization under § 154.91(b) of the Commission's regulations to be governed by the filing of Mobil Oil Corp., operator of the LaGloria Field for the proposed sale to Natural, if the abandonment is approved.

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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestant parties to 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 permission and approval for the proposed abandonment are 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.73-19336 Filed 9-11-73;8:45 am]

[Docket Nos. E-8308; E-7206]

THE DETROIT EDISON CO. AND CONSUMERS POWER CO.

Notice of Extension of Time

AUGUST 31, 1973.

On August 24, 1973, the Michigan Municipal Electric Association filed a motion for an extension of time to file protests or petitions to intervene pursuant to the notice issued August 6, 1973, in the above-designated matter.

Upon consideration, notice is hereby given that the time is extended to and including October 1, 1973, within which protests or petitions to intervene may be filed in the above-designated matter.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19337 Filed 9-11-73;8:45 am]

[Docket Nos. CI74-137; CI74-138; CI74-139]

DIAMOND SHAMROCK CORP.

Notice of Applications

SEPTEMBER 4, 1973.

Take notice that on August 21, 1973, Diamond Shamrock Corp. (Applicant), P.O. Box 631, Amarillo, Texas 79105, filed in Docket Nos. CI74-137, CI74-138, and CI74-139 applications pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75) for certificates of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Trunkline Gas Co. (Trunkline) from offshore Louisiana, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Applicant proposes under the optional gas pricing procedure to sell natural gas to Trunkline in Docket No. CI74-137 from Block 338, East Cameron Area, in Docket No. CI74-138 from Block 320, Vermilion Area, and in Docket No. CI74-139 from Block 639, West Cameron Area, at an initial rate of 45.0 cents per M c.f. at 15.025 p.s.i.a. subject to upward and downward Btu adjustment pursuant to the terms of a contract dated July 16, 1973. The gas sales contracts provide for fixed escalations of 1.0 cent per M c.f. each year after the date of initial delivery, for 87.5 percent reimbursement to the seller for any additional taxes which are greater than those being levied on the dates of the contracts and for a contract term of 20 years. Applicant estimates monthly deliveries of gas from its interest at 360,000 M c.f. in Docket No. CI74-137, 450,000 M c.f. in Docket No. CI74-138, and 435,000 M c.f. in Docket No. CI74-139.

Applicant states that the substantial volumes of natural gas being made available to Trunkline by virtue of the sales here involved are of critical importance in assisting Trunkline to meet the firm demands for gas on its system during the contract terms. Applicant states that the contract price is substantially lower than prices for base load sales of liquefied natural gas or synthetic gas for which applications are pending or have been approved by the Commission.

Any person desiring to be heard or to make any protest with reference to said applications 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). 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, hearings will be held without further notice before the Commission on these applications if no petitions to intervene are filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificates is required by the public convenience and necessity. If petitions for leave to intervene are timely filed, or if the Commission on its own motion believes that formal hearings are required, further notice of such hearings 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 hearings.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19338 Filed 9-11-73;8:45 am]

[Docket No. CP74-48]

FLORIDA GAS TRANSMISSION CO.

Notice of Application

SEPTEMBER 4, 1973.

Take notice that on August 22, 1973, Florida Gas Transmission Co. (Applicant), P.O. Box 44, Winter Park, Florida 32789, filed in Docket No. CP74-48 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities for a new delivery point to deliver natural gas to City Gas Co. of Florida (City Gas) for resale in Dade County, Florida, all as more fuly set forth in the application which is on file with the Commission and open to public inspection.

Applicant seeks authorization to construct and operate approximately 1.4 miles of 4-inch lateral pipeline extending from its existing 8-inch Lehigh Portland Cement Company lateral pipeline to a terminus at a meter and regulator station to be constructed and operated by Applicant and to be known as its Tamiami Station. By means of the proposed facilities Applicant proposes to deliver up to 3 billion Btu per day of natural gas to City Gas. Applicant states that all gas sold and delivered through the proposed facilities will come from quantities already available under its existing service agreements for General Service to City Gas and that no volumes in addition to those now being sold and delivered to City Gas will be sold or delivered.

Applicant states that the natural gas made available from the proposed facilities will be used by City Gas to improve service to its customers in its Cutler Ridge-West Miami-South Miami distribution system.

Applicant states that the estimated total overall capital cost of the proposed installation is $97,700, which cost will be borne by City Gas.

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 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.73-19339 Filed 9-11-73;8:45 am]

[Docket No. CP74-50]

FLORIDA GAS TRANSMISSION CO.

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 27, 1973, Florida Gas Transmission Co. (Applicant), P.O. Box 44, Winter Park, Florida 32789, filed in Docket No. CP74-50 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing retention in place and the operation of certain natural gas facilities in Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to § 157.22 of the Commission's regulations under the Natural Gas Act (18 CFR 157.22), it constructed and placed into actual operation a natural gas metering and regulating station in the East Bayou Pigeon Field, Iberia Parish, Louisiana, and approximately three thousand feet of 3-inch lateral gas pipeline in order to receive an emergency sale of natural gas from Florida Gas Exploration Co., Southeastern Exploration Ltd. (1970), Southeastern Exploration Ltd. (1972-A) and Edwin L. Cox from the said field.

Applicant requests authorization herein to retain these facilities constructed because Florida Gas Exploration Co. (Operator), et al., in Docket No. CI73-676 and Edwin L. Cox in Docket No. CI73-746 have filed applications pursuant to § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75) for certificates authorizing the sale of gas from the subject well, the Peterman No. A-1, to Applicant. Under the proposed arrangement, Applicant is to receive gas from the aforesaid producers, transport it through the facilities proposed to be retained, and deliver the gas into Texas Gas Transmission Corporation's (Texas Gas) existing East Bayou Pigeon-Gulf 8-inch lateral pipeline. Texas Gas then will redeliver this gas to Applicant at an existing point of interconnection between the two pipelines. Texas Gas has filed in Docket No. CP73-300 for authorization to transport this gas.

Applicant states that these facilities are necessary in order to help alleviate a gas supply shortage on its system by attaching a beneficial source of supply and to assure maintenance of adequate service to its existing customers.

Applicant estimates the total overall cost of the facilities proposed to be retained is $57,400, which was paid out of current funds.

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.73-19423 Filed 9-11-73;8:45 am]

[Docket No. CI74-142]

KERR-McGEE CORP.

Notice of Application

AUGUST 31, 1973.

Take notice that on August 23, 1973, Kerr-McGee Corp. (Applicant), Kerr-McGee Center, Oklahoma City, Oklahoma 73102, filed in Docket No. CI74-142 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 Co. from the Hobart Ranch Field, Hemphill County, 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 300,000 Mcf of gas per month until July 1, 1974, at 45.0 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).

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.73-19333 Filed 9-11-73;8:45 am]

[Docket No. CI74-153]

LONE STAR PRODUCING CO. (OPERATOR), ET AL.

Notice of Application

SEPTEMBER 6, 1973.

Take notice that on August 30, 1973, Lone Star Producing Co. (Applicant), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CI74-153 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 of natural gas in interstate commerce to Texas Gas Transmission Corporation from the Oaks Field, Claiborne Parish, Louisiana, and delivery of said gas to Beacon Gasoline Co. for delivery to the purchaser in Webster Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it commenced the sale of natural gas on August 26, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas (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 60,000 Mcf of gas per month at 50.0 cents per M c.f. at 15.025 p.s.i.a., subject to upward and downward 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 20, 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.73-19417 Filed 9-11-73;8:45 am]

[Docket No. CI74-119]

McCRACKEN OIL TRUST, OPERATOR

Notice of Application

AUGUST 31, 1973.

Take notice that on August 16, 1973, McCracken Oil Trust (Applicant), 625 First-Wichita National Bank Building, Wichita Falls, Texas 76301, filed in Docket No. CI74-119 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to United Gas Pipe Line Company from the Tuleta Field, Bee 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 gas on May 17, 1973, within the contemplation of § 157.29 of the regulations under the Natural Gas Act (18 CFR 157.29) and on July 16, 1973, was granted a sixty-day extension of this sale. Applicant proposes to sell, for one year from the end of the second sixty-day emergency period, an average of 6,000 M c.f. of gas per month at 45.0 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). Applicant states that it is a small producer and is filing the instant application solely to receive pregranted abandonment authorization. Applicant does not intend to file its gas sales contract as a rate schedule.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter that 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before 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 section 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.73-19332 Filed 9-11-73;8:45 am]

[Docket No. CP73-7]

NORTHERN NATURAL GAS CO.

Notice of Petition To Amend

SEPTEMBER 4, 1973.

Take notice that on August 20, 1973, Northern Natural Gas Co. (Petitioner), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP73-7 a petition to amend the Commission's order issued November 20, 1972, in said docket pursuant to section 7(c) of the Natural Gas Act so as to authorize the deferment for one year, the presently authorized increase in the maximum daily volumes of gas to be transported for Minneapolis Gas Co. (Minnegasco), 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 order issued November 20, 1972, to accept, transport and redeliver to Minnegasco a maximum daily volume of 50,000 M c.f. of gas commencing on October 27, 1972, and continuing through March 26, 1973, and for each winter season thereafter. Pursuant to a request by Minnegasco, Petitioner requests that the maximum daily volumes to be accepted, transported and redelivered remain at 50,000 M c.f. of gas for the 1973-74 winter season. It is stated that on August 6, 1973, Petitioner submitted First Revised Sheet Nos. 458 and 459 to its T-8 Rate Schedule which contains the revisions proposed in the instant petition.

Any person desiring to be heard or to make any protest with reference to said petition to amend 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.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19341 Filed 9-11-73;8:45 am]

[Docket No. RP74-1]

NORTHWESTERN PUBLIC SERVICE CO. AND KANSAS-NEBRASKA NATURAL GAS CO., INC.

Order Providing for Hearing and Establishing Procedures

AUGUST 31, 1973.

On July 6, 1973, Northwestern Public Service Co. (Northwestern) filed a complaint under section 5(a) of the Natural Gas Act in Docket No. RP74-1 alleging

that the refusal by Kansas-Nebraska Natural Gas Co., Inc. (K–N), to provide it with additional contract demand service is an unjust, unreasonable, and unduly discriminatory practice. Northwestern alleges that K–N has not banned increases in natural gas service to its nonjurisdictional customers, while, at the same time, it refused Northwestern's request for additional contract demand service to meet load growth in its service area. Northwestern further asserts that K–N request for certification of its Winter Period Service in Docket No. CP73–224 is an admission "that it is practical for [K–N] to provide its jurisdictional customers with such volumes of natural gas as they require for Winter Period Service * * *.".

On July 24, 1973, K–N filed a response to the complaint stating that (1) its reserve life index has been declining since 1968; (2) it has declined to serve new industrial customers in its service area or permit increases in demand for boiler fuel or electric generation; (3) it is not proposing to increase the contract demand of any customer under the CD Rate Schedule; (4) it is following the same policies in dealing with the increased needs of both its nonjurisdictional and jurisdictional customers; and (5) section 5(a) cannot be invoked to compel a natural gas company to sell increased quantities of gas to one of its customers.

The complaint filed by Northwestern and the answer filed by K–N raise issues that should be resolved in an evidentiary hearing. The pleadings bring into sharp conflict the comparative benefits of initiating a new peaking service (WPS) or increasing the contract demand of K–N's customers under its CD rate schedules. By order issued August 28, 1973, in Docket No. CP73–224, we permitted K–N to offer the new WPS to its customers. Under Ordering Paragraph (C) of that Order, we made it abundantly clear that no sale of increased volumes of gas can be initiated under the WPS rate schedule until such request was first made to and approved by the Commission. In so conditioning our approval of WPS, we did not prejudice Northwestern's position to show the superiority of increasing service under the CD rate schedule rather than initiating increased service under the WPS rate schedule.

The Commission finds:

Good cause exists to hold a public hearing on the issues involved in the complaint filed by Northwestern in Docket No. RP74–1 and for the procedures for that hearing, all as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 5 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held commencing October 10, 1973, at 10 a.m. (e.s.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, concerning the issues raised by Northwestern's complaint filed in Docket No. RP74–1.

(B) On or before September 14, 1973, Northwestern shall file its case-in-chief in support of its position on the issues raised by its complaint filed in Docket No. RP74–1 and shall serve that filing upon all parties to the complaint proceeding, including Commission staff.

(C) All other parties, including K–N, desiring to file evidence in support of its position and/or evidence in answer to Northwestern's proffered evidence, shall file with the Commission and serve upon all other parties, including Commission staff, its testimony and exhibits on or before September 28, 1973.

(D) An Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose [see Delegation of Authority, 18 CFR 3.5(d)] shall preside at the hearing ordered herein and shall prescribe relevant procedural matters not herein provided.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73–19340 Filed 9–11–73;8:45 am]

[Docket No. E–8375]

OTTER TAIL POWER CO.

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 24, 1973, Otter Tail Power Co. (Applicant), of Fergus Falls, Minnesota, filed an Application seeking an Order for approval of the issuance of short-term obligations in the form of promissory notes to banks or other institutional lenders, such notes to be issued on or before March 31st, 1975, with a final maturity date of not later than March 31, 1976, and in the form of commercial paper to commercial paper dealers, such commercial paper to be issued on or before March 31, 1975, and to have a maturity date of not to exceed nine months from the date of issue.

The net proceeds from the notes and from the sale of commercial paper will be used to provide general funds for the Company's construction program.

Any person desiring to be heard or to make any protest with reference to such Application should, on or before September 18, 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.73–19418 Filed 9–11–73;8:45 am]

[Docket No. E–8345]

PACIFIC POWER & LIGHT CO.

Notice of Annual Revision of Wheeling Agreement

SEPTEMBER 5, 1973.

Take notice that on July 30, 1973, Pacific Power & Light Co. (Applicant) filed with the Federal Power Commission an annual revision of exhibits A and B to the basic Wheeling Agreement between Applicant and the Bureau of Reclamation in Wyoming. These revised Exhibits supercede Supplement No. 7 to Supplement No. 3 to Applicant's FPC Rate Schedule No. 45.

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, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73–19426 Filed 9–11–73;8:45 am]

[Docket No. E–8357]

PACIFIC POWER & LIGHT CO.

Notice of Transfer Agreement

SEPTEMBER 5, 1973.

Take notice that on August 13, 1973, Pacific Power & Light Co. (Applicant) filed with the Federal Power Commission, pursuant to § 35.12 of the regulations under the Federal Power Act, a Transfer Agreement, between the Applicant and the Bonneville Power Administrator. The Transfer Agreement provides that the Applicant will transfer electric power and energy up to a demand of 1,500 kilowatts from the Administrator for delivery to Public Utility District No. 1 of Klickitat County, Washington, at the Glenwood point of delivery. The Administrator will make available such power and energy at one or more points on Applicant's Main System.

For the Applicant's services and the use of its facilities in transferring such power, the Administrator credits the

Applicant in the Exchange Account under the Exchange Agreement designated Applicant's FPC Rate Schedule No. 28, Supplement Nos. 30 and 34, with kilowatt-hours of secondary energy which the Applicant may schedule at times the Administrator determines that it can be made available.

Service under the aforementioned contract is scheduled to commence in June, 1973.

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, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19419 Filed 9-11-73;8:45 am]

[Docket No. CP74-49]

PIONEER NATURAL GAS CO.

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 22, 1973, Pioneer Natural Gas Co. (Applicant) filed in Docket No. CP74-49 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Northern Natural Gas Company (Respondent) to sell and deliver an additional 400 M c.f. of natural gas per day to Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests the Commission to order Respondent to increase its contract demand to 1,300 M c.f. per day of natural gas from its existing level of 900 M c.f. per day. Applicant states that this supply of gas is no longer sufficient to meet the demand of its customer, the unincorporated town of Ozona, Texas (Ozona), for residential and small commercial needs on abnormally cold and windy days. Applicant states that no new supply sources are available to it at any location from which the Ozona distribution system can be economically served. Applicant states that the additional gas is required for service to existing residential and small commercial customers. According to Applicant the annual demand requirement of 123,133 M c.f. of gas for Ozona will not change.

Any person desiring to be heard or to make any protest with reference to said application should on or before Sept. 28, 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 156.9). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19420 Filed 9-11-73;8:45 am]

[Docket No. E-8370]

PUBLIC SERVICE CO. OF NEW HAMPSHIRE

Notice of Termination of Transmission Contract

SEPTEMBER 5, 1973.

Take notice that the Public Service Co. of New Hampshire (Company) on August 20, 1973, tendered for filing notice of termination the Company's contract with Central Maine Power Co. (Central Maine).

The Company states that the Transmission contract had an effective date of July 1, 1971, and was filed with the Federal Power Commission on January 25, 1972 (designated Rate Schedule FPC No. 54).

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.73-19428 Filed 9-11-73;8:45 am]

[Docket No. CI74-148]

RAGARS OIL & GAS CO.

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 23, 1973, Ragars Oil & Gas Co. (Applicant), P.O. Drawer 2030, Alice, Texas 78332, filed in Docket No. CI74-148 an application pursuant to section 7(b) of the Natural Gas Act for permission for and approval of the abandonment of the sale of natural gas to Coastal States Gas Producing Co. from the Brownlee Field, Jim Wells County, 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 abandon a sale of natural gas, made under a small producer certificate issued in Docket No. CS72-793, due to depletion to an uneconomic state of operation. The application indicates that the purchaser has not indicated its concurrence in the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before Sept. 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). 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 permission for and approval of the proposed abandonment are 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.73-19421 Filed 9-11-73;8:45 am]

[Docket No. RP73-47]

SEA ROBIN PIPELINE CO.

Notice Postponing Date for Prehearing Conference and Deferring Other Procedural Dates

AUGUST 31, 1973.

On August 30, 1973, Sea Robin Pipeline Co. filed a motion to cancel procedural dates fixed by notice issued August 15, 1973, in the above-designated matter,

pending certification of settlement agreement.

Upon consideration, notice is hereby given that the date for the prehearing conference is postponed to October 4, 1973, at 10 a.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street NE,, Washington, D.C. All other procedural dates are deferred pending further order of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19342 Filed 9-11-73;8:45 am]

[Docket No. CI74-143]

MARIGOLD TRANSMISSION CO.

Notice of Application

AUGUST 31, 1973.

Take notice that on August 27, 1973, Arthur Silberman, Marcel J. Silberman, and Maria G. Silberman, d.b.a. Marigold Transmission Co. (Applicant), 4220½ North MacArthur Boulevard, Oklahoma City, Oklahoma 73122, filed in Docket No. CI74-143 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 Cities Service Gas Company from the Lost Creek Field, Payne County, Oklahoma, 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 intends to commence the sale of natural gas within the contemplation of § 157.29 of the regulations under the Natural Gas Act and proposes to continue said sale for two years 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 up to 2,000 M c.f. of gas per day at 45.0 cents per M c.f. at 14.65 p.s.i.a. the first year and 46.0 cents per M c.f. at 14.65 p.s.i.a. the second year, both subject to upward and downward 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.73-19334 Filed 9-11-73;8:45 am]

[Docket No. CI74-132]

TENNECO OIL CO.

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 20, 1973, Tenneco Oil Co. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CI74-132 an application pursuant to section 7(c) of the Natural Gas Act and § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75) for a certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce to Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), from the Eugene Island Block 338 Field, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes under the optional gas pricing procedure to sell natural gas to Tennessee from the subject acreage at an initial rate of 47.0 cents per M c.f. at 15.025 p.s.i.a., subject to upward and downward Btu adjustment, pursuant to the terms of a 20-year contract dated August 6, 1973. Said contract provides for fixed escalations of 2.0 cents per M c.f. each year after the date of initial delivery. Applicant estimates the monthly deliveries of gas from the subject acreage will be 270,000 M c.f.

Applicant requests authorization for this sale, alleging that the price is substantially lower than those being charged for liquefied natural gas, synthetic gas from coal and petroleum, Alaskan gas and pipeline imports from Canada and Mexico, as based on the record in Belco Petroleum Corp., Agent et al., Docket Nos. CI73-292 et al. (Belco). Citing the Belco record further, Applicant states that the proposed price with fixed escalations is justified when compared to intrastate and interstate contract prices in the Southern Louisiana Area, is within the "commodity value" of gas in Tennessee's system, is within a zone of reasonableness as to cost findings, and is justified because of economic factors other than "unit costs". Applicant concludes its request for the initial rate of 47.0 cents per M c.f. by stating that it will have internally generated funds available for future use as captal in the development of domestic exploration and development and that by waiving the protective pricing clause in the instant contract it is taking a gamble that should the Commission allow higher prices by revising area rate regulations, the instant rate will be sufficient to equate or offset such higher rates in the future.

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). 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.73-19425 Filed 9-11-73;8:45 am]

[Docket No. CI67-1658]

TEXACO INC.

Notice of Petition

SEPTEMBER 5, 1973.

Take notice that on August 17, 1973, Texaco, Inc. (Petitioner), P.O. Box 52332, Houston, Texas 77052, filed in Docket No. CI67-1658 a petition to amend the order heretofore issued in said docket on September 19, 1967, pursuant to section

7(c) of the Natural Gas Act so as to authorize the sale for resale and delivery of natural gas in interstate commerce to Colorado Interstate Gas Co., a division of Colorado Interstate Corp. (Colorado Interstate), from the Table Rock Unit, Sweetwater County, Wyoming, within the contemplation of § 2.75 of the Commission's general policy and interpretations (18 CFR 2.75), 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 in the order of September 19, 1967, to sell gas to Colorado Interstate at a rate of 16.0 cents per M c.f. Petitioner now proposes under the optional pricing procedure to sell approximately 1,200,000 M c.f. of gas per month to Colorado Interstate from wells in the Table Rock Unit at initial rates of 37.0 cents per M c.f. for gas produced below the base of the Almond Formation to 10,000 feet, at 40.0 cents per M c.f. for gas produced between 10,000 and 15,000 feet, at 45.0 cents per M c.f. for gas produced between 15,000 and 19,000 feet, and at 50.0 cents per M c.f. for gas produced from 19,000 feet and below, subject to upward and downward Btu adjustment, pursuant to amending agreement dated July 1, 1973, to the contract dated April 6, 1967. Said amending agreement also provides for a 1.0-cent per M c.f. price escalation each year.

Petitioner states that the gas offered for certification pursuant to the contract with Colorado Interstate is from wells commenced after April 6, 1972, and that said gas has not been previously sold in the interstate market.

Petitioner asserts that the instant sales at the proposed prices with escalations will make additional gas supplies available to the interstate market where shortages currently exist and will assist Colorado Interstate to augment its current systemwide supply. Petitioner further asserts that the proposed rates are lower than rates for imported liquefied natural gas, synthetic gas from petroleum or coal, gas from Alaska and the prices of alternative fuels.

Any person desiring to be heard or to make any protest with reference to said petition to amend 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). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19422 Filed 9-11-73;8:45 am]

[Docket Nos. RP71-130, RP72-58]

TEXAS EASTERN TRANSMISSION CORP.

Order Accepting for Filing Tendered Tariff Sheets, Suspending Tariff Sheets, Granting Interventions, Providing for Hearing and Establishing Procedures

AUGUST 30, 1973.

On May 31, 1973, Texas Eastern Transmission Corp. (TETCO) tendered for filing revised tariff sheets to its FPC Gas Tariff, Third Revised Volume No. 1, setting forth its curtailment plan for use during periods of gas shortage.[1] TETCO proposes that the revised tariff sheets be made effective September 1, 1973.

In support of its filing, TETCO states that its curtailment plan will be in conformity with the Commission's curtailment policies as stated in Commission Order No. 467-B, issued March 2, 1973, in Docket No. R-469. TETCO was required by Commission Order Denying Rehearing and Stay issued January 24, 1973, in Docket Nos. RP71-130 and RP 72-58 to submit a plan in conformity with Order No. 467-B by June 1, 1973, to become effective September 1, 1973. The plan submitted varies from that in Order No. 467-B in that the former includes all firm industrial requirements up to 300 M c.f. per day in priority-of-service category No. 2. TETCO justifies this variance by citing Commission Opinion No. 647-A in United Gas Pipeline Co., Docket No. RP71-29, where the Commission allowed a similar modification after a finding that the logistical problems involved in curtailing small industries and collecting data on them made their inclusion in Category No. 2 reasonable.

First Revised Sheets Nos. 92-H through 92-M establish annual quantity entitlements for each customer. These entitlements are identical to those set by the Interim Settlement Agreement and are intended to represent the actual requirements of the customers. The end-use curtailment scheme of Order No. 467-B would begin from the quantity entitlements.

First Revised Sheet No. 92-N of the filing contains a provision entitled "Relief From Demand Charge Adjustment" which would relieve TETCO from the obligation to make demand charge adjustments when failure to deliver contract quantities is due to gas supply deficiencies.

Petitions to Intervene were received from the following parties:

Consolidated Edison Co. of New York.	July 12, 1973
City of Fulton, Mississippi...	July 30, 1973
Gas Utility District No. 2 of Pointe Coupee Parish, Louisiana.	July 30, 1973
City of Loretto, Tennessee...	July 30, 1973
City of New York.....	[2] August 6, 1973
Philadelphia Electric Co.....	July 30, 1973
Sommerset Gas Service.....	July 31, 1973
Utica, Mississippi.....	July 30, 1973

[2] The City of New York's petition to intervene was filed out of time.

All of the above parties request a formal hearing except Philadelphia Electric Co.

The Commission finds:

(1) The tariff sheets designated in footnote 1 above, submitted by TETCO have not been shown to be lawful and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful under the Natural Gas Act.

(2) Good cause exists to accept for filing the tendered tariff sheets, that those sheets be suspended, and that a public hearing be initiated in accordance with the procedures set forth below, all as hereinafter ordered.

(3) The participation in these proceedings of those parties who have petitioned to intervene may be in the public interest.

(4) Although the petition to intervene of the City of New York was not timely filed, good cause exists to allow that party to intervene since permitting the intervention will not be the basis of delay in these proceedings.

The Commission orders:

(A) The tariff sheets tendered by TETCO on May 31, 1973, and June 11, 1973, designated in footnote 1 above, are hereby accepted for filing.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure, and the regulations under the Natural Gas Act (18 CFR, Chapter I), a public hearing shall be held commencing November 13, 1973, at 10 a.m. (e.s.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. 20426, concerning the lawfulness of the proposed changes in the General Terms and Conditions of TETCO's FPC Gas Tariff, Third Revised Volume No. 1.

(C) Pending such hearing and decision, the revised tariff sheets tendered by TETCO on May 31, 1973, and June 11, 1973, are hereby suspended and the use thereof deferred until September 2, 1973, and until such further time as they are made effective in the manner prescribed by the Natural Gas Act.

(D) The above-named petitioners are hereby permitted to become intervenors in these proceedings subject to the rules and regulations of the Commission: Provided, however, that the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in said petitions for leave to intervene; and Provided, further, that the admission of such intervenors shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in these proceedings.

[1] The revised tariff sheets are designated as Second Revised Sheet No. 92, and First Revised Sheet Nos. 92-A, 92-B, 92-H, 92-I, 92-J, 92-K, 92-L, 92-M, 92-N. First Revised Sheet No. 92-B supersedes Original Sheet Nos. 92-B through 92-G. On June 11, 1973, TETCO filed Substitute Second Revised Sheet No. 92 to supersede Second Revised Sheet No. 92.

(E) All parties who have previously intervened in Docket Nos. RP71–130 and RP72–58 are hereby permitted to participate in these proceedings as intervenors.

(F) On or before October 19, 1973, TETCO shall file its testimony and exhibits comprising its case-in-chief in support of its proposed waiver of demand charge adjustment provision and its proposed annual volumetric entitlement provision and shall serve that proposed evidence with the Commission and on all parties, including Commission Staff. Also, on or before October 19, 1973, all parties sponsoring variances or opposition to the curtailment plan proposed by TETCO shall file and serve their testimony and exhibits in support of their position on the Commission, its Staff, and all parties to this proceeding.

(G) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose [See Delegation of Authority, 18 CFR 3.5(d)] shall preside at the hearing in this proceeding; shall prescribe relevant procedural matters not herein provided; and shall control the proceeding in accordance with the policies expressed in § 2.59 of the Commission's rules of practice and procedure.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[FR Doc.73–19346 Filed 9–11–73;8:45 am]

[Docket No. RP73–3]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Notice of Filing of Tariff Change

SEPTEMBER 4, 1973.

Take notice that Transcontinental Gas Pipe Line Corp. (Transcontinental), tendered for filing on August 15, 1973, Substitute Fifth Revised Sheet No. 5 and Substitute Third Revised Sheet No. 6 to the FPC Gas Tariff, First Revised Volume No. 1, of Transcontinental.

Transcontinental states that these sheets, with a proposed effective date of October 1, 1973, reflect an increase of 1.6 cents per M c.f. in the commodity or delivery charge of Transcontinental's CD, G, OG, E, PS, S–2, and ACQ rate schedules. Transcontinental also states that the total increase of 1.6 cents per M c.f. consists of an increase in the current gas cost of 0.9 cent per M c.f. and an increase in the Deferred Adjustment of 0.7 cent per M c.f.

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 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 filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73–19345 Filed 9–11–73;8:45 am]

[Docket No. CP73–108]

TRANSWESTERN PIPELINE CO.

Notice of Petition To Amend

SEPTEMBER 4, 1973.

Take notice that on August 23, 1973, Transwestern Pipeline Co. (Petitioner), P.O. Box 2521, Houston, Texas 77002, filed in Docket No. CP73–108 a petition to amend the Commission's order of February 20, 1973 (49 FPC ——) issued in the subject docket pursuant to section 7(c) of the Natural Gas Act, as implemented by § 157.7(b) of the Commission's regulations thereunder, by authorizing the additional construction during the calendar year 1973, and operation of gas-purchase facilities through waiver of the cost limitation prescribed by § 157.7(b)(1)(i) of the Commission's regulations, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By the Commission's order of February 20, 1973, Petitioner is authorized to construct, during the calendar year 1973, natural gas purchase facilities up to a total cost of $7,000,000 and to operate said facilities. Section 157.7(b)(1)(i) of the Commission's regulations limits to $7,000,000 cost of gas-purchase facilities which Petitioner can construct under that section. Petitioner now requests a waiver of this section so that it may construct up to $11,000,000 of gas-purchase facilities for the year 1973. In support of this request Petitioner asserts that:

(a) As of the date of this filing, it has scheduled gas purchase facility projects totaling approximately $7,000,000, and estimates that for the remainder of 1973, it will require an additional $4,000,000 of budget-type facilities;

(b) Because of the pressures of inflation and increasing construction costs over the last three and one-half years since the $7,000,000 limit was established, this limit has no longer any practical relationship to the annual cost of an active gas supply acquisition program; and

(c) The changing pattern of gas supply projects calls for increased cost authorizations, since there has been a shift from the large diameter lateral pipeline projects, to the scattered and unrelated small diameter gathering-type projects.

Petitioner states that it will not require any modification of the single project limitation in § 157.7(b).

Any person desiring to be heard or to make any protest with reference to said petition to amend 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.

KENNETH F. PLUMB, *Secretary.*

[FR Doc.73–19344 Filed 9–11–73;8:45 am]

[Docket No. CP74–45]

UNITED GAS PIPE LINE CO.

Notice of Application

SEPTEMBER 5, 1973.

Take notice that on August 20, 1973, United Gas Pipe Line Co. (Applicant), 1500 Southwest Tower, Houston, Texas 77002, filed in Docket No. CP74–45 an application pursuant to section 7(b) of the Natural Gas Act and § 157.7(e) of the regulations thereunder (18 CFR 157.7(e)) for permission and approval to abandon gas service to unspecified direct sale customers and to abandon by removal the direct sales measuring, regulating and related minor facilities for such direct sales, during the twelve-month period commencing October 1, 1973, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The purpose of this budget-type abandonment application is to permit Applicant to discontinue service to direct sale customers who no longer require such service and remove the facilities necessary therefor.

The deliveries to any one direct sale customer through any one of the sales measuring facilities to be abandoned shall not have exceeded 100,000 M c.f. of gas annually during the last year of service, and Applicant shall receive either a written request or written permission from the direct sale customer to terminate service. In the event such request or permission cannot be obtained, Applicant will file a statement certifying that the customer has no further need for such service.

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 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 permission and approval for the proposed abandonment are 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.73-19424 Filed 9-11-73;8:45 am]

[Docket No. RP73-94]

VALLEY GAS TRANSMISSION, INC.

Notice Changing Date for Prehearing Conference and Deferring Other Procedural Dates

AUGUST 31, 1973.

On August 30, 1973, Valley Gas Transmission, Inc., filed a motion for an indefinite postponement of certain procedural dates fixed by notice issued August 9, 1973, in the above-designated matter, and for an advancement of the date of the prehearing conference. The motion states that the parties who participated in the conference have no objection to the motion.

Upon consideration, notice is hereby given that the date of the prehearing conference is changed to September 10, 1973, at 2 p.m. (e.d.t.) in a hearing room of the Federal Power Commission, 825 North Capitol Street NE., Washington, D.C. All other procedural dates are deferred pending further order of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19343 Filed 9-11-73;8:45 am]

[Docket No. E-8351]

VIRGINIA ELECTRIC AND POWER CO.

Notice of Contract Supplement and New Delivery Point

SEPTEMBER 5, 1973.

Take notice that on August 13, 1973, Virginia Electric and Power Co. (Applicant) filed an application with the Federal Power Commission, pursuant to section 35 of the Regulations under the Federal Power Act, requesting approval of a contract supplement, dated April 3 1972, with Shenandoah Valley Electric Cooperative (Shenandoah). At Shenandoah's request Applicant has established a new point of delivery, designated the North River Delivery Point, near the intersection of Route 681 and Route 682 in Rockingham County, Virginia.

The contract supplement provides for service at the North River Delivery Point, proposed as Applicants' FPC Rate Schedule No. 84-24. Applicant states that the unit cost of electricity to Shenandoah will remain unchanged as a result of the connection of the aforementioned facilities.

Applicant further requests that the Commission's notice requirements be waived so as to allow an effective date for the contract supplement of May 11, 1973, the date of the connection of the facilities at North River Delivery Point.

Any person wishing to be heard or to make any protest with reference to such Application should, on or before September 18, 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.73-19427 Filed 9-11-73;8:45 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE ON FINANCE

Notice of Meeting and Agenda

Agenda for a Meeting of the Technical Advisory Committee on Finance to be held at the Federal Power Commission Offices, 825 North Capitol Street NE., Washington, D.C., September 13, 1973, 9:30 a.m., e.d.t. (meeting location to be posted in room 5100).

1. Meeting called to order by FPC Coordinating Representative.
2. Objectives and purposes of meeting.
A. Approval of minutes of August 1, 1973, meeting.
B. Report of Task Force—Future Financial Requirements on revised model and narrative.
C. Discussion of drafts of work assignments made at August 1 meeting.
D. Coordination of draft materials for final Committee report.
E. Suggestions for presentation of Task Force model at October 3, Coordinating Committee and October 4, Executive Advisory Committee meetings.
F. Other business.
G. Date for next meeting.
3. Adjournment.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee—which statements, if in written form, may be filed before or after the meeting, or, if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19331 Filed 9-11-73;8:45 am]

NATIONAL POWER SURVEY TECHNICAL ADVISORY COMMITTEE

Notice of Meeting and Agenda

Agenda for a meeting of the Task Force—Administrative of the Technical Advisory Committee on Fuels to be held at the Federal Power Commission Offices, 825 North Capitol St. N.E., Washington, D.C. 20426, September 13 and 14, 1973, 9:30 a.m., e.d.s.t., Room 6200.

1. Meeting called to order.
2. Objectives and purposes of meeting.
A. Approval of minutes of meeting August 7, 1973.
B. Review comments of task force reports.
C. Continue the drafting of TAC on Fuels report.
D. Other business.
E. Date for next Task Force—Administrative meeting.
3. Adjournment.

NOTE.—This will be a meeting of the Task Force—Administrative for the purpose of preparing draft report of TAC on Fuels. It is anticipated the meeting will require two days. Committee members who desire to contribute to the preparation of the report are invited to attend.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee—which statements, if in written form, may be filed before or after the meeting, or if oral, at the time and in the manner permitted by the committee.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-19512 Filed 9-11-73;8:45 am]

[Docket No. RP73-78]

ORANGE AND ROCKLAND UTILITIES, INC.

Order Accepting Settlement and Terminating Proceeding

SEPTEMBER 5, 1973.

On January 31, 1973, Orange and Rockland Utilities, Incorporated (O. & R.) filed in this docket proposed changes in its FPC Gas Tariff, Original Volume No. 1. Also included for filing were executed service agreements between O. & R. and New York State Electric and Gas Corporation (N.Y.S.E. & G.) and O&R's wholly owned subsidiary, Pike County Light and Power (Pike). The proposed changes would have increased revenues from jurisdictional sales and service by $66,194 based on a volume of sales for the 12-month period ending September 30, 1972. The proposed effective date was

March 2, 1973. The filing was noticed on February 12, 1973, with comments due by February 22, 1973.

By order of March 1, 1973, the Commission accepted for filing and suspended the proposed tariff sheets for the full five month statutory period, and deferred their use until August 1, 1973. A hearing pursuant to section 4 of the Natural Gas Act was ordered.

By order of March 19, 1973, a petition to intervene from N.Y.S.E. & G. and a notice of intervention from the Public Service Commission for the State of New York were granted.

On April 30, 1973, the Commission Staff served testimony in which it raised objections to O. & R.'s proposed change from a one part, straight line rate design to a two part, demand-commodity rate design, the proposed rate of return, and the treatment of depreciation rates in the proposed tariff sheets. A prehearing conference was held on May 11, 1973, and thereafter, to accommodate conferences between O. & R. and N.Y.S.E. & G., the procedural dates were altered on several occasions upon motion of O. & R. Another prehearing conference was called on July 19, 1973, wherein the parties indicated that agreement had been reached. On August 2, 1973, the testimony of all parties was placed in the record and there was offered for certification a Settlement Agreement (Agreement) with an accompanying motion to the Commission for acceptance of the Agreement. All parties consented to waiver of the decisions of the Presiding Administrative Law Judge (Judge) and there were no objections to the motion to certify. On August 3, 1973, the Judge certified to the Commission the proposed Agreement and motion, along with the complete record in the docket. The certification was noticed on August 8, 1973, with comments or protests due on or before August 20, 1973. Comments in support of the Agreement were filed by the Commission Staff on August 14, 1973.

So as to encompass all objections raised by Commission Staff in its prepared testimony, the Agreement effects the following changes in the originally filed tariff sheets:

(1) The settlement rates include a rate of return of 8.35 percent, rather than the 9 percent originally proposed by O. & R. This reduction in overall rate of return would yield a rate of return on O. & R.'s common equity of 12.08 percent and reduce the annual amount of the proposed rate increase from $66,194 to $65,076.[1]

(2) The Company has replaced the originally proposed two-part demand-commodity rate design with a single, commodity rate pursuant to Commission Staff objections based on the Commission's decision in Florida Gas Transmission Company, Opinion No. 611–A, issued January 30, 1973. The distribution expenses which the Company proposed to recover at a flat rate of 9 cents per M c.f. are now based on an allocated cost-of-service basis. Interruptible Rate Schedule I–1 has been terminated.

(3) Depreciation rates have been specifically set forth in the Company's tariff.

O. & R.'s motion for approval of the proposed Agreement does not contain a proposed effective date.

Our review of the proposed Settlement Agreement, the cost of service filed in support thereof (Appendix A, below), and O. & R.'s capitalization as of December 31, 1972, indicates that the rates therein are not excessive and that the other provisions of the Settlement Agreement are in the public interest. We shall therefore accept the proposed Settlement Agreement and permit the tariff sheets proposed therein to become effective as of August 1, 1973, the end of the suspension period originally ordered in this docket.[2]

The Commission finds

(1) Approval, as hereinafter ordered, of the settlement in these proceedings on the basis of the Agreement certified on August 3, 1973, is just and reasonable and in the public interest in carrying out the provisions of the Natural Gas Act and the tariff sheets included therein should be made effective.

(2) Good cause exists to waive the Commission's notice requirements to permit an effective date of August 1, 1973, for the tariff sheets proposed pursuant to the Settlement Agreement.

The Commission orders

(A) O. & R.'s motion for approval of the proposed Settlement Agreement is granted, the proposed Settlement Agreement incorporated by reference herein is accepted, and the tariff sheets included therein shall become effective as of August 1, 1973.

(B) O. & R. shall comply with the terms and conditions of the Settlement Agreement.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

(D) This order is without prejudice to any findings or orders which have been made or will hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, O. & R., or any party or person affected by this order, in any proceeding now pending or hereinafter instituted by or against CIG or any person or party.

(E) Nothing contained in this letter shall relieve the applicant of any responsibility imposed by the Economic Stabilizaton Act of 1970, (Public Law 91–379, 84 Stat. 799, as amended by Public Law 92–15, 85 Stat. 38), or by any Executive Order or rules and regulations promulgated pursuant to such Act.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

[1] See Appendixes A and B for the summary cost of service and capitalization reflected in the settlement tariff sheets.

[2] See Appendix C for tariff sheet designations.

APPENDIX A

[Docket No. RP73–78]

ORANGE AND ROCKLAND UTILITIES, INC.

JURISDICTIONAL REVENUE, CS–1 RATE, WESTERN DIVISION 12 MONTHS ENDED SEPTEMBER 30, 1972, AS ADJUSTED

Cost component	Cost of service rates				
	Base rate	Filing adjustment	Filed rate	Settlement adjustment	Settlement rate
Production expense	$309,219	$58,335	$367,554		$367,554
Other O. & M	2,640	1,896	4,536		4,536
Depreciation, taxes and return	19,908	5,963	25,871	(1,118)	24,753
Total revenue	331,767	66,194	397,961	$(1,118)	396,843
Rate of return (percent)	6		9		8.35

APPENDIX B

[Docket No. RP73–78]

ORANGE AND ROCKLAND UTILITIES, INC.

COST OF CAPITAL AND RATE OF RETURN DECEMBER 31, 1972 ADJUSTED

	Capitalization		Cost factor (percent)	Weighted totals (percent)
	Amount	Ratios (percent)		
Long-term debt	$160,140	51.47	6.45	3.32
Preferred stock	47,986	14.60	6.36	.93
Common equity	111,522	33.93	12.08	4.10
Totals	328,648	100.00		8.35

APPENDIX C

[Docket No. RP73–78]

ORANGE AND ROCKLAND UTILITIES, INC.

DESIGNATIONS OF ACCEPTED SHEETS FOR ORANGE AND ROCKLAND'S FPC GAS TARIFF, ORIGINAL VOLUME NO. 1

Original Sheet No. 25–A.

First Revised Sheet Nos. 2, 3, 13, 17, 20, 23, 24, and 25.

Second Revised Sheet Nos. 4, 5, 6, 7, 8, 9, and 18.

First Revised Leaf Nos. 9–A, 9–B, 27–A, 27–B, and 27–C.

Box number	Accession number	Date
1	138-73-4	Jan. 1-31, 1967.
2	138-73-4	Feb. 1-28, 1967.
3	138-73-4	Mar. 1-29, 1967.
4	138-73-4	Mar. 30-31, 1967, April 1-29, 1967.
5	138-73-4	April 21-30, 1967, May 1-17, 1967.
6	138-73-4	May 18-31, 1967, June 1-12, 1967.
7	138-73-4	June 13-28, 1967.
8	138-73-4	June 29-30, 1967, July 1-19, 1967.
9	138-73-4	July 20-31, 1967, Aug. 1-13, 1967.
10	138-73-4	Aug. 14-31, 1967.
11	138-73-4	Sept. 1-30, 1967.
12	138-73-4	Oct. 1-31, 1967.
13	138-73-4	Nov. 1-30, 1967.
14	138-73-4	Dec. 1-31, 1967.
15	138-73-4	Jan. 1-31, 1968.
16	138-73-4	Feb. 1-29, 1968.
17	138-73-4	Mar. 1-31, 1968.
18	138-73-4	April 1-30, 1968.
19	138-73-4	May 1-21, 1968.
20	138-73-4	May 22-31, June 1-18, 1968.
21	138-73-4	June 19-30, July 1-10, 1968.
22	138-73-4	July 11-31, Aug. 1-7, 1968.
23	138-73-4	Aug. 8-31, Sept. 1-11, 1968.
24	138-73-4	Sept. 12-30, 1968.
25	138-73-4	Oct. 1-25, 1968.
26	138-73-4	Oct. 26-31, Nov. 1-22, 1968.
27	138-73-4	Nov. 23-30, Dec. 1-19, 1968.
28	138-73-4	Dec. 20-31, 1968, Jan. 1-23, 1969.
29	138-73-4	Jan. 24-31, Feb. 1-25, 1969.
30	138-73-4	Feb. 26-28, Mar. 1-17, 1969.
31	138-73-4	Mar. 18-31, April 1-16, 1969.
32	138-73-4	April 17-30, May 1-15, 1969.
33	138-73-4	May 16-31, June 1-11, 1969.
34	138-73-4	June 12-30, July 1-10, 1969.
35	138-73-4	July 11-29, 1969.

[FR Doc.73-19209 Filed 9-11-73;8:45 am]

FEDERAL RESERVE SYSTEM

FINANCIAL GENERAL BANKSHARES, INC.

Order Conditionally Approving Acquisition of Bank

Financial General Bankshares, Inc., Washington, D.C., a bank holding company within the meaning of the Bank Holding Company Act, and its two wholly owned subsidiaries, The Morris Plan Corporation and Virginia Bankshares, Inc., both of Washington, D.C. (collectively referred to as "Applicants"), have applied for the Board's approval under Sec. 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)), to acquire 17,000 or more, but not to exceed 80 percent, of the voting shares of Clarendon Bank & Trust, Fairfax County, Virginia (Bank).

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with Sec. 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 Sec. 3(c) of the Act (12 U.S.C. 1842(c)).

On January 10, 1973, the Federal Deposit Insurance Corporation approved the merger of Woodlawn National Bank, Alexandria, Virginia (deposits of $11.5 million), into Bank (deposits of $154 million). Prior to that merger, Applicants owned 141,800 (or 55.12 percent) of the outstanding shares of Bank. As a result of the merger, Applicants' ownership has dropped to 44.7 percent. Although it is acknowledged that effective control still exists, the purpose of the instant proposal is to increase Applicants' degree of control of Bank to at least its former level of more than 50 percent, and would have no effect on existing or future competition. The Board concludes that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicants are generally satisfactory and consistent with approval of the application. Applicants propose to acquire up to 80 percent of the outstanding shares of Bank by means of a cash offer of $55 per share to all minority shareholders. A pro rata adjustment will be made, whereby Applicants will take a proportionate number of shares from each tendering stockholder, in the event that acceptance of the number of shares tendered would increase Applicant's percentage of ownership to more than 80 percent. The Board has previously determined such a purchase procedure to be equitable to minority shareholders and a reasonable means of protecting both the offeror and the offeree. (See 1967 Fed. Res. Bulletin 1567, 1570.) Considerations relating to the convenience and needs of the community to be served are also consistent with approval of the application. Control by International Bank, Washington, D.C. (which is engaged in nonbanking business), over Financial General is a matter of concern to the Board. To the extent that International Bank controls or exercises controlling influence over Financial General, an acquisition by Financial General would be regarded by the Board as an acquisition by International Bank under the provisions of the Bank Holding Company Act. Accordingly, approval of the application is hereby conditioned upon prior termination by International Bank of any such control or controlling influence over Financial General. 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 provided that such control by International Bank is terminated.

On the basis of the record, the application is approved for the reasons summarized above and upon the condition that no shares of Bank may be acquired under this Order prior to the date on which the Board concludes that the International Bank does not control nor exercise a controlling influence over Applicant. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order or (b) later than 180 days 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 Richmond pursuant to delegated authority.

By order of the Board of Governors,[1] effective August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19313 Filed 9-11-73;8:45 am]

[1] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

FINANCIAL GENERAL BANKSHARES, INC.

Order Conditionally Approving Acquisition of Bank

Financial General Bankshares, Inc., Washington, D.C., a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under sec. 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire 50 percent plus one share or more of the voting shares of Second National Bank of Richmond, Richmond, Virginia.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with sec. 3(b) of the Act. The time for filing comments and views has expired, and those received have been considered in light of the factors set forth in sec. 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, holds interests in 25 banks in seven States, the District of Columbia, and the Virgin Islands. The operations of Applicant's banking subsidiaries were principally conducted in the State of Virginia on July 1, 1966, the date on which Applicant became a bank holding company. Therefore, the effect of sec. 3(d) of the Act is to prohibit the Board from approving an application by Applicant for the direct or indirect acquisition of voting shares of any additional bank not located in the State of Virginia. Applicant is the seventh largest banking organization in Virginia, controlling eight banks in Virginia with aggregate deposits of $573 million representing 5.3 percent of all deposits of commerical banks in the State.[1] Acquisition of Bank (deposits of $30.7 million) would constitute Applicant's initial entry into the Richmond banking market (approximated by the city of Richmond and the counties of Chesterfield, Hanover, and Henrico) and would not change Applicant's ranking among banking organizations in the State.

As of June 30, 1972, Bank was the eighth largest of 14 banks in the Richmond banking market, controlling 1.5 percent of total deposits in that market. Applicant's nearest subsidiary office to Bank is more than 100 miles distant. It appears that no meaningful competition exists between Bank and any of Applicant's subsidiary banking offices. Further, it seems unlikely that meaningful competition would develop in the future between Bank and Applicant in light of the facts presented, notably, the distances separating these banks and the Virgina statutes prohibiting Applicant's subsidiaries from *de novo* branching into the Richmond banking market. It appears that acquisition of Bank would not have a significantly adverse effect on the remaining banks in the relevant market. Furthermore, entry by Applicant may have a procompetitive effect by enabling Bank to compete more effectively with the four largest banks in the Richmond market which together controlled

[1] All banking data are as of December 31, 1972.

approximately 82 percent of market deposits on June 30, 1972. On the basis of the record before it, the Board concludes that consummation of the proposal herein would not have an adverse effect on competition in any relevant area.

The financial condition, managerial resources and future prospects of Applicant and its subsidiary banks appear satisfactory. Bank's financial and managerial resources and future prospects are regarded as satisfactory and the ability of Applicant to strengthen Bank's capital position lends weight toward approval of the application. Considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. Control by International Bank, Washington, D.C. (which is engaged in nonbanking business), over Applicant is a matter of concern to the Board. To the extent that International Bank controls or exercises controlling influence over Applicant, an acquisition by Applicant would be regarded by the Board as an acquisition by International Bank under the provisions of the Bank Holding Company Act. Accordingly, approval of the application is hereby conditioned upon prior termination by International Bank of any such control or controlling influence over Applicant. 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 provided that such control by International Bank is terminated.

On the basis of the record, the application is approved for the reasons summarized above and upon the condition that no shares of Bank may be acquired under this Order prior to the date on which the Board concludes that International Bank does not control nor exercise a controlling influence over Applicant. The transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order, or (b) later than 180 days after the effective date of this Order, unless such period is extended for good cause by the Board.

By order of the Board of Governors,[2] effective August 31, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19314 Filed 9-11-73;8:45 am]

FIRST PRATT BANKSHARES, INC.

Formation of Bank Holding Company

First Pratt Bankshares, Inc., Pratt, Kansas, has applied for the Board's approval under Sec. 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of 80 percent or more of the voting shares of First National Bank in Pratt, Pratt, Kansas. The factors that are considered in acting on the application are set forth in Sec. 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 Reserve Bank to be received not later than October 1, 1973.

Board of Governors of the Federal Reserve System, September 4, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19312 Filed 9-11-73;8:45 am]

PIEDMONT CAROLINA FINANCIAL SERVICES, INC.

Order Approving Formation of Bank Holding Company and Acquisition of Consumer Finance Companies

Piedmont Carolina Financial Services, Inc., Davidson, North Carolina, 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)) of formation of a bank holding company through acquisition of 100 per cent (less directors' qualifying shares) of the voting shares of the successor by merger to Piedmont Bank and Trust Company, Davidson, North Carolina ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

At the same time, Applicant has applied for the Board's approval under section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(2) of the Board's Regulation Y to acquire (1) Carolina Finance Company of Charlotte, Inc., Charlotte, North Carolina ("Charlotte"), (2) B & M Finance Company, Winston-Salem, North Carolina ("Winston-Salem"), and (3) Credit Loan and Finance Company, Inc., Greensboro, North Carolina ("Greensboro"). These three companies are consumer finance companies making personal loans up to a maximum of $900 and also engage in the selling as agent of credit life and credit health and accident insurance directly related to extensions of credit by them. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1) and (9)).

Notice of receipt of the applications has been given in accordance with sections 3 and 4 of the Act and the time for filing comments and views has expired. The Board has considered the applications and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)) and considerations specified in section 4(c)(8) of the Act (12 U.S.C. 1843(c)(8)).

Applicant, a newly formed corporation with no operating history, was organized by the officers and directors of Bank. Bank (deposits of $29 million) is one of the smaller banks in its market area.[1] Since this formation involves the acquisition by Applicant of one bank, consummation of the transaction would have no adverse effect on competition in commercial banking.

Considerations relating to the financial and managerial resources and prospects of Applicant depend primarily on those of Bank, which appear to be generally satisfactory and consistent with approval of the application. Considerations relating to the convenience and needs of the communities to be served are also consistent with approval of the transaction. It is the Board's judgment that consummation of the transaction, insofar as regards the acquisition of Bank, would be in the public interest.

Both Winston-Salem and Greensboro compete in the same geographic market which is approximated by the Greensboro-Winston-Salem-High Point Standard Metropolitan Statistical Area ("SMSA"). However, the effect on competition in this market of consummation of this transaction is minimal in view of the large number of consumer finance companies in the area along with numerous commercial banks which make small personal loans and the fact that neither Winston-Salem nor Greensboro occupies a significant position in the market. They had total receivables of $366 thousand and $313 thousand respectively as of March 31, 1973. Moreover, both consumer finance companies are owned by the same shareholders so that substantial competition between the two probably could not be expected. Bank does not compete in this market for small personal loans and consummation of the proposal would not eliminate significant existing or potential competition between Greensboro and Winston-Salem on the one hand and Bank on the other.

Charlotte competes for small personal loans in the Charlotte SMSA where Bank also has offices. However, there are 20 other commercial banks and 41 other consumer finance companies in the area which either do or could make small personal loans. Moreover, neither Bank nor Charlotte has a significant market share in the relevant market with the latter having total receivables of $385 thousand as of March 31, 1973. Consummation of the transaction would not eliminate significant existing or potential competition in this market.

There is no evidence in the record indicating that consummation of the proposal would result in any undue concentration of resources, unfair competition, conflicts of interest, unsound banking practices, or other adverse effects on the public interest. It does appear that consummation of the transaction could result in the three consumer finance companies having greater access to capital, thereby enabling them to become stronger competitive forces in their respective market areas. Additionally, it appears that the three finance companies are managed by an individual in his mid-seventies. Affiliation of the three

[2] Voting for this action: Vice-Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

[1] All banking data are as of December 31, 1972.

companies with Applicant should provide continuity and depth of management for the finance companies.

The three finance companies act as agents for the sale of credit insurance related to the loans they originate. Due to the limited nature of this activity, Applicant's acquisition of the three companies would not appear to have a significantly adverse effect on competition in this product line. At the present time, the three finance companies sell level term credit life and credit health and accident insurance in connection with personal loans they make. However, the Applicant has committed itself to have the three companies cease selling level term credit life and credit accident and health insurance upon consummation of this transaction and sales of credit life and credit accident and health insurance will be on a declining term basis.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under section 4(c)(8) is favorable. Accordingly, the application is hereby approved. This determination is subject to the conditions set forth in section 225.4(c) of Regulation Y and to the Board's authority to require such modification or termination of the activities of the 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.

In its consideration of this matter, the Board noted that Bank engages through a wholly-owned subsidiary in general insurance agency activities at off-premise locations including one office in a community where Bank does not operate any branches. It appears that Bank itself could directly perform these activities at those locations. The agency would be considered an operations subsidiary of Bank if Bank were a State member bank (*Interpretations*, paragraph 4215, 12 CFR 250.141).[1] Accordingly, pursuant to section 4(c)(5) of the Bank Holding Company Act and § 225.4(e) of Regulation Y, such activities do not *require* the approval of the Board.

On the basis of the record, the applications to acquire Bank and the three insurance agencies are approved for the reasons summarized above. The acquisition of Bank shall not be consummated before the thirtieth calendar date following the effective date of this Order nor shall acquisition of Bank or the three consumer finance companies be made 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 Richmond.

By order of the Board of Governors,[2] effective September 4, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-19368 Filed 9-11-73;8:45 am]

[1] If, however, State law did not authorize Bank to perform the activities directly, but rather only authorized the investment in shares of the insurance agency, such agency would not be permissible on the basis of § 4(c)(5) and § 225.4(e).

[2] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

SWISS-ISRAEL TRADE BANK, ET AL.

Determination Regarding "Grandfather" Privileges Under Bank Holding Company Act

Section 4 of the Bank Holding Company Act (12 U.S.C. 1843) provides certain privileges (grandfather privileges) with respect to nonbanking activities of a company that, by virtue of the 1970 Amendments to the Bank Holding Company Act, became subject to the Bank Holding Company Act. Pursuant to section 4(a)(2) of the Act, a "company covered in 1970" may continue to engage, either directly or through a subsidiary, in nonbanking activities that such a company was lawfully engaged in on June 30, 1968 or on a date subsequent to June 30, 1968, in the case of activities carried on as a result of the acquisition by such company or subsidiary, pursuant to a binding written contract entered into on or before June 30, 1968, of another company engaged in such activities at the time of the acquisition), and has been continuously engaged in since June 30, 1968 (or such subsequent date).

Section 4(a)(2) of the Act provides, *inter alia*, that the Board of Governors of the Federal Reserve System may terminate such grandfather privileges if, having due regard to the purposes of the Act, the Board determines that such action is necessary to prevent undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. With respect to a company that controls a bank with assets in excess of $60 million on or after December 31, 1970, the Board is required to make such a determination within a two-year period.

Notice of the Board's proposed review of the grandfather privileges of the Swiss-Israel Trade Bank, Geneva, Switzerland; Beaver Securities Co., Inc., New York, New York; and Exchange Place Corp., New York, New York, and an opportunity for interested persons to submit comments and views or request a hearing, has been given (37 FR 22414). The time for filing comments, views, and requests has expired, and all those received have been considered by the Board in light of the factors set forth in Sec. 4(a)(2) of the Act.

On the evidence before it, the Board makes the following findings. Swiss Israel Trade Bank, Geneva, Switzerland (Registrant), became a bank holding company, as a result of the 1970 Amendments to the Act, by virtue of Registrant's control of close to 75 percent of the voting shares of American Bank and Trust Company, New York, New York (Bank) (assets of $253 million, as of December 31, 1970). Swiss-Israel owns close to 75 percent of the voting shares of American B. & T. Corporation, New York, New York, which company owns 100 percent of the voting shares of Bank.[1] Bank, control of which was acquired by Registrant in October 1963, had total deposits of approximately $250 million as of June 30, 1972, representing 0.3 percent of the total deposits in commercial banks in the New York City area and is the 23d largest of the 79 banking organizations in the New York City area.

It appears that Bank has enjoyed satisfactory earnings and that Registrant's financial strength does not derive from, nor is dependent upon, the resources of Bank. On the other hand, the Board has noted that Bank's capital appears low in relation to its deposits and Bank's management and financial condition lack the strength the Board expects of subsidiary banks of a holding company. While the record shows that these aspects preceded Registrant's acquisition of control of Bank, the Board is concerned about these aspects since they are present today. In view of the Board's concern in this area, Registrant has adopted a program to reduce the Bank's footings and the amount of loans outstanding, to strengthen management, and to provide for stock dividends in lieu of cash payments by Bank. On the basis of the actions already taken and the commitments made by Registrant, the Board considers that the prospects of Bank should be improved and its financial condition strengthened.

Registrant,[2] a foreign bank, owns 100 percent of Exchange Place Corp., which

[1] On December 31, 1970, Swiss-Israel was an indirect parent of Bank with three Swiss-Israel subsidiaries (Exchange Place Corporation, Beaver Securities, and American B. & T. Corp.) being the intermediate companies. Each of these three intermediate companies became a bank holding company under the 1970 Amendments. Since then, the corporate structure has changed so that only Swiss-Israel and American B. & T. Corp. (which was formed on April 30, 1970) are parents of Bank. On March 30, 1972, the shares of American B. & T. Corp. were transferred from Beaver Securities Co. to direct ownership by Swiss-Israel to be held in custody by Pan Am & Co., New York, New York. Pan Am & Co. functions solely as the registered nominee for Swiss-Israel and has no discretionary power to vote any shares of American B. & T. Corp. Exchange Place Corporation and Beaver Securities are no longer bank holding companies, and the question of a review of grandfather privileges is moot as to each of these companies.

[2] Registrant's annual report to shareholders shows consolidated assets of Registrant and its interest in five other banking affiliates of 2.2 billion Swiss francs (approximately $525 million), as of December 31, 1971. The bank affiliates, other than Bank, are located in Paris, Brussels, Tel-Aviv, and

in turn owns 100 percent of Beaver Securities Co., Inc., and of Exchange Place Management Corp., New York, New York. The latter company owns 100 percent of the shares of Bevex Realty Corp. (Bevex), Merex Realty Corp. (Merex), Staunton Development Corporation (Staunton), Suissex Realty Corp. (Suissex), and Tradex Realty Corp. (Tradex), all of which are located in New York City. Registrant also owns 100 percent of Isramerica Corp., New York, New York, which company owns 100 percent of Sitra Corp., New York, New York (Sitra), and of Vantar Properties Inc., New York, New York (Vantar). All of these direct or indirect subsidiaries of Registrant have been engaged in their current activities since before June 30, 1968, and continuously thereafter.[2] Exchange Place Corp. (assets of $6.3 million as of April 30, 1971) and Isramerica Corporation (assets of about $5 million as of April 30, 1971), both acquired in 1960, engage directly in making loans to business enterprises and in investing in stocks and bonds for their own account but do not own over 5 percent of the shares of any company [4] except for two subsidiaries of Exchange Place Corp., namely, Beaver Securities Co., Inc. (acquired in 1960), and Exchange Place Management Corporation (acquired in 1962). The making of loans to business enterprises is entitled to grandfather privileges.[5] The only current activity of Beaver appears to be holding of $50,000 of stock and bond investments, none of which represents more than 5 percent of the voting shares of the issuing company. No grandfather benefits are involved for the present activities of Beaver [6] nor does there appear to be any reason to require a termination of its activities. Exchange Place Management Corp. engages in no direct activites but acts as a holdng company for five wholly owned subsidiaries named earlier herein. Of the five subsidiaries, Merex and Tradex (both acquired in 1962) each hold a mortgage which is being liquidated by periodic payments but the companies are otherwise inactive. Registrant is entitled to grandfather benefits with respect to the mortgages now held and liquidation thereof.[3] Bevex, Staunton, and Suissex were acquired in 1961 and 1962. Each of these three companies holds an interest in a real estate joint venture whose sole investment is a parcel of land located in Staten Island in New York City. As of April 30, 1971, the combined assets of these three subsidiaries amounted to about $621,000. These joint ventures may be retained under the grandfather privilege proviso. Vantar (acquired in 1964) owns and services a mortgage acquired as a result of the sale of real property.[3] This activity may be retained under the grandfather privilege proviso. Sitra (acquired in 1964) holds a 3 percent interest in a shopping center. Sitra's total investment in this participation is $32,000. There appears to be no reason to require a modification of this activity.

On the basis of the foregoing and all the facts before the Board, it appears that the volume, scope, and nature of the activities of Registrant and its subsidiaries do not demonstrate an undue concentration of resources, decreased or unfair competition, conflicts of interest nor unsound banking practices.

There appears to be no reason to require Registrant to terminate its grandfathered interests. It is the Board's judgment that, at this time, termination of the grandfather privileges of Registrant is not necessary in order to prevent an undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. However, this determination is not authority to enter into any activity that was not engaged in on June 30, 1968, and continuously thereafter, or any activity that is not the subject to this determination. Nor is this determination authority for Registrant to enter into any new real estate joint venture or to acquire additional shares of any company if the Registrant's holdings in said company will exceed 5 percent of the outstanding voting shares of such company.

A significant alteration in the nature or extension of Registrant's activities or a change in location thereof (significantly different from any described in this determination) will be cause for a re-evaluation by the Board of Registrant's activities under the provisions of sec. 4(a)(2) of the Act, that is, whenever the alteration or change is such that the Board finds that a termination of the grandfather privileges is necessary to prevent an undue concentration of resources or any of the other evils designated in the Act. No merger, consolidation, acquisition of assets other than in the ordinary course of business, nor acquisition of any interest in a going concern, to which the Registrant or any nonbank subsidiary thereof is a party, may be consummated without prior approval of the Board. Further, the provisions of any credit, property, or service by the Registrant or any subsidiary thereof shall not be subject to any condition which, if imposed by a bank, would constitute an unlawful tie-in arrangement under sec. 106 of the Bank Holding Company Act Amendments of 1970.

The determination herein does not preclude a later review by the Board of Registrant's nonbank activities and a future determination by the Board in favor of termination of grandfather benefits of Registrant. The determination herein is subject to the Board's authority to require modificaton or termination of the activities of Registrant or any of its nonbanking subsidiaries as the Board finds necessary to assure compliance with the provisions and purposes of the Act and the Board's regulations and orders issued thereunder, or to prevent evasions thereof.

By determination of the Board of Governors,[7] effective September 4, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-19315 Filed 9-11-73;8:45 am]

Montividео. As to these foreign banks, the activities are permissible under the Board's Regulation Y and accordingly grandfather benefits need not be considered. Registrant also has two inactive subsidiaries, Solon Properties Inc., and South Beach Realty Corporation (both located in New York City), that have no grandfather benefits.

[2] In 1970, American B. & T. Corp., made loans for its own account and acquired shares in GIT Realty & Mortgage Investors (15 percent), a real estate investment trust and in GIT Management Services Inc. With respect to the activities of these two companies, Registrant has no grandfather benefits within the meaning of the proviso in section 4(a)(2) of the Act. Registrant's direct or indirect interest in these two companies will be required to be reduced to 5 percent or less by January 1, 1981, unless the Board were to grant Registrant approval under section 4(c)(8) to continue such activities. Shares of a REIT are not on the Board's list of activities closely related to banking. However, under section 224(a)(5) of Regulation Y advisory services to a REIT are regarded as permissible.

[4] Section 4(c)(6) of the Act provides an exemption to the general prohibitions of section 4 and permits a holding company to own not more than 5 percent of the outstanding shares of any company. Such holdings are permissible without recourse to the benefits of the grandfather proviso.

[5] The activity of making loans is a "closely related" activity under § 225.4(a)(1) of regulation Y. The activity of servicing loans is a closely related activity under § 225.4(a)(3) of regulation Y. However, the Board's approval is required to authorize a company to engage in such permissible activities under said sections of the regulation and sec. 4(c)(6) of the Act.

[6] The holdings of 5 percent or less of the shares of any company is permissible under section 4(c)(6) of the Act. Also section 4(c)(7) of the Act permits a holding company to own shares of an investing company that is not a bank holding company and is not engaged in any business other than investing in securities which do not include more than 5 percent of the outstanding voting shares of any company.

[7] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

WAVERLY INVESTMENT CO.

Proposed Acquisition of Mallen and Waverly Insurance Agencies

Waverly Investment Company, Waverly, Missouri (which applied, pursuant to section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company through acquisition of up to 100 per cent of the voting shares of Bank of Waverly, Waverly, Missouri (38 Federal Register 22678), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.4(b)(2) of the Board's Regulation Y, for permission to acquire the assets of Mallen and Waverly Insurance Agencies, Waverly, Missouri. Notice of the application was published on August 29, 1973, in The Waverly Times, a newspaper circulated in Waverly, Missouri.

Applicant states that the proposed subsidiaries would engage in the following activities: sale of credit life and health insurance; casualty insurance including fire and extended coverage on dwelling and farm buildings, and automobile insurance; life insurance and liability insurance and such other forms of insurance as may be authorized under the laws of Missouri. Such activities will be conducted at offices in Waverly, Missouri, a town of less than 5,000 population. Such activities have been specified by the Board in section 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 section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than October 2, 1973.

Board of Governors of the Federal Reserve System, September 5, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19367 Filed 9-11-73;8:45 am]

WELLS FARGO & CO.

Order Approving Acquisition of Wells Fargo Mortgage Company

Wells Fargo & Company, San Francisco, California, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under sec. 4(c)(8) of the Act and § 225.4(b)(2) of the Board's regulation Y, to acquire all of the voting shares of Wells Fargo Mortgage Company, San Francisco, California (WFMC), a proposed new company to be engaged in the activities of making and servicing mortgage loans. Such activities have been determined by the Board to be closely related to banking (12 CFR 225.4(a)(1) and (3)).

Notice of the application, affording opportunity for interested persons to submit comments and views on the public interest factors, has been duly published (38 FR 18719). The time for filing comments and views has expired, and none has been timely received.

Applicant is a one-bank holding company controlling Wells Fargo Bank, N.A., San Francisco, California (Bank), the third largest commercial bank in the State. Bank's deposits of $6.2 billion represent 9.7 percent of the total deposits in commercial banks in California.[1] The proposal herein constitutes essentially a corporate reorganization whereby a portion of Bank's mortgage banking activities would be transferred to WFMC as a wholly owned subsidiary of Applicant. Formation of WFMC would establish Applicant's only mortgage banking and servicing subsidiary.

Applicant, however, through Bank, is a significant competitor in the mortgage banking and servicing field in the State. Applicant's existing nonbanking subsidiaries are engaged in numerous activities, including data processing, equipment leasing, and furnishing other financial services.

WFMC will engage in most of the mortgage lending and servicing activities now conducted by the Sonoma Mortgage Division of Bank (Sonoma). In April 1968, Bank expanded its mortgage servicing activities through merger with Sonoma Mortgage Company, Santa Rosa, California (SMC), then a going concern with six offices in northern California.[2] It is proposed that Bank's present mortgage loan servicing portfolio (totaling approximately $815 million) will, for the most part, be assumed by WFMC.

In the nine county San Francisco area in which SMC operated prior to merger with Bank, the mortgage lending activities of the more than 100 lending institutions in this area totaled approximately $6.5 billion in 1972. Of this total, Bank's Sonoma Division accounted for less than 1 percent. Bank's direct mortgage lending activities apart from Sonoma, in this area, represented approximately 8 percent of the area's real estate loans.

The transfer of Sonoma's operations from Bank to Applicant would appear to have no adverse effects on competition in any market in which Applicant currently operates. Moreover, the proposed subsidiary would provide a vehicle through which Applicant could expand its mortgage lending and servicing activities beyond the State. The Board concludes that consummation of the proposed formation of WFMC would have no adverse effects on mortgage lending and servicing activities in any relevant area.

Based upon the foregoing and other considerations reflected in the record, the Board has determined that the balance of the public interest factors the Board is required to consider under sec. 4(c)(8) is favorable. Accordingly, the application is hereby 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. The transaction shall be consummated not later than November 31, 1973, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of San Francisco pursuant to delegated authority.

By order of the Board of Governors,[3] effective August 31, 1973.

THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19316 Filed 9-11-73;8:45 am]

[1] Data are as of December 31, 1972.

[2] Under Bank, Sonoma has since expanded to a total of 11 offices located throughout California.

[3] Voting for this action: Vice Chairman Mitchell and Governors Daane, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Chairman Burns.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 73-70]

NASA AD HOC SUBCOMMITTEE FOR THE REVIEW OF THE INVESTIGATIONS ON THE SECOND AND THIRD HIGH ENERGY ASTRONOMY OBSERVATORY MISSIONS

Notice of Meeting

The NASA Ad Hoc Subcommittee of the Space Science and Applications Steering Committee for the Review of the Investigations on the Second and Third High Energy Astronomy Observatory (HEAO) Missions will meet in Washington, D.C., September 13 and 14, 1973. The meeting, which will be closed to the public, will be held in Federal Office Building No. 6, 400 Maryland Ave. SW., Washington, D.C., Room 6004. The meeting will be concerned with the validation of investigations under consideration for the pointed x-ray telescope mission of the HEAO program. The Subcommittee will discuss and comment on the strengths and weaknesses of these investigations and thus, may tend to violate individuals' rights to privacy if discussions were conducted in an open forum. Also, discussions will involve proprietary data. The Chairman is Dr. Albert G. Opp, NASA Headquarters, Washington, D.C. 20546.

The Executive Secretary is Mr. Russell L. Chandler, also of NASA Headquarters. There are approximately seven other members of the Subcommittee. Questions may be directed to Dr. Opp, telephone, 202-755-8493.

HOMER E. NEWELL,
Associate Administrator National Aeronautics and Space Administration.

SEPTEMBER 10, 1973.

[FR Doc.73-19464 Filed 9-11-73;8:45 am]

[Notice 73-69]

NASA PHYSICAL SCIENCES COMMITTEE

Notice of Meeting

The Physical Sciences Committee of the NASA Space Program Advisory Council will meet at the Headquarters of the National Aeronautics and Space Administration on September 24 and 25, 1973. The meeting will be held in Room 5026 of Federal Office Building 6, located at 400 Maryland Avenue SW., Washington, D.C. 20546. The meeting is open to members of the public, from 2 p.m. to 4:30 p.m. on September 24, 1973, and from 8:30 a.m. to 3:30 p.m. on September 25, 1973, on a first-come, first-served basis to within the 60-seat capacity of the room. Visitors will be requested to sign a visitor's register.

The Physical Sciences Committee serves only in an advisory capacity to NASA. The committee is concerned with all aspects of the physical sciences which are relevant to the space program, including lunar and planetary exploration, astronomy, and space physics. The committee has 14 members including the chairman, Dr. Michael B. McElroy. For further information regarding the meeting, please contact Col. Donald Senich: Area Code (202) 755-6280. The agenda for the meeting is as follows:

SEPTEMBER 24, 1973

Time	*Topic*
9:30 a.m....	Executive Session (Action: Concern has been expressed with regard to Space Science research and development efforts at NASA Centers, University and industrial research groups. The Committee's advice is requested to clearly define the issues and suggest areas of discussion for future meetings. Proposed Office of Space Science new starts in FY 1975 have been identified for the preliminary budget submission. The Committee is requested to advise NASA on the priorities of FY 1975 new starts. In discussing these issues, the qualification, reputation, and ability of individuals and groups will be reviewed. The discussions will therefore include personnel matters which, if conducted in a public session, may well invade the privacy of the individuals concerned.)
12:30 p.m....	Lunch
2:00 p.m....	Exploration of Comets and Asteroids (Action: The Committee's recommendations for future programs to explore the comets and asteroids have been requested. Prior to formulating such recommendations, the members have requested additional information regarding current plans and the results by the Comets and Asteroids Working Group.)
3:00 p.m....	Physical Sciences Committee Recommendations (Action: The Committee has submitted formal recommendations to NASA as a result of deliberations in open and closed sessions. The members have requested a review and discussion of their recommendations and the action taken by NASA in response.)

SEPTEMBER 25, 1973

8:30 a.m....	NASA Strategy for High Energy Astronomy (Action: The Committee's recommendations for, and the priority of payloads and scientific objectives for the restructured HEAO program have been requested. The members have requested a discussion on the existing strategy and a presentation on the possible options available prior to formulating such recommendations.)
11:00 a.m....	Future Space Science Projects (Action: NASA has suggested possible future space science missions which are now incorporated in the NASA mission model. The members have requested a period of discussion to review recommendations and projected science benefits from selected programs.)
12:00 noon..	Lunch
1:30 p.m....	Committee Working Papers (Action: The members of the Committee will use this period to prepare individual working papers and the draft committee report to the Associate Administrator.)
3:30 p.m....	Adjourn.

HOMER E. NEWELL,
Associate Administrator, National Aeronautics and Space Administraton.

SEPTEMBER 6, 1973.

[FR Doc.73-19356 Filed 9-11-73;8:45 am]

NATIONAL ENDOWMENT FOR THE HUMANITIES

PUBLIC PROGRAMS PANEL (FILM TV)

Notice of Meeting

SEPTEMBER 4, 1973.

Pursuant to Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Public Programs Panel (Film/TV) will take place in Washington, D.C. on October 1, 1973.

The purpose of the meeting is to review film/TV proposals and development grant proposals that have been submitted to the Endowment for possible grant funding.

Based on section b (4) and (6) of 5 U.S.C. 552, the meeting will not be open to public participation. It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street NW., Washington, D.C. 20506, or call area code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.73-19361 Filed 9-11-73;8:45 am]

SENIOR FELLOWSHIPS PANEL

Notice of Meeting

SEPTEMBER 5, 1973.

Pursuant to Public Law, 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Senior Fellowships Panel will take place in Washington, D.C. on September 20 and 21, 1973.

The purpose of the meeting is to review Senior Fellowship applications submitted to the Endowment for individual fellowship grants.

Based on section b (4) and (6) of 5 U.S.C. 552, the meeting will not be open to public participation. It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Mr. John W. Jordan, 806 15th Street NW., Washington, D.C. 20506, or call Area Code 202-382-2031.

JOHN W. JORDAN,
Advisory Committee Management Officer.

[FR Doc.73-19362 Filed 9-11-73;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

CONTINENTAL VENDING MACHINE CORP.

Order Suspending Trading

SEPTEMBER 6, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, 10¢ par value, of Continental Vending Machine Corporation, and the 6 percent convertible subordinated debentures due September 1, 1976 being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 15 (c) (5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period September 7, 1973 through September 16, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-19319 Filed 9-11-73;8:45 am]

[No. 811-64]

COUNSELORS INVESTMENT FUND, INC.

Proposal To Terminate Registration

SEPTEMBER 6, 1973.

Notice is hereby given that the Commission proposes, pursuant to section 8 (f) of the Investment Company Act of 1940 (Act), to declare by order upon its own motion that Counselors Investment Fund, Inc. (Fund), (c/o Stuart M. de Haaff, Esquire Macdonald, Halsted & Laybourne, 1200 Wilshire Boulevard, Los Angeles, California, 90017), registered under the Act as an open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

Fund was organized as a Delaware corporation on July 13, 1939, and filed a Notification of Registration on Form N-8A with the Commission on October 29, 1940.

The Commission's records indicate that on July 3, 1973, pursuant to a Plan and Agreement of Reorganization approved by its shareholders, Fund transferred all of its assets (except approximately $15,000 to pay for liquidating expenses) to Pegasus Fund, Inc. (Pegasus), a Maryland corporation registered under the Act as an investment company, in exchange for shares of Pegasus, and distributed all such shares to Fund shareholders. Fund presently has no shareholders, has not made an offering of its shares since October 31, 1972, and has no intention of making any further offering.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and, upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than October 2, 1973, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail (airmail if the person being served is located more than 500 miles from the point of mailing) upon the Fund at the address set forth above. Proof of such service (by affidavit, or in case of an attorney at law, by certificate) shall be filed contemporaneously with the request. At any time after said date, as provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the matter may be issued by the Commission upon the basis of the information stated herein, unless an order for a hearing shall be issued upon request or upon the Commission's own motion. Persons who request a hearing or advice as to whether a hearing is ordered will receive notice of further developments in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management Regulation, pursuant to delegated authority.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-19320 Filed 9-11-73;8:45 am]

[File No. 500-1]

HOME-STAKE PRODUCTION CO.

Order Suspending Trading

SEPTEMBER 6, 1973.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the common stock, $2.50 par value, and all other securities of Home-Stake Production Company being traded otherwise than on a national securities exchange is required in the public interest and for the protection of investors.

It is ordered, Pursuant to section 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from September 7, 1973, through September 16, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-19318 Filed 9-11-73;8:45 am]

[File No. 500-1]

KORACORP INDUSTRIES, INC.

Order Suspending Trading

SEPTEMBER 6, 1973.

The common stock, $1 par value, of Koracorp Industries, Incorporated, being traded on the New York Stock Exchange and the Pacific Coast Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Koracorp Industries, Incorporated, being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchanges and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

It is ordered, Pursuant to section 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, that trading in such securities on the above mentioned exchanges and otherwise than on a national securities exchange be summarily suspended, this order to be effective for the period from September 7, 1973, through September 16, 1973.

By the Commission.

[SEAL] GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.73-19317 Filed 9-11-73;8:45 am]

TARIFF COMMISSION

[337-L-66]

CHAIN DOOR LOCKS

Extension of Time for Filing Written Views

On July 31, 1973, the United States Tariff Commission published notice of the receipt of a complaint under section 337 of the Tariff Act of 1930, filed by Ideal Security Hardware Corp. of Saint Paul, Minnesota, alleging unfair methods of competition and unfair acts in the importation and sale of certain chain door locks (38 FR 20381). Interested parties were given until September 10, 1973, to file written views pertinent to the subject matter of a preliminary inquiry into the allegations of the complaint. The Commission has extended the time for filing written views until the close of business on October 10, 1973.

By order of the Commission.

Issued September 6, 1973.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.73-19324 Filed 9-11-73;8:45 am]

[337-34]

CONVERTIBLE GAME TABLES AND COMPONENTS THEREOF

Notice of Investigation and Hearing

A complaint was filed with the U.S. Tariff Commission on October 26, 1972, and a supplement thereto on January 22, 1973, on behalf of ATI Recreation, Inc. (now All-Tech Industries, Inc.), of Miami Lakes, Florida, alleging unfair methods of competition and unfair acts in the importation and sale of certain convertible game tables. Complainant alleges that the effect or tendency of the unfair methods or acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States in violation of the provisions of section 337 of the Tariff Act of 1930 (19 U.S.C. sec. 1337).

Armac Enterprises, Inc., and Sears Roebuck and Company, both of Chicago, Illinois, have been named by complainant as either importing or offering for sale the subject product.

Having conducted, in accordance with § 203.3 of the Commission's rules of practice and procedure (19 CFR 203.3), a preliminary inquiry with respect to the matters alleged in said complaint, as supplemented, the U.S. Tariff Commission, on August 30, 1973, ordered:

That, for the purposes of section 337 of the Tariff Act of 1930, an investigation be instituted with respect to the alleged violations in the importation and sale in the United States of convertible game tables made in accordance with the claims of U.S. Design Patent No. 223,539 and U.S. Patent No. 3,711,099 and components thereof; with respect to the allegation that complete sets of the imported product are the subjects of unfair pricing; and with respect to the allegation that complete sets of the imported product are the subjects of false representations as to sponsorship.

A public hearing was ordered by the Commission to begin on October 15, 1973, at 10 a.m., e.d.t. in the Hearing Room,

U.S. Tariff Commission Building, Eighth and E Streets NW., Washington, D.C. All parties concerned will be afforded an opportunity to be present, to produce evidence, and to be heard concerning the subject matter of the investigation. Interested parties desiring to appear and give testimony at the hearing should notify the Secretary of the Commission in writing at least 5 days in advance of the opening of the hearing.

The Commission decided not to recommend at this time that the President issue a temporary exclusion order pursuant to section 337(f).

Public notice of the receipt of the complaint and initiation of the preliminary inquiry was published in the FEDERAL REGISTER on November 17, 1972 (33 FR 24473).

By order of the Commission.

Issued September 6, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-19321 Filed 9-11-73;8:45 am]

[TEA-W-210]

NINA FOOTWEAR CO., INC.

Workers' Petition for a Determination; Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of the Nina Footwear Co., Inc., Long Island City, New York, the United States Tariff Commission, on September 6, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of consessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.20, 700.43, 700.45, and 700.55 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before September 24, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued September 6, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-19323 Filed 9-11-73;8:45 am]

[TEA-W-209]

ZUCKERMAN AND FOX, INC.

Workers' Petition for a Determination: Notice of Investigation

On the basis of a petition filed under section 301(a)(2) of the Trade Expansion Act of 1962, on behalf of the former workers of Zuckerman & Fox, Inc., New York, New York, the United States Tariff Commission, on September 6, 1973, instituted an investigation under section 301(c)(2) of the Act to determine whether, as a result in major part of concessions granted under trade agreements, articles like or directly competitive with footwear for women (of the types provided for in items 700.20 and 700.45 of the Tariff Schedules of the United States) produced by said firm are being imported into the United States in such increased quantities as to cause, or threaten to cause, the unemployment or underemployment of a significant number or proportion of the workers of such firm or an appropriate subdivision thereof.

The optional public hearing afforded by law has not been requested by the petitioners. Any other party showing a proper interest in the subject matter of the investigation may request a hearing, provided such request is filed on or before September 24, 1973.

The petition filed in this case is available for inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets NW., Washington, D.C., and at the New York City office of the Tariff Commission located in Room 437 of the Customhouse.

By order of the Commission.

Issued September 6, 1973.

[SEAL] KENNETH R. MASON, *Secretary.*

[FR Doc.73-19322 Filed 9-11-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 339]

ASSIGNMENT OF HEARINGS

SEPTEMBER 7, 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-C-7901, North American Van Lines, Inc.—Investigation and Revocation of Certificates, Procedural Conference now assigned September 10, 1973, at Washington, D.C., is cancelled and the hearing is continued to October 1, 1973 (3 weeks), at Fort Wayne, Ind., in a hearing room to be later designated.

MC 129171 Sub 11, Arthur Shelley, Inc., now assigned September 11, 1973, at San Francisco, Calif., is cancelled and application dismissed.

MC-C-6689, Victor Grothaus, D.B.A. Grothaus Express—Investigation and Revocation of Certificates, now assigned September 27, 1973, at Omaha, Nebr., is postponed indefinitely.

Ex Parte No. 295, Increased Freight Rates and Charges, 1973, Nationwide, now being assigned hearing September 24, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. 35825, Board of Trade of the City of Chicago V. The Akron, Canton & Youngstown Railroad Company, Et Al., now assigned October 23, 1973, at Chicago, Illinois, is postponed to January 7, 1974, at Chicago, Illinois, in a hearing room to be later designated.

MC-61955, Centropolis Transfer Co., Inc., now assigned September 19, 1973, at Jefferson City, Mo., is postponed indefinitely.

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

[FR Doc.73-19413 Filed 9-11-73;8:45 am]

[Sec. 5a Application No. 2; Amendment No. 23]

BURLINGTON NORTHERN, INC.

Western Railroad Traffic Association Agreement

AUGUST 30, 1973.

The Commission is in receipt of an application in the above-entitled proceeding for approval of an amendment to the agreement therein approved.

Filed Aug. 6, 1973 by J. M. Souby, Jr., 222 South Riverside Plaza, Suite 1200, Chicago, Ill. 60606, Attorney-in-Fact, and J. D. Feeney, 222 South Riverside Plaza, Suite 1200, Chicago, Ill. 60606.

The amendments involve: Make the representative of the Burlington Northern, Inc., permanent chairman of the Northern Lines Committee and of the Freight Traffic Committee with that carrier bearing the expenses of the committee, in lieu of monthly rotation with the Soo Line Railroad Company (article VII section 9 (f)(3) and (h)); and add Helena, Ark., as a point within the jurisdiction of the Southwestern Freight Bureau in respect to traffic in defined official and southern territory by deletion of exception (2) of article VIII, section 3(b).

The complete amended application may be inspected at the Office of the Commission in Washington, D.C.

Any person desiring to protest and participate in this proceeding shall notify the Commission in writing on or before October 2, 1973. As provided by the General Rules of Practice of the Commission, persons other than applicants should fully disclose their interest, and the position they intend to take with respect to the application. Otherwise, the Commission, in its discretion, may proceed to investigation and determine the matters involved without public hearing.

By the Commission.

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

[FR Doc.73-19411 Filed 9-11-73;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

SEPTEMBER 7, 1973.

An application, as summarized below, has been filed requesting relief from the requirements of Section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 1100.40 of the General Rules of Practice (49 CFR 1100.40) and filed on or before September 27, 1973.

FSA No. 42744—*Soda Ash to Freeport, Texas.* Filed by Southwestern Freight Bureau, Agent (No. B-427), for interested rail carriers. Rates on soda ash, dense, in bulk, in covered hopper cars, as described in the application, from Alchem, Stauffer, and Westvaco, Wyoming, to Freeport, Texas.

Grounds for relief—Rate relationship.

Tariff—Supplement 165 to Southwestern Freight Bureau, Agent, tariff 270-F, I.C.C. No. 4832. Rates are published to become effective on October 13, 1973.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19414 Filed 9-11-73;8:45 am]

[No. 35889]

ILLINOIS CENTRAL GULF RAILROAD CO.

Electric Commuter Train Fares

Order.—At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 6th day of September 1973.

By petition filed on August 20, 1973, the Illinois Central Gulf Railroad Company, a common carrier by railroad operating within the State of Illinois, avers that the Illinois Commerce Commission has refused to authorize or permit increases in its commuter passenger fares over certain routes to and from Chicago in in intrastate commerce in Illinois, on which commuter lines it has incurred operating deficits due to the level of the intrastate commuter fares and said intrastate fares thereby constituting a burden on interstate commerce. Specifically, it seeks to increase fares by a revision of its mileage scale of fares to conform to the mileage scale of the Chicago South Shore and South Bend Railroad Company, and to be applied over respondent's routes between Chicago and Richton, Ill. (28.9 one-way miles), South Chicago, Ill. (12.6 one-way miles), and Blue Island, Ill. (18.7 one-way miles).

Wherefore, and for good cause:

It is ordered, That pursuant to section 13 of the Interstate Commerce Act, an investigation be, and it is hereby instituted into the matters and things presented in the said petition to determine whether the present intrastate commuter fares charged by petitioner to and from Chicago, which are described more particularly in the petition, are in any manner unlawful under section 13(4) of the act and, if warranted, to enter an appropriate order thereunder.

It is further ordered, That the Illinois Central Gulf Railroad be, and it is hereby, made respondent in this proceeding.

It is further ordered, That, since consideration of record in the above-entitled proceeding indicates that this matter should be set for hearing, the said proceeding be, and it is hereby, referred to an Administrative Law Judge for hearing commencing on Tuesday, October 9, 1973, at 9:30 a.m., d.s.t. (or 9:30 a.m. United States Standard Time, if that time is observed) at Chicago, Illinois, in a hearing room to be later designated.

It is further ordered, That on or before Monday, September 24, 1973, the respondent shall make available for the record herein and for the inspection of all parties of record in this proceeding the data upon which it has relied to conclude that the proposed action will or will not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

It is further ordered, That the respondent shall file with the Commission on or before Monday, September 24, 1973, three copies of its cost studies and any other studies it expects to submit into evidence at the hearing, and, at the same time, serve copies of said studies upon protestants requesting such studies and indicate where the underlying work papers will be available for inspection by any person desiring to do so during normal business hours; and respondent shall also make copies of such studies available at the hearing to any party, requesting such studies, as well as making copies of its underlying work papers to the studies available for inspection at the scheduled hearing.

And it is further ordered, That a copy of this order be served upon the respondent; that the State of Illinois be notified of this proceeding by sending a copy of this order by certified mail to the Governor of Illinois and a copy to the Illinois Commerce Commission, Springfield, Ill.; that notice of this proceeding be given to the general public by depositing a copy of this order in the office of the Commission's Secretary and by filing a copy with the Director, Office of the Federal Register for publication in the FEDERAL REGISTER; and that all individual protestants whose protests have been received on or prior to date of the instant order be served a copy thereof.

By the Commission, Division 2.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19408 Filed 9-11-73;8:45 am]

[Notice No. 30]

MOTOR CARRIER ALTERNATE ROUTE DEVIATION NOTICES

SEPTEMBER 7, 1973.

The following letter-notices of proposals (except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application), to operate over deviation routes for operating convenience only have been filed with the Interstate Commerce Commission under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969 (49 CFR 1042.4(c)(11)), and notice thereof to all interested persons is hereby given as provided in such rules (49 CFR 1042.4(c)(11)).

Protests against the use of any proposed deviation route herein described may be filed with the Interstate Commerce Commission in the manner and form provided in such rules (49 CFR 1042.4(c)(12)) at any time, but will not operate to stay commencement of the proposed operations unless filed within 30 days from the date of Publication.

Successively filed letter-notices of the same carrier under the Commission's Revised Deviation Rules—Motor Carriers of Property, 1969, will be numbered consecutively for convenience in identification and protests, if any, should refer to such letter-notices by number.

MOTOR CARRIERS OF PROPERTY

No. MC-29910 (Deviation No. 26), ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 S. 11th Street, Fort Smith, Arkansas 72901, filed August 17, 1973. Carrier proposes to operate as a *common carrier,* by motor vehicle, of *general commodities,* with certain exceptions, over a deviation route as follows: From Indianapolis, Ind., over Interstate Highway 69 to Fort Wayne, Ind., thence over U.S. Highway 24 to Toledo, Ohio, and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Akron, Ohio, over unnumbered highway (formerly portion U.S. Highway 224) to junction U.S. Highway 224, thence over U.S. Highway 224 to Findlay, Ohio, thence over unnumbered highway (formerly portion U.S. Highway 25) to junction U.S. Highway 25, thence over U.S. Highway 25 to junction unnumbered highway (formerly portion U.S. Highway 25) near Lima, Ohio, thence over unnumbered highway to Wapakoneta, Ohio, thence over U.S. Highway 33 to junction Ohio Highway 29, thence over Ohio Highway 29 to the Ohio-Indiana State line, thence over Indiana Highway 67 to junction U.S. Highway 36, thence over U.S. Highway 36 to Indianapolis, Ind., and (2) from Toledo, Ohio, over U.S. Highway 25 to Bairdstown, Ohio, thence over unnumbered highway (formerly portion U.S.

Highway 25) via Findlay, Ohio, to junction U.S. Highway 25 near Bluffton, Ohio, thence over U.S. Highway 25 to Lima, Ohio, and return over the same routes, restricted in (1) and (2) above to the transportation of traffic moving to or from points in Ohio.

No. MC-29910 (Deviation No. 27), ARKANSAS-BEST FREIGHT SYSTEM, INC., 301 S. 11th Street, Fort Smith, Arkansas 72901, filed August 28, 1973. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From Springfield, Mo., over U.S. Highway 60 to junction U.S. Highway 63, thence over U.S. Highway 63 to junction Interstate Highway 55, thence over Interstate Highway 55 to junction Interstate Highway 40, thence over Interstate Highway 40/U.S. Highway 70 to Asheville, N.C., and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over pertinent service routes as follows: (1) from Akron, Ohio, over Ohio Highway 5 to Wooster, Ohio, thence over Ohio Highway 3 to Mount Vernon, Ohio, thence over Ohio Highway 13 to Newark, Ohio, thence over Ohio Highway 16 to Columbus, Ohio, thence over Ohio Highway 440 (formerly portion U.S. Highway 40) to junction U.S. Highway 40, thence over U.S. Highway 40 to St. Louis, Mo. (also from Brandt, Ohio, over Ohio Highway 201 to Dayton, Ohio, thence over Ohio Highway 49 to junction U.S. Highway 40, thence over U.S. Highway 40 to St. Louis), thence over U.S. Highway 66 via Carthage, Mo., to Afton, Okla. (also from Carthage over U.S. Highway 71 to junction Interstate Highway 44 (formerly U.S. Highway 166), thence over Interstate Highway 44 to Joplin, Mo., thence over Missouri Highway 43 to junction U.S. Highway 60, thence over U.S. Highway 60 to Afton), thence over U.S. Highway 66 to Tulsa, Okla., serving the intermediate points of Barberton, Newark, Columbus, Springfield, and Dayton, Ohio; Richmond, Indianapolis, and Terre Haute, Ind.; East St. Louis, Ill.; and St. Louis and Springfield, Mo., restricted to preclude the handling of traffic originating at or destined to St. Louis, Mo., and points in the St. Louis, Mo.-East St. Louis, Ill., commercial zone, and which moves to or from Cincinnati, Ohio, and points in the Cincinnati, Ohio commercial zone, (2) from Atlanta, Ga., over U.S. Highway 41 to Chattanooga, Tenn. (also from Atlanta over Interstate Highway 75 to Chattanooga), thence over U.S. Highway 41 to Nashville (also from Chattanooga over Interstate Highway 24 to Nashville), thence over U.S. Highway 31W to Louisville, Ky. (also over Interstate Highway 65 to Louisville), thence over Interstate Highway 65 to Indianapolis, Ind., serving (a) all intermediate and off-route points in that part of Georgia on and north of a line beginning at the Alabama-Georgia State line and extending along Georgia Highway 20 to junction U.S. Highway 41, thence along U.S. Highway 41 to Atlanta, Ga., thence along U.S. Highway 29 to Athens, Ga., and thence along U.S. Highway 78 to the Georgia-South Carolina State line, and (b) the intermediate point of Louisville, Ky., restricted to the transportation of traffic moving from, to, and through Georgia points as described in (a) of the service paragraph immediately above, or Wilmington, N.C.; Lowland, Tenn.; or points in that part of North Carolina on and west of U.S. Highway 1; or points in South Carolina, (3) from Louisville, Ky., over U.S. Highway 60 to junction Kentucky Highway 151, thence over Kentucky Highway 151 to junction U.S. Highway 127, thence over U.S. Highway 127 to Danville, Ky., thence over U.S. Highway 150 to Mt. Vernon, Ky., serving (a) those intermediate points in Buncombe County, N.C., restricted to the transportation of traffic moving from, to, or through Knoxville or Newport, Tenn.; Ashland, Lexington, Louisville, Newport or Fort Thomas, Ky.; Cincinnati or Hamilton, Ohio; Charleston, Columbia, Greenwood, Greenville, or Spartanburg, S.C.; or those in that part of Georgia on and north of a line beginning at the Alabama-Georgia State line and extending along Georgia Highway 20 to junction U.S. Highway 41, thence along U.S. Highway 41 to Atlanta, Ga., thence along U.S. Highway 29 to Athens, Ga., thence along U.S. Highway 78 to the Georgia-South Carolina State line, (b) the intermediate point of Newport, Ky., restricted in both instances to the transportation of traffic moving from, to or through Lowland, Tenn., or points in Buncombe, Haywood, Henderson, or Graham Counties, N.C., and (c) the junction of U.S. Highway 60 and Kentucky Highway 151, the junction of Kentucky Highway 151 and U.S. Highway 127, Danville, Stanford, and Mt. Vernon, Ky., and the junction of North Carolina Highway 208 and combined U.S. Highways 25 and 70 (near Walnut Gap, N.C.) for purposes of joinder only, and (4) from Akron, Ohio, over Ohio Highway 241 to Massillon, Ohio, thence over U.S. Highway 21 to Marietta, Ohio, thence over Ohio Highway 7 to the Ohio-West Virginia State line at or near Parkersburg, W. Va., thence over U.S. Highway 21 to Charleston, W. Va., thence over Interstate Highway 77 to junction U.S. Highway 460 (near Princeton, W. Va.), thence over U.S. Highway 460 to junction Virginia Highway 100, thence over Virginia Highway 100 to junction U.S. Highway 221, thence over U.S. Highway 221 to junction U.S. Highway 52, thence over U.S. Highway 52 to Winston-Salem, N.C., thence over U.S. Highway 421 to Greensboro, N.C., thence over U.S. Highway 70 to Raleigh, N.C., thence over U.S. Highway 401 to junction U.S. Highway 421, thence over U.S. Highway 421 to Wilmington, N.C. (also from Winston-Salem over U.S. Highway 52 to Lexington, N.C., thence over U.S. Highway 64 to Asheboro, N.C., thence over U.S. Highway 220 to junction U.S. Highway 74, thence over U.S. Highway 74 to Wilmington), also from Akron, Ohio, over Ohio Highway 5 to Wooster, Ohio, thence over Ohio Highway 3 to Columbus, Ohio, thence over U.S. Highway 40 to Springfield, Ohio, thence over Ohio Highway 4 to Dayton, Ohio, thence over U.S. Highway 25 to Cincinnati, Ohio, thence over U.S. Highway 25 to Corbin, Ky., thence over U.S. Highway 25-E to Morristown, Tenn., thence over U.S. Highway 11-E to Greenville, Tenn., thence over Tennessee Highway 70 to the Tennessee-North Carolina State line, thence over North Carolina Highway 208 to junction combined U.S. Highways 25 and 70, thence over combined U.S. Highways 25 and 70 to Asheville, N.C., thence over U.S. Highway 74 to junction U.S. Highways 74 and 220 near Rockingham, N.C., thence over U.S. Highway 74 to Wilmington, N.C., serving (a) the intermediate points of Columbus, Springfield, Dayton, and Cincinnati, Ohio; and the off-route points of Middletown, Hamilton, Norwood, Troy, West Carrollton, and Miamisburg, Ohio, all restricted to the transportation of traffic moving from, to or through Wilmington, N.C., or those points in North Carolina on and west of U.S. Highway 1, or points in South Carolina, or Augusta or Savannah, Ga., or Lowland, Tenn., (b) those intermediate and off-route points in North Carolina on and west of U.S. Highway 1 restricted to the transportation of traffic moving from, to or through Akron, Columbus, Springfield, Troy, Dayton, West Carrollton, Miamisburg, Middletown, Hamilton, Norwood, or Cincinnati, Ohio; or Augusta or Savannah, Ga.; or points in South Carolina; or Lowland, Tenn., and (c) the junction of U.S. Highways 62 and 21, Ripley and Charleston, W. Va., the junction of Interstate Highway 77 and U.S. Highway 460 (near Princeton, W. Va.); Lexington, Mt. Vernon, and Corbin, Ky.; Morristown, Tenn.; and the junction of North Carolina Highway 208 and combined U.S. Highways 25 and 70 (near Walnut Gap, N.C.) for purposes of joinder only, and return over the same routes.

No. MC-98327 (Sub-No. 3) (Deviation No. 1), SYSTEM 99, 8001 Capwell Drive, Oakland, California 94621, filed August 22, 1973. Carrier proposes to operate as a *common carrier*, by motor vehicle, of *general commodities*, with certain exceptions, over a deviation route as follows: From the junction of Interstate Highway 5 (formerly U.S. Highway 99) and California Highway 14 (near Sylmar, Calif.) over California Highway 14 to junction U.S. Highway 395 (near Inyokern, Calif., thence over U.S. Highway 395 to junction Nevada Highway 3 (Topaz Junction, Nev.), and return over the same route, for operating convenience only. The notice indicates that the carrier is presently authorized to transport the same commodities, over a pertinent service as follows: From the junction of Interstate Highway 5 (formerly

U.S. Highway 99) and California Highway 14 (near Sylmar, Calif.) over Interstate Highway 5 to junction California Highway 99 (formerly U.S. Highway 99) north of Wheeler Ridge, Calif., thence over California Highway 99 to junction U.S. Highway 50 (near Sacramento, Calif.), thence over U.S. Highway 50 to junction U.S. Highway 395 (near Carson City, Nev.), thence over U.S. Highway 395 to junction Nevada Highway 3 (Topaz Junction, Nev.), and return over the same route, serving all intermediate points.

By the Commission.

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

[FR Doc.73-19416 Filed 9-11-73;8:45 am]

[Notice No. 71]

MOTOR CARRIER APPLICATIONS AND CERTAIN OTHER PROCEEDINGS

SEPTEMBER 7, 1973.

The following publications (except as otherwise specifically noted, each applicant (on applications filed after March 27, 1972) states that there will be no significant effect on the quality of the human environment resulting from approval of its applicaton), are governed by the new Special Rule 1100.247 of the Commission's rules of practice, published in the FEDERAL REGISTER, issue of December 3, 1963, which became effective January 1, 1964.

The publications hereinafter set forth reflect the scope of the applications *as filed* by applicant, and may include descriptons, restrictions, or limitations which are not in a form acceptable to the Commission. Authority which ultimately may be granted as a result of the applications here noticed will not necessarily reflect the phraseology set forth in the application as filed, but also will eliminate any restrictions which are not acceptable by the Commission.

MOTOR CARRIERS OF PROPERTY

No. MC 135423 (Sub-No. 2) (REPUBLICATION) filed November 24, 1972, published in the FR issue of January 11, 1973, and republished this issue

Applicant: FRANKLIN GORDON, Rural Route 1, Manilla, Ind. 46150. Applicant's representative: Robert W. Loser II, 1009 Chamber of Commerce Building, Indianapolis, Ind. 46204. An Order of the Commission, Review Board Number 4, dated August 16, 1973, and served August 31, 1973, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier*, by motor vehicle, over irregular routes, (1) of *animal and poultry feed and feed ingredients*, from Rushville, Ind., to points in Ohio and points in Anderson, Boone, Bourbon, Bracken, Bullitt, Campbell, Carroll, Fayette, Franklin, Gallatin, Grant, Hardin, Harrison, Henry, Jefferson, Jessamine, Kenton, Larue, Marion, Mason, Mercer, Nelson, Nicholas, Oldham, Owen, Pendleton, Robertson, Scott, Shelby, Spencer, Trimble, Washington, and Woodford Counties, Ky., (2) of *dry feed ingredients* from Dayton, Ohio to Rushville, Ind., and (3) of *liquid feed ingredients*, from Cincinnati, Ohio, to Rushville, Ind., under a continuing contract or contracts with Cargill, Inc., Nutrena Feed Division, of Minneapolis, Minn., will be consistent with the public interest and the national transportation policy, subject to the condition that to the extent the authority described herein duplicates the authority now held by applicant, it shall not be construed as conferring more than a single operating right; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 138190 (REPUBLICATION) filed November 2, 1972, published in the FR issue of December 14, 1972, and republished this issue.

Applicant: DARCI TRUCKING, INC., 3137 East North Avenue, Fresno, Calif. 93725. Applicant's representative: Donald Murchison, 9454 Wilshire Boulevard, Suite 400, Beverly Hills, Calif. 90212. An Order of the Commission, Operating Rights Board, dated August 15, 1973, and served September 5, 1973, finds that operation by applicant, in interstate or foreign commerce, as a *contract carrier* by motor vehicle, over irregular routes, (1) of *aquariums, accessories*, and *supplies* (a) from Compton, Calif., to points in Arizona, Colorado, Idaho, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, Washington, and Wyoming, and (b) between Compton, Calif., and East Paterson, N.J., and (2) *returned shipments* of aquariums, accessories, and supplies from points in the destination States in (1)(a) above to Compton, Calif., under a continuing contract with the Metaframe Corporation, of Compton, Calif., will be consistent with the public interest and the national transportation policy; that applicant is fit, willing, and able properly to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a permit in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

No. MC 138540 (REPUBLICATION) filed March 5, 1973, published in the FR issue of April 19, 1973, and republished this issue.

Applicant: BUTLER REFRIGERATED DELIVERY, INC., 609 Perry Highway, Pittsburgh, Pa. 15229. Applicant's representative: Arthur J. Diskin, 806 Frick Building, Pittsburgh, Pa. 15219. An Order of the Commission, Operating Rights Board, dated August 14, 1973, and served September 5, 1973, finds that the present and future public convenience and necessity require operation by applicant, in interstate or foreign commerce, as a *common carrier* by motor vehicle, over irregular routes, of *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, in vehicles equipped with mechanical refrigeration, from points in Butler County, Pa., to points in Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Fayette, Green, Indiana, Lawrence, Somerset, Washington, and Westmoreland Counties, Pa.; that applicant is fit, willing, and able properly to perform such service and to conform to the requirements of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Because it is possible that other parties who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice of the authority described above, issuance of a certificate in this proceeding will be withheld for a period of 30 days from the date of this publication of the authority actually granted, during which period any proper party in interest may file an appropriate petition for intervention or other relief in this proceeding setting forth in detail the precise manner in which it has been so prejudiced.

NOTICE FOR FILING OF PETITION

No. MC 7832 (Sub-No. 16) (NOTICE OF FILING OF PETITION TO ADD AN ADDITIONAL CONTRACTING SHIPPER), filed August 29, 1973. Petitioner: SAM LOWENSTEIN AND STANLEY LOWENSTEIN, doing business as SUPER M FOODS DELIVERY, 411A N. Wood Avenue, Linden, N.J. 07036. Petitioner's representative: Bert Collins, Suite 6193, 5 World Trade Center, New York, N.Y. 10006. Petitioner presently holds a motor *contract carrier* permit in No. MC 7832 (Sub-No. 16) issued July 27, 1973, authorizing transportation, over irregular routes, of *such merchandise* as is dealt in by wholesale, retail, chain grocery, department stores, and food business houses (except commodities in bulk), and in connection therewith, *equipment, materials, and supplies* used in the conduct of such business (except commodities in bulk), between points in New Jersey, Pennsylvania, Maryland, New

York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Delaware, Virginia, and Washington, D.C., under a continuing contract or contracts with Food Fair Stores, Inc., of Philadelphia, Pa. By the instant petition, petitioner seeks to add Lever Brothers Company as an additional contracting shipper to the authority described above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views, or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 80430 (Sub-No. 126) (NOTICE OF FILING OF PETITION FOR ELIMINATION OF A RESTRICTION), filed August 10, 1973. Petitioner: GATEWAY TRANSPORTATION CO., INC., 455 Park Plaza Drive, P.O. Box 851, La Crosse, Wis. 54601. Petitioner's representative: Drew L. Carraway, 618 Perpetual Building, Washington, D.C. 20004. Petitioner presently holds a motor *common carrier* certificate in No. MC 80430 (Sub-No. 126) issued May 20, 1969, authorizing transportation, over irregular routes, of *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Nashville, Tenn., and Atlanta, Ga., serving the intermediate and off-route points located in Davidson County, Tenn.: (1) From Nashville over U.S. Highway 41 to Atlanta, and return over the same route; and (2) from Nashville over Interstate Highway 24 to junction Interstate Highway 75, thence over Interstate Highway 75 to Atlanta and return over the same route, restricted in (1) and (2) above against the transportation of traffic originating at points within the Chicago, Ill., Commercial Zone and destined to points within the Atlanta, Ga., Commercial Zone, and against the transportation of traffic originating at points within the Atlanta, Ga., Commercial Zone and destined to points within the Chicago, Ill., Commercial Zone. By the instant petition, petitioner seeks to eliminate the above stated restriction. Any interested person or persons desiring to participate may fil ean original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

No. MC 84444 (Sub-Nos. 3 and 6) (NOTICE OF FILING OF PETITION TO ADD A CONTRACTING SHIPPER), filed August 24, 1973. Petitioner: McCORMACK'S EXPRESS, a Corporation, 3rd and Winslow, Camden, N.J. 08104. Petitioner's representative: William H. McCormick (same address as petitioner). Petitioner presently holds motor contract carrier permits in No. MC 84444 (Sub-Nos. 3 and 6) issued March 11, 1966, and August 7, 1970, respectively, authorizing as pertinent, transportation over irregular routes, of in Sub-No. 3, *paperboard, wallboard, fire extinguishing materials, waste paper, licorice root, licorice mass, powdered licorice, syrup, and wood pulp* (except liquids in tank vehicles), from Camden, N.J., to points in Delaware, those in Maryland in and east of Frederick County, and those in Pennsylvania in and east of Bradford, Sullivan, Columbia, Montour, Northumberland, Dauphin, and York Counties, Pa.; *and waste paper and such supplies and equipment* as are used by a licorice and paper board manufacture (except liquids in tank vehicles), from the destination points named above, to Camden, N.J., restricted to a transportation service to be performed under a continuing contract or contracts with MacAndrews & Forbes Co., of Camden, N.J.; and in Sub-No. 6, of *paperboard, wallboard, fire extinguishing materials, waste paper, licorice root, licorice mass, powdered licorice, syrup, wood pulp, micronutrients, and supplies and equipment* used in the manufacture of licorice (except commodities in bulk, in tank vehicles), between Camden, N.J., on the one hand, and, on the other, points in Suffolk, Nassau, Orange, Westchester and Putnam Counties, N.Y., and points in Fairfield County and Weston, Conn., restricted to a transportation service to be performed under a continuing contract or contracts with MacAndrews & Forbes, of Camden, N.J. By the instant petition, petitioner seeks to add Kaiser Gypsum Co., Inc., as an additional contracting shipper to the authority described in the two permits above. Any interested person or persons desiring to participate may file an original and six copies of his written representations, views or arguments in support of or against the petition within 30 days from the date of publication in the FEDERAL REGISTER.

APPLICATION FOR CERTIFICATE OR PERMIT WHICH IS TO BE PROCESSED CONCURRENTLY WITH APPLICATION UNDER SECTION 5 GOVERNED BY SPECIAL RULE 240 TO THE EXTENT APPLICABLE

No. MC 121555 (Sub-No. 5), filed July 3, 1973. Applicant: PARCEL DISPATCH, INC., 305 North Senate Avenue, Indianapolis, Ind. 46204. Applicant's representative: Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Merchandise, equipment, and supplies*, sold, used, or distributed by a manufacturer of cosmetics (except (a) glass containers; (b) enclosures for glass containers; (c) fiberboard boxes; and (d) commodities in bulk) between Cincinnati, Ohio, on the one hand, and, on the other, points in Indiana.

NOTE.—Applicant states that the requested authority cannot be tacked with its existing authority. This instant application is a matter directly related to the purchase proceeding in MC-F-11927, published in the FEDERAL REGISTER issue of July 19, 1973. If a hearing is deemed necessary, applicant requests it be held at Indianapolis, Ind., or Washington, D.C.

APPLICATIONS UNDER SECTIONS 5 AND 210a(b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under Sections 5(a) and 210a(b) of the Interstate Commerce Act and certain other proceedings with respect thereto (49 CFR 1.240).

MOTOR CARRIERS OF PROPERTY

No. MC-F-11920. (Correction) (YALE TRANSPORT CORP.—PURCHASE—JOSEPH LUCARELLI, TRUSTEE FOR TRIPLE "M" TRANSPORT CO.), published in the July 11, 1973, issue of the FEDERAL REGISTER on page 18509. Prior notice should have included the following states that vendee is authorized to operate in: Rhode Island, New York, New Jersey, Florida, Delaware, Pennsylvania, and the District of Columbia.

No. MC-F-11975. Authority sought for purchase by FOOD TRANSPORT, INC., P.O. Box 1041, York, PA 17405, of the operating rights of KENNETH E. ALLISON, Hungerford (York County), PA 17361, and for acquisition by STEWARD LLOYD, 2100 Pleasant View Drive, York, PA 17402, and PAUL HIVELY, 287 Dew Drop Road, York, PA 17402, of control of such rights through the purchase. Applicants' attorney: CHRISTIAN V. GRAF, 407 North Front Street, Harrisburg, PA 17101. Operating rights sought to be transferred: *Soybean meal, linseed meal, alfalfa meal, corn gluten feed, corn gluten meal, hominy feed, distillers byproducts, feed grade urea, wheat midds*, and *wheat bran*, as a *common carrier*, over irregular routes, from Frankfort and Indianapolis, Ind., Decatur, Ill., Fostoria and Bellevue, Ohio, and Lair, Ky., to points in New Castle County, Del., points in Cecil, Harford, Baltimore, and Carroll Counties, Md., and that part of Frederick County, Md., on and east of a line beginning at the Maryland-Virginia State line near Tuscarora, Md., and extending along an unnumbered highway to junction U.S. Highway 15, thence along U.S. Highway 15 to junction Maryland Highway 26, thence along Maryland Highway 26 to junction Maryland Highway 194, and thence along Maryland Highway 194 to the Maryland-Pennsylvania State Line near Littlestown, Pa., and points in that part of Pennsylvania on, east and south of a line beginning at the Maryland-Pennsylvania State line near Littlestown, Pa., and extending along Pennsylvania Highway 194 to junction U.S. Highway 15, thence along U.S. Highway 15 to junction Interstate Highway 80, and thence along Interstate Highway 80 to the Pennsylvania-New Jersey State line near Stroudsburg, Pa., *Fertilizer*, from Baltimore, Md., to points and places in York, Adams and Franklin Counties, Pa., *Feeds*, from Lewes, Del., to points in York, Adams and Franklin Counties, Pa., *Waste paper*, from New York, N.Y., to Bently Springs, and Freeland, Md., and points and places in

Maryland within one and one-half miles of Freeland, *Paper*, from Bently Springs, and Freeland, Md., and points and places in Maryland within one and one-half miles of Freeland to New York, N.Y., *Canned foods*, from Hungerford, Pa., to certain specified points in Connecticut, Mass., Mich., Indianapolis, and Gary, Indiana, and Chicago, Ill., *Raw onions*, from Zooland, Mich., and points within 50 miles of Zooland, to Hungerford, Pa., *Paper*, from Freeland, Md., and points within one and one-half miles of Freeland, to certain specified points in New Jersey, and Pennsylvania, *Waste paper*, from certain specified points in New Jersey, Pennsylvania, to Freeland, Md., and points within one and one-half miles of Freeland, *Empty containers and closures*, from Baltimore, Md., to Hungerford and New Freedom, Pa., Vendee is authorized to operate as a *common carrier* in Pennsylvania, Florida, Maryland, Alabama, Georgia, New Jersey, Louisiana, New York, Mississippi, Texas, West Virginia, Virginia, Delaware, District of Columbia, Arkansas, Kentucky, Tennessee, Rhode Island, Connecticut, Massachusetts, North Carolina, Ohio, and South Carolina. Application has not been filed for temporary authority under section 210a(b).

No. MC–F–11977. Authority sought for control by CHEMICAL EXPRESS COMPANY, 1200 Simons Bldg., Dallas, TX 75201, of ATLAS TRUCK LINE, INC., P.O. Box 9848, Houston, TX 77015, and for acquisition by A. POLLARD SIMONS, AND HERMAN J. RUPPEL, both of Dallas, TX 75201, AND CURTIS W. MEWBOURNE, 330 Citizens Bank Bldg., Tyler, TX 75701, of control of ATLAS TRUCK LINE, INC., through the acquisition by CHEMICAL EXPRESS COMPANY. Applicants' attorneys: Leroy Hallman, 4555 First Nat'l. Bank Bldg., Dallas, TX 75202, and J. Philip Wandel, 745 Memorial Professional Bldg., 1010 Louisiana, Houston, TX 77002. Operating rights sought to be controlled: *Machinery, equipment, materials, and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas, and etc., as a *common carrier* over irregular routes, between points in Arkansas, Louisiana, Mississippi, Oklahoma, and Texas, between points in Kansas and Oklahoma, between Forth Worth, Tex., and points in Texas within 250 miles of Fort Worth, on the one hand, and, on the other, points in Lea and Eddy Counties, N. Mex., between Houston, Tex., on the one hand, and, on the other, points in Louisiana, from Houston, Tex., to points in Texas, between points in Oklahoma, on the one hand, and, on the other, certain specified points in North Dakota, and South Dakota, between points in Kansas, Oklahoma, and Texas, between points in Arkansas, Louisiana, Mississippi, and Texas, between points in Arkansas, Louisiana, Mississippi, Oklahoma and Texas, between points in Kansas and Oklahoma, between points in Texas, on the one hand, and, on the other, points in Colorado, Wyoming, Utah and Montana, between points in Oklahoma, on the one hand, and, on the other, certain specified points in North Dakota, between points in Kansas, Oklahoma and Texas, between points in Arkansas, Louisiana, Mississippi, and Texas, between points in Arkansas, Louisiana, Oklahoma, and Texas, between points in Kansas, Oklahoma, and Texas, between points in Texas, on the one hand, and, on the other, points in Colorado, Wyoming, Utah, and Montana, with restriction; *pipe*, other than pipe used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and etc., from Lone Star and Bond, Tex., to points in Arkansas, Kansas, Louisiana, Mississippi, Oklahoma, and Texas, from Lone Star and Bond, Tex., to points in Alabama (except Mobile and points in the commercial zone thereof as defined by the Commission), Georgia, Florida, and Tennessee (except Memphis and points in the commercial zone thereof as defined by the Commission); *pipe* other than oilfield pipe as described in "Mercer Extension," 74 M.C.C. 459, from the plant sites and warehouse facilities of Jones & Laughlin Steel Corporation, at or near Gainesville, Tex., to points in Arkansas, Louisiana, Missouri, Oklahoma, and Texas, with restriction; *structural steel, metal castings, reinforcing rods, and machinery, materials, supplies*, and *equipment* incidental to, or used in, the construction, development, operation, and maintenance of facilities for the discovery, development, and production of natural gas and petroleum, between Fort Worth, Tex., and points in Texas within 250 miles of Ft. Worth, on the one hand, and, on the other, certain specified points in Oklahoma, Louisiana, and Arkansas; *structural steel, metal castings*, and *reinforcing rods*, between Ft. Worth, Tex., and points in Texas within 250 miles of Ft. Worth, Tex., on the one hand, and, on the other, those in Lea and Eddy Counties, N. Mex.; *oilfield equipment*, between Ft. Worth, Tex., on the one hand, and, on the other, oilwell; *electrical transformers and electrical transformer coils* and *cases*, between points in Texas, Arkansas, and Louisiana within 125 miles of Texarkana; *steel water tanks*, and *materials* and *supplies* used in the construction of steel water tanks, between points in Texas, Oklahoma, Louisiana, Arkansas and New Mexico; *liquefied gas tanks, gasoline tanks* and *machinery*, minimum weight 10,000 lbs. for each tank or machine, between points in Texas, on the one hand, and, on the other, points in Louisiana, Arkansas, and Mississippi; *earth drilling machinery* and *equipment*, and *machinery, equipment, materials, supplies* and *pipe* incidental to, used in, or in connection with (a) the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment, (b) the completion of holes or wells drilled, (c) the production, storage, and transmission of commodities resulting from drilling operations at well or hole sites and (d) the injection or removal of commodities into or from holes or wells, between points in Arkansas, Louisiana, Mississippi, and Texas, between points in Kansas, Oklahoma, and Texas, between points in Arkansas, Louisiana, Mississippi, Oklahoma, and Texas, between points in Kansas and Oklahoma, between points in Texas, on the one hand, and, on the other, points in Colorado, Wyoming, Utah, and Montana, between points in Oklahoma, on the one hand, and, on the other, points in North Dakota, on the west of North Dakota Highway 30, and those points in South Dakota, west of the Missouri River, and on the North of U.S. Highway 14; *cement-asbestos pipe and fittings and couplings* therefor when transported in the same vehicle therewith, except when such pipe fittings and couplings are intended for use in pipelines for the transmission of gas, petroleum, and petroleum products, from Hillsboro, Tex., to points in Arkansas, Colorado, Kansas, Louisiana, Mississippi, New Mexico, and Oklahoma, with restriction; *cement asbestos pipe and plastic pipe*, from the plant site of Cement Asbestos Products Company, subsides of Woodward Company, at Van Buren, Ark., to points in Alabama, Colorado, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Nebraska, New Mexico, North Dakota, Missouri, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming; *tubing, other than oilfield tubing*, from the plant site of Gulf States Tube Corporation at Rosenburg, Tex., to points in Arkansas, Louisiana, Mississippi, New Mexico, Oklahoma, and Texas. CHEMICAL EXPRESS COMPANY holds no authority from this Commission. However, it is affiliated with (1) CHEMICAL EXPRESS CARRIERS, INC., (2) QUALITY TRANSPORT, INC., AND (3) CEMENT TRANSPORTS, INC., all of 1200 Simons Bldg., Dallas, TX 75201, which are authorized to operate as *common carriers* in (1) Texas, New Mexico, Arkansas, Louisiana, Oklahoma, Colorado, Kansas, Alabama, Mississippi, Missouri, North Carolina, South Carolina, Wisconsin, Florida, Nebraska, Tennessee, Arizona, Utah, Georgia, Illinois, Indiana, Ohio, Kentucky Michigan, New Jersey, and Pennsylvania, (2) Louisiana, Florida, Alabama, and Mississippi, and (3) Texas, New Mexico, and Oklahoma. Application has not been filed for temporary authority under section 210a(b).

MC–F–11978. Authority sought for purchase by SMITH'S TRANSFER CORPORATION, P.O. Box 1000, Staunton, Va. 24401, of a portion of the operating rights and property of FRED OLSON MOTOR SERVICE COMPANY, 6022 West State Street, Milwaukee, Wi. 53213, and for acquisition by R. R. SMITH, and R. P. HARRISON, P.O. Box 1000, Staun-

ton, Va. 24401, of control of such rights through the purchase. Applicant's attorney: DAVID G. MACDONALD, Suite 502, Solar Building, 1000 16th Street NW., Washington, D.C. 20036. Operating rights sought to be transferred: *General commodities*, as a *common carrier* over regular routes with exceptions, between Chicago, Ill., and Milwaukee, Wis., serving all intermediate points, and off-route points in Cook and Lake Counties, Ill., and Milwaukee County, Wis., over one alternate route for operating convenience only. *General commodities* as a *common carrier* over irregular routes with exceptions between certain specified points in Illinois, Indiana, and Wisconsin, between Chicago, Ill., on the one hand, and, on the other, Indiana points indicated in the Chicago, Ill., Commercial Zone as defined by the Commission, between points in the Chicago, Ill., Commercial Zone and defined by the Commission, on the one hand, and, on the other, points in Cook, Lake, McHenry, DeKalb, Kane, DuPage, Kendall, Will, Grundy, and Kenkakee Counties, Ill., Vendee is authorized to operate as a *common carrier* in Virginia, West Virginia, Kentucky, South Carolina, North Carolina, New York, Pennsylvania, New Jersey, Maryland, Massachusetts, Connecticut, Rhode Island, Maine, New Hampshire, Vermont, Delaware, Indiana, Tennessee, Georgia, Illinois, Ohio, Missouri, Michigan, Kansas, Wisconsin, Minnesota, and the District of Columbia. Application has been filed for temporary authority under Section 210a(b).

MC-F-11979. Authority sought for purchase by MARTY'S EXPRESS, INC., 2335 Wheatsheaf Lane, Philadelphia, Pa. 19137, of a portion of the operating rights of THE MUSHROOM TRANSPORTATION COMPANY, INC., 845 E. Hunting Park Avenue, Philadelphia, Pa. 19124, and for acquisition by MARTIN MARANO, SR., 2335 Wheatsheaf Lane, Phila., Pa. 19137, of control of such rights through the purchase. Applicant's attorney: RONALD ERVAIS, 2520 PSFS Building, 12 S. 12th St., Phila., Pa. 19107. Operating rights sought to be transferred: *General commodities*, with exceptions as a *common carrier* over regular routes, between Lancaster, Pa., and Camden, N.J., serving all intermediate points, and the off-route point of Pomeroy, Pa.: from Lancaster over U.S. Highway 30 to junction Business Route U.S. Highway 30, thence over Business Route U.S. Highway 30 to junction U.S. Highway 30, thence over U.S. Highway 30 to Camden, and return over the same route. Vendee is authorized to operate as a *common carrier* in Pennsylvania, New Jersey, Delaware, and New York. Application has not been filed for temporary authority under section 210a(b).

No. MC-F-11980. Authority sought for purchase by COMMODORE CARTAGE COMPANY, 4930 Stecker Ave., Dearborn, Mich. 48126, of the operating rights of ALLIED INDUSTRIAL CONTRACTORS, INC., 300 E. Seven Miles Rd., Detroit, Mich. 48203, and for acquisition by SANTO MILITELLO, 20925 Austin Dr., Warren, Mich., and JOHN QUINN, JR., 25459 Elon Dr., Dearborn Heights, Mich., of control of such rights through the purchase. Applicants' attorneys: William B. Elmer, 21635 E. Nine Mile Rd., St. Clair Shores, Mich. 48080, and Wilhelmina Boersma, 1600 First Federal Bldg., Detroit, Mich. 48226. Operating rights sought to be transferred: Under a certificate of registration, in Docket No. MC-66585 (Sub-No. 6), covering the transportation of property, as a common carrier, in interstate commerce, within the State of Michigan. Vendee holds no authority from this Commission. However, it is affiliated with ALLIED DELIVERY SYSTEM, INC., 2201 Fenkell Ave., Detroit, Mich. 48238, which is authorized to operate as a common carrier in Michigan. Application has been filed for temporary authority under section 210a(b).

By the Commission.

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

[FR Doc.73-19406 Filed 9-11-73;8:45 am]

[Notice No. 350]

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 before October 20, 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-74146. By order of September 6, 1973, the Motor Carrier Board approved the transfer to Balvanz Trucking Co., Hubbard, Iowa, of Permit No. MC 119784 issued to Bestway, Inc., Farmington, Minn., authorizing the transportation of: Linseed meal and screenings, in bags and in bulk, between specified points and areas in Minnesota, Iowa, and Nebraska. Robert R. Rydell, Attorney, 900 Savings and Loan, Des Moines, Iowa 50309.

No. MC-FC-74648. By order of September 6, 1973, the Motor Carrier Board approved the transfer to Moore Transportation Co., Inc., Fort Worth, Tex., of the Certificate in No. MC-106676 and the Certificate of Registration in No. MC-106676 (Sub-No. 2) both issued September 18, 1970, to Orval Hall Trucking Co., A Corporation, Fort Worth, Tex., and acquired by Don Moore, Doing Business As Moore Transportation Company, Fort Worth, Tex., pursuant to order in MC-FC-73577, and operated by transferee herein pursuant to lease approved in MC-FC-35446, the former authorizing the transportation of machinery, materials, supplies, and equipment, incidental to, or used in the gas and petroleum industry, between and over specified routes to Uvalde, Houston, and Freeport, Tex., including points on the indicated portions of the highways specified, and the latter evidencing a right of the holder to engage in transportation in interstate or foreign commerce as described in Certificate No. 5051, dated November 18, 1954, transferred and reissued April 9, 1970, by the Railroad Commission of Texas. James W. Hightower, 136 Wynnwood Bldg., Dallas, Tex. 75224, Attorney for applicants.

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

[FR Doc.73-19415 Filed 9-11-73;8:45 am]

[Ex Parte No. MC-43]

O.N.C. FREIGHT SYSTEMS ET AL.

Lease and Interchange of Vehicles by Motor Carriers

Order.—At a session of the Interstate Commerce Commission, Motor Carrier Leasing Board, held at its office in Washington, D.C., on the 22d day of August 1973.

It appearing, that a petition has been filed by O.N.C. Freight Systems (MC-71459) Cashmere Transfer Co., Inc. (MC-121534) and Northwest Motor Freight Co., Inc. (MC-105937), under temporary common control, for waiver of paragraphs (a) (3) and (c) of § 1057.4 of the Lease and Interchange of Vehicles Regulations (49 CFR 1057) concerning equipment leased between petitioners;

It further appearing, that the motor carrier safety records of petitioners Cashmere Transfer Co., Inc. and Northwest Motor Freight Co., are such that the U.S. Department of Transportation recommends denial of the petition until there is substantial data that both are in satisfactory compliance with the motor carrier safety regulations;

It further appearing, that the financial and operational problems that have beset petitioners, Cashmere and Northwest, are in the process of being removed by the controlling petitioner O.N.C. and that the latter petitioner has replaced the defective equipment of the former petitioners and has instituted a safety program which includes safety meetings held throughout the entire system;

And it further appearing, that because of the efforts by petitioner O.N.C. to correct the situation with some immediate apparent success and with the assurances of substantial continued compliance and improvement;

It is ordered, That the waiver of paragraphs (a) (3) and (c) of section 1057.4

as set forth in the first paragraph of this order, be, and it is hereby granted, provided that the equipment is inspected on the day it is to be leased and found to meet the requirements of the safety regulations of the U.S. Department of Transportation and that petitioners remain in satisfactory compliance with those regulations and under common control.

By the Commission, Motor Carrier Leasing Board.

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

[FR Doc.73-19407 Filed 9-11-73;8:45 am]

[Ex Parte No. 295]

PUGET SOUND TRAFFIC ASSOCIATION

Increased Freight Rates and Charges, 1973, Nationwide

Order.—At a session of the Interstate Commerce Commission, Division 2, held at its office in Washington, D.C., on the 6th day of September 1973.

Upon consideration of the record in the above-entitled proceeding, including a request of Puget Sound Traffic Association, filed August 27, 1973, for oral hearing for the purpose of cross-examination of certain railroad witnesses who submitted verified statements herein, and good cause appearing therefor:

It is ordered, That this proceeding be, and it is hereby, referred to Administrative Law Judge Janice M. Rosenak for hearing commencing on September 24, 1973, at 9:30 a.m., District of Columbia Daylight Savings Time, at the office of the Interstate Commerce Commission, Washington, D.C., for the purpose of cross-examination of witnesses submitting verified statements on behalf of the respondents.

It is further ordered, That, not later than September 18, 1973, parties desiring to participate shall specify which witnesses they intend to cross-examine by notice, sent via first-class mail, to the Commission and to respondents at the following address: James L. Tapley, Esq., American Railroads Building, 1920 L Street NW., Washington, D.C. 20036.

And it is further ordered, That notice of this order 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 Federal Register.

By the Commission, Division 2.

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

[FR Doc.73-19410 Filed 9-11-73;8:45 am]

[No. MC-128273 (Sub-No. 127)]

SCHNEIDER TRANSPORT, INC., AND EAST TEXAS MOTOR FREIGHT LINES, INC.

Midwestern Express, Inc., Extension—Ripon, Calif.

Order.—At a session of the Interstate Commerce Commission, Division 1, Acting as an Appellate Division, held at its office in Washington, D.C., on the 27th day of August 1973.

Upon consideration of the record in the above-entitled proceeding, and of:

(1) Petition of Schneider Transport, Inc., protestant, filed May 18, 1973, for reconsideration;

(2) Petition of East Texas Motor Freight Lines, Inc., protestant, filed May 24, 1973, for reconsideration;

(3) Reply by applicant, filed June 13, 1973;

It appearing, that by report and order of March 13, 1973, in the above-entitled proceeding, the Commission, Review Board Number 2, (a) concluded that imposition of a tacking restriction in the proceeding was unwarranted, and (b) granted authority to applicant as requested in the application;

It further appearing, that the application as published in the FEDERAL REGISTER of April 3, 1972, stated that the requested authority could not be tacked with applicant's existing authority;

It further appearing, that the FEDERAL REGISTER notice of April 3, 1972, in this matter was incorrect in that the authority granted in this proceeding can in fact be tacked with applicant's existing authority, so as to permit a through service by applicant, from, to, or between points not included in the application;

It further appearing, that because it is possible that other persons, who have relied upon the notice of the application as published, may have an interest in and would be prejudiced by the lack of proper notice that the authority granted in this proceeding can be tacked with applicant's outstanding authority, a notice of the authority actually granted will be published in the FEDERAL REGISTER and issuance of a certificate will be withheld for a period of 30 days from the date of such publication, during which period any person with a proper interest may file an appropriate petition for leave to intervene in this proceeding setting forth in detail the precise manner in which he has been so prejudiced; and good cause appearing therefor:

It is ordered, That notice of the authority granted in this proceeding be published in the FEDERAL REGISTER.

It is further ordered, That the petitions be, and they are hereby, denied, for the reason that the findings of Review Board Number 2 are in accordance with the evidence and the applicable law, and that no sufficient or proper cause appears for reopening the proceeding for reconsideration or for granting any of the other relief sought.

It is further ordered, That unless compliance is made by applicant with the requirements of sections 215, 217, and 221 (c) of the Interstate Commerce Act, within 90 days after the date of service of this order, or within such additional time as may be authorized by the Commission, the grant of authority shall be considered as null and void, and the application shall stand denied in its entirety effective upon the expiration of the said compliance time.

By the Commission, Division 1, Acting as an Appellate Division.

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

[FR Doc.73-19409 Filed 9-11-73;8:45 am]

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federal register

WEDNESDAY, SEPTEMBER 12, 1973
WASHINGTON, D.C.

Volume 38 ■ Number 176

PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN RED RIVER VALLEY AND CERTAIN OTHER MARKETING AREAS

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1104, 1106, 1120, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1138]

[Dockets Nos. AO-298-A19, etc.]

MILK IN RED RIVER VALLEY AND CERTAIN OTHER MARKETING AREAS

Notice of 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 II	
1104	Red River Valley	AO-298-A19.
1106	Oklahoma Metropolitan	AO-210-A31.
1120	Lubbock-Plainview, Tex	AO-328-A13.
1126	North Texas	AO-231-A37.
1127	San Antonio, Tex	AO-232-A23.
1128	Central West Tex	AO-238-A26.
1129	Austin-Waco, Tex	AO-256-A19.
1130	Corpus Christi, Tex	AO-289-A23.
1131	Central Arizona	AO-271-A15.
1132	Texas Panhandle	AO-262-A22.
1138	Rio Grande Valley	AO-335-A18.

Notice is hereby given of the filing with the Hearing Clerk of this 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 F.R. 19604).

This hearing was a single proceeding on proposed amendments to the tentative marketing agreements and orders regulating the handling of milk in 33 marketing areas. In addition to those listed at the beginning of this document, such marketing areas include the following:

GROUP I

Georgia	Memphis, Tenn.
Neosho Valley	Nashville, Tenn.
Wichita, Kans.	Fort Smith, Ark.
Chattanooga, Tenn.	Central Arkansas
New Orleans, La.	
Northern Louisiana	

GROUP III

Minnesota-North Dakota	Minneapolis-St. Paul, Minn.
Southeastern Minnesota-Northern Iowa	Duluth-Superior
Quad Cities-Dubuque	Cedar Rapids-Iowa City
Greater Kansas City	Eastern South Dakota
Nebraska-Western Iowa	North Central Iowa
	Des Moines, Iowa

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, 8, 9, 12, 15, 16, and 18 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 multistate regions from centralized processing facilities. Products frequently mentioned include frozen desserts, yogurt, various cream products, and cottage cheese. Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these specialty products is relatively limited, it is probably the distribution of these products more than any others that has precipitated such general interest within the industry for uniform classification provisions among Federal orders.

Although the 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 discernible to the reader with the reprinting of the complete order, the sections in each order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

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 milkshake and ice milk mixes containing less than 20 percent total solids. Skim milk and butterfat disposed of in any such product that is flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted likewise should be classified as Class I milk. Such classification should apply whether the products are disposed of in fluid or frozen form.

In addition, Class I milk should include all skim milk and butterfat disposed of in the form of any other fluid or frozen milk product (if not specifically designated as a Class II or Class III use) that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids.

Skim milk disposed of in any product described above that is modified by the addition of nonfat milk solids should be Class I milk only to the extent of the weight of the skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

Class I milk should not include skim milk or butterfat disposed of in the form of evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas especially prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, or whey.

As a convenience in drafting order provisions, each product designated herein as a Class I product would be defined in the 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 milkshake mixes might there be a higher classification under the adopted amendments than at present. Under some orders, such mixes are now included in the lowest class. This higher classification would be limited, however, to only those milkshake mixes containing less than 20 percent total solids.

The adopted Class I classification would not include eggnog, yogurt, cream or mixtures of cream and milk or skim milk containing 9 percent or more butterfat (such as half and half). A Class I classification now applies to eggnog in 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.

[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.

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 foodstores and on home delivery routes. The major outlet for milkshake and ice milk mixes, though, is the so-called "soft-serve" trade. Mixes processed by regulated handlers for this use are sold to commercial establishments where the product is run through a special freezer and dispensed to the public in a semisoft form.

Milkshake and ice milk mixes are basically similar in composition and purpose to what might be considered as traditional frozen desserts, such as ice cream. Although such shake mixes are intended to be consumed in a semisoft form, or even in a very thick fluid form, they are being marketed for essentially the same use as the traditional frozen desserts. This is the case whether such mixes are sold through the "soft-serve" trade or for home use. With minor exception, as noted below, milk used in milkshake and ice milk mixes thus should be classified in the same class as milk used in the traditional frozen desserts. As discussed later in this decision, the classification plan adopted herein includes frozen desserts in Class 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 solids are similar in composition to chocolate milk and other flavored fluid milk products and should be a Class I product.

As proposed by cooperatives and the national organizations of fluid milk and ice cream processors, no exception to the Class I classification of milk should be made for fluid milk products in sterilized form. The sterilization of fluid milk products does not change the form or purpose of such products. As in the case of the unsterilized fluid milk products which they resemble, such sterilized products are disposed of in fluid form for consumption as a beverage. They are generally intended for use in place of their unsterilized counterparts and are thus competing for the same consumers.

Returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are sterilized or unsterilized. Such products in either form are being marketed for the same beverage use. Classifying all such products in Class I will assure that the returns from producer milk used in sterilized fluid milk products will contribute on the same basis as returns from producer milk used in unsterilized fluid milk products toward inducing an adequate supply of milk for beverage use.

With the removal of any exception to the Class I classification of milk because of sterilization, specific reference must be made in the "fluid milk product" definition to the exclusion of certain products that otherwise could be construed to fall within such definition. Such products are evaporated or condensed milk or skim milk, formulas in hermetically sealed glass or all-metal containers that are especially prepared for infant feeding or dietary use, and products (such as flavored drinks in "pop" bottles) containing by weight less than 6.5 percent nonfat milk solids. These products, which are being sold in sterilized form, are now excluded from the Class I classification and, as proposed by cooperatives and handlers, such exclusion should be continued, notwithstanding the fact that they are sold to the public in fluid form. Evaporated milk and condensed milk sold for home use are intended primarily for cooking purposes. They are not consumed normally as a beverage. Infant and dietary formulas, which are being sold in hermetically sealed glass or all-metal containers, are specialized food products prepared for a limited use. Such formulas do not compete with other milk beverages consumed by the general public. Similarly, fluid products containing only a minimal amount of nonfat milk solids are not considered as being in the competitive sphere of the traditional milk beverages.

Fluid milk products should not be defined only on the basis of product composition, as was proposed by cooperatives. Contending that the present fluid milk product definition in each order does not clearly identify those products that are intended to be classified as Class I products, cooperatives proposed that a fluid milk product be defined solely in terms of moisture and milk solids content of the product. As proposed by producers, a "fluid milk product" would be any product containing at least 6.5 percent but less than 27 percent nonfat milk solids, less than 9 percent butterfat, and more than 20 percent moisture, all computed on the basis of weight.

In support of their proposal, proponents indicated that such a definition would result in a more uniform application among the 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 des-

sert 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 product 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.[2] There is no basis for changing this procedure.

The use of composition standards as a means of defining fluid milk products should not deter the development of new milk products, as handlers contended. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered. The use of composition standards should result, however, in a more uniform classification among orders of new products developed for fluid consumption.

[2] Official notice is taken of the Assistant Secretary's decision issued on October 13, 1969 (34 F.R. 16881), with respect to the Memphis, Tenn., and certain other marketing areas.

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, lowfat 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 11 different prices for milk put to similar uses. Also, four additional prices can result under the five orders that have an intermediate classification and price for milk used to produce cottage cheese.

Cooperatives proposed that each of the 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), butter, condensed whey and buttermilk for animal feed, dumpage, ending inventory, shrinkage, and the non-Class I portion of modified fluid milk products.

The cooperatives' Class III pricing proposals varied by regions. 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 appropriate 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, Lubbock-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 the 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 32 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 implementing the identification of various categories of receipts at a regulated plant.

At present, fluid milk products from any source other than producers, cooperatives acting as a handler for farm bulk tank milk, pool plants, and plant inventory at the beginning of the month are considered as other source milk.[2]

[2] 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.

Under the revised classification plan, however, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, it is desirable, nevertheless, that fluid cream products, when in bulk form, continue to be treated in the same manner as fluid milk products for purposes of applying the other source milk definition.

Other source milk should include any receipts in packaged form of fluid cream products, eggnog or yogurt (or any filled product resembling such products). These are Class II products under the revised classification plan.

Producers and handlers proposed that Class II products received at a pool plant in packaged form and then disposed of from the plant without further processing be treated as "pass-through" products. Under this treatment such "pass-through" products would not be considered as other source milk and would not be subject to the allocation and pricing provisions of the order.

Although no handler obligation would apply under the provisions adopted herein to these receipts of packaged Class II products, it is desirable for accounting purposes that such receipts be defined as other source milk. This accounting procedure will preclude the recordkeeping difficulties that might otherwise be experienced in accounting separately for inventories and sales of Class II products processed in the handler's plant versus those received at the plant in packaged form from other plants. As provided herein, such receipts of other source milk would be allocated directly to the handler's Class II utilization, rather than being allocated to the extent possible to the handler's lowest utilization as is provided in some cases for other types of other source milk.

The orders now provide that manufactured products from any source that are reprocessed, converted into, or combined with another product in the plant shall be considered as other source milk. For accounting purposes under the order, such manufactured products should include dry curd cottage cheese received at a pool plant to which cream is added before distribution to consumers. When used to produce cottage cheese or lowfat cottage cheese, the receipts of dry curd would be allocated under the adopted provisions directly to the handler's Class II utilization. No handler obligation would apply under the order to such receipts.

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 an other order plant or a producer-handler plant. To determine such classification, the nonpool plant's utilization must be assigned to its receipts of milk from each source. Some amplification of this procedure is appropriate to set forth clearly the priority for assigning the different types of plant use to the different sources of fluid milk products and bulk fluid cream products received at the nonpool plant.

Under the adopted assignment priorities, the first step is to assign the nonpool plant's Class I utilization to its receipts of packaged fluid milk products from all federally regulated plants. Such receipts should receive first priority on the nonpool plant's Class I use since all orders provide that such packaged transfers from a pool plant to an unregulated nonpool plant shall be classified as Class I milk. Thus, any Class I route disposition of the nonpool plant in the marketing area of a Federal order, and any transfers of packaged fluid milk products from the nonpool plant to plants fully regulated under such order, would be assigned, first, to the nonpool plant's receipts of packaged fluid milk products from plants fully regulated under such order and, second, to any such remaining packaged receipts from plants fully regulated under other Federal orders.

A similar assignment of any such remaining disposition (i.e., the aforesaid Class I route disposition and transfers of packaged fluid milk products) then would be made to the nonpool plant's receipts of bulk fluid milk products from pool plants and other order plants. Any other Class I disposition of packaged fluid milk products from the nonpool plant, such as route disposition in unregulated areas, would be assigned to any remaining unassigned receipts of packaged fluid milk products at the nonpool plant from plants fully regulated under any Federal order.

After these assignments, any Class I use at the nonpool plant that is attributable to the Class I allocation at a Federal order plant of fluid milk products transferred in bulk from the nonpool plant to the regulated plant would be assigned next. Such use would be assigned, first, to the nonpool plant's remaining unassigned receipts of fluid milk products from plants fully regulated under that order and, second, to any such remaining receipts from plants fully regulated under other orders.

Additional unassigned Class I utilization at the nonpool plant then would be assigned to the plant's receipts of Grade A milk from dairy farmers and unregulated nonpool plants that are determined to be regular sources of Grade A milk for the nonpool plant. Any remaining unassigned receipts of fluid milk products at the nonpool plant from plants fully regulated under any order would be assigned to any of the nonpool plant's remaining Class I utilization, then to its Class III utilization, and then to its Class II utilization.

Following these assignments, any receipts of bulk fluid cream products at the nonpool plant from pool plants and other order plants would be assigned to the nonpool plant's remaining unassigned utilization in each class. Such assignment would be made in sequence beginning with the lowest class.

In determining the classification of any transfers or diversions from a pool plant to a nonpool plant, the utilization of any transfers from the nonpool plant to another unregulated nonpool plant also must be established. In this case, the same assignment priorities just outlined should apply also at the second nonpool plant.

Certain changes should be made in each order concerning the classification of products transferred from a pool plant to a producer-handler. Under the revised classification plan, bulk fluid cream products transferred from a pool plant to a producer-handler should be assigned to the extent possible to the latter's Class III use, and then Class II use. If the producer-handler does not have enough utilization in these classes to cover such transfers, any remaining transfers should be classified as Class I milk.

As in the case of all other fluid milk products, such transfers of cream are now classified as Class I milk. Such classification tends to assure that producers do not carry for producer-handlers the burden of maintaining reserve supplies for the Class I sales of producer-handlers. With the removal of cream from the Class I classification, as adopted herein, a mandatory Class I classification of cream transfers to producer-handlers would not be necessary for this purpose.

Each order should provide that fluid milk products transferred from a pool plant to a producer-handler under an- 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 pack-

aged 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 10 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 shrinkage allowance for such milk from producers in the receiving and processing operations.

The provisions adopted herein are designed to carry out the appropriate division of shrinkage whether the plant operator purchases the milk at farm weights and tests or at plant weights and tests. The provisions allow the plant operator up to 2 percent shrinkage in Class III if he buys the milk on the basis of weights determined 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. This 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 seven provide for only two classes of utilization. Thus, changes in most of the orders are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes. Also, all orders must be changed with respect to the allocation of beginning inventories, as previously described.

The adoption of three use classes requires a new consideration of how other source milk shall be allocated to a handler's utilization of milk. Under the present orders, other source milk is allocated in most cases to a handler's surplus uses to the extent possible, regardless of how it actually may have been used. The producers who are relied upon for a regular supply of milk for the local fluid market thus receive the highest possible classification of their milk. Depending on the supply conditions, milk from unregulated supply plants and other Federal order plants is permitted to share in varying degrees with local producer milk in the higher value of the handler's Class I sales.

In conjunction with the revised classification plan, however, handlers using certain types of other source milk (whether in the form received or in reconstituted form) in the processing of Class II products should be permitted to have such other source milk allocated directly to their Class II uses. Under the plan adopted herein, such other source milk to which direct allocation could apply would be limited to milk products (such as nonfat dry milk and condensed milk or skim milk) that are not fluid milk products or fluid cream products.

The national associations of fluid milk and ice cream processors proposed that if a three-class system is adopted handlers should have the option of having other source milk allocated to their Class II utilization rather than allocated to the extent possible to the lowest class. It was their position that the Class II price for producer milk should not be set at a level that is any higher than the cost to handlers of obtaining alternative supplies of milk or milk products for Class II use. These groups contended that with such pricing there is no justification for "down-allocating" to Class III any receipts of other source milk which actually may have been used in Class II.

Handlers indicated further that with optional allocation a handler could choose to use other source milk without the cost impact of down-allocation should the cost of such milk become less than the cost of producer milk for Class II use. Also, these groups stated that down-allocation of other source milk would imply an intent to provide undue protection of the Class II market for producers. They maintained that such protection is not justified, or apparently intended by producers in view of no producer proposal for a compensatory payment on other source milk used in Class II.

Cooperative associations, on the other hand, urged in connection with their proposal for three classes that producers have first claim on a handler's Class II use as well as on his Class I use.

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 refuse to supply him with milk when, in fact, this was not the case.

Such administrative difficulties could be overcome, of course, through the adoption of provisions that do not down-allocate receipts of outside milk from selected sources, or from any source, for Class I use. This would be a major departure, however, from the allocation procedure now used under the present orders. This procedure, which was based on comprehensive hearings for all Federal order markets, resulted from the "compensatory payment" decisions concerning the integration of other source milk into the regulatory plan of an order.[4] Such a change would be much broader in scope than was contemplated under the handler's proposal described above and should not be adopted.

In keeping with the goal of classifying milk uniformly under the 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 marketwide pooling should be revised to the extent necessary to remove the possibility of a handler being charged under the order at the Class I price for milk that already has been classified and priced as Class I milk under some Federal order. Certain of these orders already have been revised to remove any "double charge" on Class I milk. The order language previously adopted for this purpose should be made uniform, however, and should be included in the remaining orders not now containing such provisions.

No changes in this respect are necessary under the Memphis, Fort Smith, Austin-Waco and North Central Iowa orders. These orders employ individual-handler pooling and do not provide for any handler obligation on other source milk.

A "double charge" on Class I milk received at a pool plant from an unregulated nonpool plant could result in the following manner. Producer milk could be transferred in bulk from a pool plant under the Wichita order, for example, to an unregulated nonpool plant and be assigned to the nonpool plant's Class I utilization. In determining his pool obligation, the pool plant operator would be charged for this Class I utilization of milk at the Class I price. During the same month, bulk milk could be transferred from the nonpool plant to a pool plant under the Kansas City order and be allocated to such pool plant's Class I utilization. In this case, the operator of the pool plant would be charged under the Kansas City order the difference between the order's Class I price and weighted average price for this receipt of "other source" Class I milk. Thus, to the extent of the Class I milk that was moved to the nonpool plant from the Wichita market as Class I milk, the Class I other source milk received at the Kansas City pool plant from the nonpool plant is, in effect, priced twice as Class I milk under the Federal order system.

More and more, plants are tending to specialize in the processing of certain products, or in the packaging of products

[4] Official notice is taken of the Assistant Secretary's decisions issued on June 19, 1964 (29 F.R. 9002, 9110, and 9213), with respect to all milk orders then in effect.

in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to an unregulated nonpool plant for special processing and the finished products to be moved back into the regulated market. When the milk is initially priced at the Class I price, the market price structure is in no way undermined if this milk, or its equivalent, is disposed of by the nonpool plant in the regulated market.

The orders therefore should provide that the operator of the Kansas City plant, in this example, will have no obligation to the pool on such other source Class I milk. This is achieved through a revision of the allocation provisions and the procedure for computing the pool obligation of a pool plant operator. Receipts of packaged fluid milk products at a pool plant from an unregulated supply plant would be allocated to the pool plant's Class I utilization to the extent that an equivalent amount of skim milk or butterfat disposed of to the unregulated plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order. This allocation would be made prior to any other allocation of receipts to the plant's Class I utilization, and no order obligation would apply to the milk so allocated to Class I. In the case of fluid milk products received from an unregulated supply plant in bulk form, the provisions setting forth a handler's pool obligation would specify that no payment would apply to any of such milk allocated to Class I if, as just described for packaged milk, an equivalent amount of milk received at the unregulated plant had been priced as Class I milk under some order.

In this same connection, the provisions prescribing the obligation of a partially regulated distributing plant should be changed in each marketwide pool order. When such plant's obligation is computed as though it were a pool plant, proper recognition must be given to any transfers from the plant to a regulated plant that are considered to already have been priced as Class I milk under some Federal order. Also, in computing such plant's pool obligation on route sales in a Federal order marketing area, recognition should be given to any receipt of milk at such plant from another unregulated plant if an equivalent amount of milk received at the latter plant already has been priced as Class I milk under an order.

Each order now imposes a handler assessment for administering the order on all other source Class I milk except that received in fluid form from an other order plant. This may include milk that already has been priced as Class I milk under some Federal order as described above. With the removal of a "double" Class I charge on such milk, each order should be changed to likewise remove any assessment on such milk for administrative expenses. It is presumed that such milk was subject to a similar charge under the order that initially priced the milk.

The marketwide pool orders should be changed also with respect to the application of location adjustments to other source Class I milk. As just described, each of the orders provides that a pool plant operator's obligation to the producer-settlement fund shall include a payment for fluid milk products received from an unregulated supply plant if they are allocated to Class I. The handler's payment is determined by charging him at the Class I price for the Class I other source milk and giving him a credit on the milk at the weighted average price (or uniform price in the case of those orders that do not provide for any type of seasonal production incentive plan). Both the Class I and weighted average prices are adjusted for the location of the unregulated supply plant. The adjustment of the weighted average price, though, is so limited as to be not less than the lowest class price. No such limitation is applied currently under most of the 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 0.1 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 0.5 cent per point of butterfat.

Cooperative associations proposed that all class prices and uniform prices be subject to adjustment by a single butterfat differential based on the Chicago butter price times a factor of 0.115. One handler proposed that the Class II and Class III butterfat differentials be based on the Chicago butter price times 0.110. Handlers in general opposed any change in the present Class I butterfat differentials.

Lowering the Class I butterfat differential factor to 0.115 will accommodate producers' request for a readjustment of the values of skim milk and butterfat in Class I milk at a time of declining use of butterfat in fluid milk products. In 1960, the average butterfat test of fluid milk products (including cream items) in 63 Federal order markets was 3.76 percent. In 1970, the average butterfat test for such products in 58 markets was 3.26 percent. Comparable data for the 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, however, there is every indication that the use of butterfat in Class I in these markets is following the national trend.[2]

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 Fort 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 handlers (excluding cream and lowfat items) would have ranged in 1970 from 3.55 percent to 2.53 percent. Using the average test for these markets of 2.98 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 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

[2] 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.

which the prices apply should not be adopted.

Under the present orders, the prices for surplus milk are announced by the fifth day of each month. Such prices apply to producer milk delivered to handlers during the preceding month.

The national association of fluid milk and ice cream processors proposed that the class prices to be applicable in a particular month to surplus milk be announced by the fifth day of such month. Handlers stated that under the present announcement procedure they are often disadvantaged by not knowing the costs of producer milk for manufacturing use until after the end of the month in which the milk is processed. They claimed that when there is a significant increase in the order price, the delayed notice of the increase prevents them from making corresponding adjustments in their resale prices on a timely basis. Proponents' interest in advance pricing related essentially to the prices that would be applicable to cottage cheese, cream products, yogurt and frozen desserts, the principal Class II products processed by such handlers.

For the regulated handler processing producer milk into butter, nonfat dry milk and cheddar cheese, however, advance announcement of the applicable class price could place him at a competitive disadvantage on his sales of these manufactured products. As indicated earlier, the surplus prices under the revised classification plan 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 one billion pounds of milk, or 88 percent of the market's total Class II use, were so disposed of by handlers in the Minneapolis-St. Paul market. In the Minnesota-North Dakota, Southeastern Minnesota-Northern Iowa, Duluth-Superior, Cedar Rapids-Iowa City, Eastern South Dakota, Oklahoma Metropolitan and North Central Iowa markets, over 80 percent of each market's total Class II milk was used that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other markets, only in four markets (Memphis, Fort Smith, Central West Texas and Rio Grande Valley) did such uses represent less than 20 percent of the total Class II use for each market. Thus, handlers in most of the 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, Tenn. The decision resulting from the hearing classified the skim milk component of filled milk in the same way as the skim milk component of natural milk. It provided a means of equating the cost of skim milk in filled milk if it originates from sources other than producer milk with the cost if derived from producer milk.

At the time of the 1968 hearing, the Southeastern Minnesota-Northern Iowa order had not been issued, and the Minneapolis-St. Paul order could not be amended in this respect because of a marketing area expansion to which the filled milk hearing did not apply. As a result, these orders do not contain the uniform provisions dealing with filled milk provided in all other Federal milk orders.

Filled milk is a combination of skim milk and vegetable fat or oil in about the same proportions as the skim milk and milk fat in whole milk. Well over 90 percent of the product is skim milk. In most filled milk, the skim milk portion is fresh fluid skim milk separated from whole milk. Some filled milk contains reconstituted fluid skim milk prepared from a concentrated product such as nonfat dry milk. Whether made from vegetable fat and fresh or reconstituted skim milk or any combination of the two, filled milk resembles whole milk in appearance.

Regulated handlers disposing of filled milk make a substantial savings in cost by substituting vegetable fat or oil for butterfat. This is the main incentive for the marketing of filled milk. While the difference in cost between vegetable fat and butterfat is not an issue at this hearing, it is relevant to the extent that it explains the profit motivation for marketing the product relative to the marketing of natural milk.

At the present time, no filled milk is distributed in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas. In those regulated markets where filled milk is distributed, it moves in the same channels as whole milk. It is distributed by the same handlers in the course of their regular business through the same outlets for natural milk and in the same types of containers.

Filled milk, if disposed of in either the Minneapolis-St. Paul or the Southeastern Minnesota-Northern Iowa marketing area, would directly burden, obstruct, or affect interstate commerce in milk and milk products. It previously has been determined (at the time of the promulgation of each of these orders) that all milk marketed in each marketing area is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and milk products.

Filled milk is in content substantially a product of milk and competes for the same sales outlets as milk. It follows, therefore, that the marketing of the milk ingredients in filled milk in either of the two markets would burden, obstruct, or affect interstate commerce in milk and milk products. This would be equally true whether the marketing of filled milk were by a fully regulated plant or by a plant not fully regulated because both would compete for similar outlets in the market.

Also, manufactured milk products are sometimes used in the production of filled milk. Manufactured milk products move in interstate commerce and compete in the national market, regardless of where the milk is produced. Therefore, manufactured milk products, if used in the production of filled milk for disposition in either the Minneapolis-St. Paul or Southeastern Minnesota-Northern Iowa market, likewise would burden, obstruct, or affect interstate commerce in milk and its products.

The classification of the dairy ingredients of filled milk is a proper consideration derived from the Agricultural Marketing Agreement Act. As stated in the decision resulting from the filled milk hearing in Memphis, Tenn., the "specific

language of the Act with respect to classification is that each order shall contain terms "* * * classifying milk in accordance with the form in which or the purpose for which it is used * * *". In applying the language of the Act we here consider the form and purpose of use for both filled milk and the milk ingredient content of the filled milk.

"The form of filled milk and the purpose for which it is used are the same as the form and purpose of use of whole milk. Filled milk, just as whole milk, is disposed of in fluid form. It is marketed by handlers in the same types of packages and in the same trade channels as the whole milk they market, and is mainly intended as a beverage substitute for milk.

"Similarly, the fluid skim milk content of the filled milk is in the same form as skim milk in whole milk and serves the same purpose, providing in each case the main body of the product thereby making it a milk beverage. The addition of the nonmilk ingredients, principally vegetable fat or oil and stabilizers, does not alter the basis for Class I classification. The addition of nonmilk ingredients in fluid milk products is not a new development. The addition of vegetable fat does not involve an essentially different consideration from that for other Class I fluid milk products to which a flavoring ingredient, such as chocolate (which also contains nonmilk fat) has been added.

"For purpose of illustration, a product within the 'fluid milk product' category containing a nonmilk additive is chocolate milk. The additive is not considered as changing the form of this product so that it is no longer a fluid milk product. For the purposes of classification, the flavoring material has never been regarded as significant in determining the form of the product or as a basis for altering its classification.

"The same reasoning applies in the case of filled milk—that the additives do not change significantly the form or the purpose of use and therefore do not constitute a basis for classification other than in Class I.

"The product 'filled milk' therefore should be classified, for the purpose of pricing under the orders, in the same manner as whole milk. As in the case of other fluid milk products containing some nonmilk ingredients, the classification would apply only to the milk ingredients in the product."

No opposition to the filled milk proposal was expressed at the hearing or in briefs submitted by interested parties.

Based on the testimony of proponent, which related specifically to the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, it is found that the above findings from the Memphis decision are equally applicable to this proceeding. Accordingly, they serve as the basis for concluding that the milk ingredients of filled milk should be classified and priced under the two orders as Class I milk.

Proponent testified also that filled milk may be made by combining reconstituted skim milk with vegetable fat and other minor ingredients. Reconstituted skim milk commonly is made from nonfat dry milk to which water is added to return it essentially to a form and consistency similar to fresh skim milk. Its potential as a disruptive influence on the market for producer milk is substantial, however, since the disposition of any Class I product that has been priced at the surplus price level undermines the classified pricing system.

As was found in the filled milk decision referred to earlier, filled milk made from reconstituted skim milk is, from a marketing standpoint, essentially similar to filled milk made from fresh skim milk. It is a competitor of whole milk at the consumer level. Therefore, reconstituted skim milk in filled milk, as in other fluid milk products, should be classified and priced on the same basis as all other fluid milk products to achieve uniformity in the pricing of milk for similar uses.

Federal milk orders, including the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa orders, have contained for some time specific provisions dealing with the disposition by a regulated handler of other fluid milk products reconstituted from nonfluid milk products. The issue of proper classification and charge for such use of nonfluid milk products to produce products for Class I disposition was dealt with for most orders in the compensatory payment decisions referred to earlier in this decision. The findings and conclusions that relate to the reconstitution of milk appeared at 29 F.R. 9010. The regulatory treatment of reconstituted products that is described in the compensatory payment decisions and reiterated in the later filled milk decision is appropriately applicable to any reconstituted skim milk used in filled milk that may be disposed of in the Minneapolis-St. Paul and Southeastern Minnesota-Northern Iowa marketing areas.

It should be noted that these two orders now provide that a producer-handler would lose his status as such and become a fully regulated handler if he disposes of fluid milk products made from reconstituted skim milk. Since the fluid milk product definition would include filled milk under the amendments adopted herein, loss of producer-handler status would result also from the sale of reconstituted filled milk.

A definition of filled milk should be provided in the two orders to meet the specific needs of order regulation, and for such purpose only. This definition, which would be identical to the filled milk definition in all other orders, should be as follows:

> "Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

The term "filled milk" is not intended to include skim milk marketed in a form or for a purpose specifically excluded from the fluid milk product definition of either order. For example, evaporated milk is a use of skim milk and butterfat not treated as a fluid milk product in either order. If a product containing skim milk and any amount of vegetable fat were marketed in the same form and manner as evaporated milk, it would be excluded from the term "filled milk."

The regulatory treatment of filled milk adopted herein requires numerous conforming changes throughout the order. Accordingly, all the conforming changes found necessary on the basis of the Memphis hearing to implement the filled milk amendments are incorporated herein wherever applicable.

8. *A uniform "equivalent price" provision.* Each of the 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 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 1104—MILK IN RED RIVER VALLEY MARKETING AREA

The Index and §§ 1104.7, 1104.12(b)(2), 1104.14, 1104.15(a)(2), 1104.16, 1104.30(a)(3), 1104.40, 1104.41(b)(2) and (3), and (c), 1104.42(d)(2)(vi), 1104.44(a), 1104.61, 1104.70, 1104.71(a)(2)(ii), 1104.75(b), 1104.76(a)(4) and (b)(2)(i) and (ii), 1104.77, and new §§ 1104.78 and 1104.110 through 1104.122 are added.

PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

The Index and §§ 1106.7, 1106.12(b)(2), 1106.14, 1106.15(a)(2), 1106.16, 1106.30(a)(3), 1106.40, 1106.41(b)(2) and (3) and (c), 1106.42(d)(2)(vi), 1106.44(a), 1106.50 (b) and (c), 1106.52, 1106.61, 1106.71(a)(2)(ii), 1106.75, 1106.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1106.110 through 1106.122 are added.

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEXAS, MARKETING AREA

The Index and §§ 1120.7, 1120.12(b)(2), 1120.14, 1120.15(a)(2), 1120.16, 1120.30(a)(3), 1120.40, 1120.41(b)(2) and (3) and (c), 1120.42(d)(2)(vi), 1120.44(a), 1120.50 (b) and (c), 1120.61, 1120.71(a)(2)(ii), 1120.75(b), 1120.76(a)(4) and (b)(2)(i) and (ii), 1120.86(b), and new §§ 1120.110 through 1120.122 are added.

PART 1126—MILK IN NORTH TEXAS MARKETING AREA

The Index and §§ 1126.7, 1126.12(b)(3), 1126.14, 1126.15(a)(2), 1126.16, 1126.30(a)(3), 1126.40, 1126.41(b)(2) and (3) and (c), 1126.42(d)(2)(vi), 1126.44(a), 1126.50 (b) and (c), 1126.61, 1126.71(a)(2)(ii), 1126.75(b), 1126.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1126.110 through 1126.122 are added.

PART 1127—MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

The Index and §§ 1127.7, 1127.12(b)(2), 1127.14, 1127.15(a)(2), 1127.16, 1127.30(a)(3), 1127.40, 1127.41(b)(2) and (c), 1127.42(d)(2)(vi), 1127.44(a), 1127.50 (b) and (c), 1127.60(d), 1127.61, 1127.71(a)(2)(ii), 1127.75(b), 1127.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1127.110 through 1127.122 are added.

PART 1128—MILK IN CENTRAL WEST TEXAS MARKETING AREA

The Index and §§ 1128.7, 1128.12(a) and (b)(2), 1128.14, 1128.15(a)(2), 1128.16, 1128.30(a)(3), 1128.40, 1128.41(b)(2) and (3) and (c), 1128.42(d)(2)(vi), 1128.44(a), 1128.50 (b) and (c), 1128.61, 1128.71(a)(2)(ii), 1128.75(b), 1128.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1128.110 through 1127.122 are added.

PART 1129—MILK IN AUSTIN-WACO, TEXAS, MARKETING AREA

The Index and §§ 1129.7, 1129.12(b)(2), 1129.14, 1129.15(a)(2), 1129.16, 1129.30(a)(3), 1129.40, 1129.41(b)(2) and (3) and (c), 1129.42(d)(2)(vi), 1129.44(a), 1129.50 (b) and (c), 1129.61, and new §§ 1129.110 through 1129.122 are added.

PART 1130—MILK IN CORPUS CHRISTI, TEXAS, MARKETING AREA

The Index and §§ 1130.7, 1130.12(b)(2), 1130.14, 1130.15(a)(2), 1130.16, 1130.30(a)(3), 1130.40, 1130.41(b)(2) and (3) and (c), 1130.42(d)(2)(vi), 1130.44(a), 1130.50 (b) and (c), 1130.61, 1130.71(a)(2)(ii), 1130.75(b), 1130.76(a)(4) and (b)(2)(i) and (ii), and new §§ 1130.110 through 1130.122 are added.

PART 1131—MILK IN CENTRAL ARIZONA MARKETING AREA

Sections 1131.7, 1131.12(b)(2), 1131.14, 1131.15(a)(2), 1131.16, 1131.30(a)(3), 1131.40, 1131.41(b)(2) and (3) and (c),

1131.42(d)(2)(vi), 1131.44(a), 1131.50 (b) and (c), 1131.76(b)(2) (i) and (ii).

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

The Index and §§ 1132.7, 1132.12(b)(2), 1132.14, 1132.15(a)(2), 1132.16, 1132.30(a)(3), 1132.40, 1132.41(b) (2) and (3) and (c), 1132.42(d)(2)(vi), 1132.44(a), 1132.50 (b) and (c), 1132.61, 1132.71(a)(2)(ii), 1132.75(b), 1132.76 (a)(4) and (b)(2)(i) and (ii), and new §§ 1132.110 through 1132.122 are added.

PART 1138—MILK IN RIO GRANDE VALLEY MARKETING AREA

The Index and §§ 1138.7, 1138.12(b)(2), 1138.14, 1138.15(a)(2), 1138.16, 1138.30(a)(3), 1138.40, 1138.41(b) (2) and (3) and (c), 1138.42(d)(2)(vi), 1138.44(a), 1138.50 (b) and (c), 1138.61, 1138.71(a)(2)(ii), 1138.75(b), 1138.76 (a)(4) and (b)(2) (i) and (ii), and new §§ 1138.110 through 1138.122 are added.

PART 1104—MILK IN RED RIVER VALLEY MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1104 issued under Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1104.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1104.2 Red River Valley marketing area.

"Red River Valley marketing area", hereinafter called "the marketing area", means all territory within the following counties, including all municipal corporations; Federal reservations, facilities, and installations; and State institutions located therein:

OKLAHOMA COUNTIES

Bryan.
Caddo.
Carter.
Choctaw.
Comanche.
Cotton.
Grady.
Jackson.
Jefferson.
Johnston.
Kiowa.
Love.
Marshall.
Murray.
Pushmataha.
Stephens.
Tillman.

TEXAS COUNTIES

Archer.
Baylor.
Clay.
Hardeman.
Montague.
Wichita.
Wilbarger.

§ 1104.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant-store) of any fluid milk product classified as Class I milk, other than a delivery to a milk or filled milk plant.

§ 1104.4 [Reserved]

§ 1104.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

§ 1104.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

§ 1104.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition of fluid milk products (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1104.13; and

(2) Route disposition of fluid milk products (except filled milk) in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1104.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of an other Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institution;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part.

§ 1104.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant, except an other order plant or a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1104.7 and which is not an other order plant or a producer-handler plant.

§ 1104.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of producers diverted for the account of such association pursuant to § 1104.13;

(c) A cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association, or under the control of such association, by contract or otherwise, to the extent that such association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1104.7(c)

§ 1104.10 Producer-handler.

"Producer-handler" means any person who produces milk and who operates a plant from which the route disposition in the marketing area does not exceed such person's own production and fluid milk products received from a pool plant regulated under either this Part or Part 1106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

§ 1104.11 [Reserved]

§ 1104.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted health authority, which milk is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1104.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1104.44(a)(8)(iii) and the corresponding step of § 1104.44(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.

§ 1104.13 Producer milk.

"Producer milk" means skim milk and butterfat in milk from producers that is:

(a) Received by the operator of a pool plant at such pool plant from producers;

(b) Received by the operator of a pool plant at such pool plant from a handler described in § 1104.9(c);

(c) Diverted by the operator of a pool plant from such pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (f) of this section;

(d) Received from producers by a handler described in § 1104.9(c) in an amount in excess of the quantity delivered by such handler to pool plants pursuant to paragraph (b) of this section; or

(e) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (f) of this section;

(f) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of paragraph (f)(3) of this section, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of paragraph (f)(3) of this section, milk of producers not members of a cooperative association diverting milk pursuant to paragraph (f)(1) of this section, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for as received by the diverting handler at the location of the nonpool plant.

§ 1104.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1104.40(b)(1) from any source other than producers, handlers described in § 1104.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1104.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1104.40(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 § 1104.40(b)(1)) for which the handler fails to establish a disposition.

§ 1104.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1104.40 (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.

§ 1104.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1104.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1104.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) Is qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) Has and is exercising full authority in the sale of milk of its members.

HANDLER REPORTS

§ 1104.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1104.9(c);

(3) Receipts of fluid milk products and 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 § 1104.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1104.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1104.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1104.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1104.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1104.32 Other reports.

(a) Each handler who causes milk to be diverted to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which it is to be diverted.

(b) In addition to the reports required pursuant to §§ 1104.30 and 1104.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1104.40 Classes of utilization.

Except as provided in § 1104.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1104.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1104.15; and

(6) In shrinkage assigned pursuant to § 1104.41(a) to the receipts specified in § 1104.41(a)(2) and in shrinkage specified in § 1104.41 (b) and (c).

§ 1104.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1104.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1104.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1104.9(c), except that if the operator of the plant to which the milk is delivered purchases 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. If farm weights and tests are not used as the basis for any such milk commingled in a tank truck with milk of producers who are not members of the cooperative association, the milk received from the cooperative association shall be the proportion of the total receipts at the plant that such milk was of the total receipts determined at the respective farms;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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 § 1104.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1104.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1104.44(a)(12) and the corresponding step of § 1104.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1104.44(a)(7) or the corresponding step of § 1104.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1104.44(a) (11) or (12) or the corresponding steps of § 1104.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1104.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1104.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1104.43 General classification rules.

In determining the classification of producer milk pursuant to § 1104.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1104.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1104.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1104.40, 1104.41, and 1104.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1104.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1104.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1104.9(a) for each of his pool plants separately and of each handler described in § 1104.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1104.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1104.40(b)(1) that were received in packaged form

from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1104.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1104.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1104.40(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 reserve 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 § 1104.40(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 § 1104.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 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 § 1104.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1104.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1104.44(a)(12) and the corresponding step of § 1104.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1104.44 on the basis of such report, and, therafter, any change in such allocation required to correct errors disclosed in the vertification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests, the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk and the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports the milk so received from members of such association shall be prorated to each class in accordance with the same percentage as the total receipts of producer milk bear to such utilization of milk by such handler.

CLASS PRICES

§ 1104.50 Class prices.

Subject to the provisions of § 1104.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the price for Class I milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area at Oklahoma City, plus 22 cents.

(b) *Class II price.* The Class II price shall be the price for Class II milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

(c) *Class III price.* The Class III price shall be the price for Class III milk established under Federal Order No. 106 regulating the handling of milk in the Oklahoma Metropolitan marketing area.

§ 1104.51 [Reserved]

§ 1104.52 Plant location adjustments for handlers.

(a) For milk received from producers at a plant located outside the State of Texas and more than 40 miles from Wichita Falls, Tex., and classified as Class I milk or assigned a Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1104.50(a) shall be reduced at the rate set forth in the following schedule. The distance shall be based on the shortest highway distance, as determined by the market administrator, that the plant is from the City Hall in Wichita Falls, Tex.

Distance (miles)	*Rate per hundredweight (cents)*
40.1–70	12
70.1–100	15
For each additional 10 miles or fraction thereof in excess of 100 miles an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant in an amount not in excess of that by which such Class I disposition exceeds 95 percent of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1104.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1104.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1104.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1104.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1104.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1104.44(a)(14) and the corresponding step of § 1104.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1104.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1104.44(a)(9) and the corresponding step of § 1104.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1104.44(a)(7) (i) through (iv) receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1104.44(a)(7) (v) and (vi) and the corresponding step of § 1104.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1104.44(a)(11) and the corresponding step of § 1104.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1104.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received as follows:

(a) Combine into one total the values computed pursuant to §1104.60 for all handlers who filed the reports prescribed by §1104.30 for the month and who made the payments pursuant to §§1104.71 and 1104.73 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to §1104.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) 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 § 1104.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The results shall be the "uniform price" for milk received from producers.

§ 1104.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1104.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1104.71, 1104.76, and 1104.77 subject to the provisions of § 1104.78, and from which he shall make all payments to handlers pursuant to §§ 1104.72 and 1104.77: *Provided*, That any payments due to any handler may be offset by any payments due from such handler.

§ 1104.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each person shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1104.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1104.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1104.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1104.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1104.71(a)(2) exceeds the amount computed pursuant to § 1104.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the necessary funds are available.

§ 1104.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the last day of each month, to each producer who did not discontinue shipping milk to such handler during the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month;

(2) On or before the 15th day of the following month, an amount equal to not less than the applicable uniform price, as adjusted pursuant to §§ 1104.74 and 1104.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions for marketing services made pursuant to § 1104.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment pursuant to § 1104.72, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 27th and 13th day of each month, in lieu of payments pursuant to paragraph (a) of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member-producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member-producer (*a*) the total pounds of milk received during the preceding month, (*b*) the total pounds of butterfat contained in such milk, (*c*) the number of days of production included in such receipts, and (*d*) the amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month written information which shows for each such member-producer

the total pounds of milk received during the first 15 days of the current month.

The foregoing payment and submission of information shall be made with respect to the milk, of each producer who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a handler described in § 1104.9(c), shall on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(i) Partial payment for milk received during the first 15 days of the month at the rate specified in paragraph (a) of this section; and

(ii) In making final settlement, the value of such milk at the uniform price, as adjusted pursuant to §§ 1104.74 and 1104.75, less the amount of partial payment made for such milk.

§ 1104.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1104.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1104.73 for producer milk received at a pool plant, the uniform price computed pursuant to § 1104.61 shall be reduced according to the location of the pool plant at the rate set forth in § 1104.52(a);

(b) For the purpose of computations pursuant to §§1104.71 and 1104.72, the uniform price plus 5 cents shall be adjusted at the rate set forth in § 1104.52 (a) applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1104.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1104.61 shall be reduced according to the location of the nonpool plant at which the milk is received at the rate set forth in § 1104.52(a).

§ 1104.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1104.30(b) and 1104.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) 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 II price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1104.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to 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 § 1104.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1104.60 for such handler shall include, in lieu of the value of other source milk specified in § 1104.60(f) less the value of such other source milk specified in § 1104.71(a)(2)(ii), a value of milk determined pursuant to § 1104.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1104.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1104.30 (b) and 1104.31(b) similar reports for each nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1104.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1104.74, for milk re-

ceived 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 § 1104.74, 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.

§ 1104.77 Adjustment of accounts.

(a) Whenever audit by the market administrator 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 errors occurred.

§ 1104.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1104.71, 1104.77, 1104.85, or 1104.86 shall be increased one-half of 1 percent on the first day of the month next following the due date of such obligation and compounded on the first day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1104.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1104.13(b) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1104.44(a) (7) and (11) and the corresponding steps of § 1104.44(b), except such other source milk that is excluded from the computations pursuant to § 1104.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1104.76(a)(2).

§ 1104.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1104.73 shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight, as may be prescribed by the Secretary and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section) make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1104.110 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 § 1104.121(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.

§ 1104.111 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 § 1104.113(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 § 1104.113(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 § 1104.113(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.

§ 1104.112 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.

§ 1104.113 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 § 1104.111 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 indi-

vidual 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.

§ 1104.114 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.

§ 1104.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1104.110;

(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 §§ 1104.110 and 1104.117.

§ 1104.116 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 §§ 1104.110 and 1104.117;

(c) Keep minutes, books, and records and submit books and records for examination by the Secreetary 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.

§ 1104.117 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.

§ 1104.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1104.121(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.

§ 1104.119 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.

§ 1104.120 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.

§ 1104.121 Duties of the market administrator.

Except as specified in § 1104.116, 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 § 1104.113(c).

(b) Set aside the amounts subtracted under § 1104.61(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 § 1104.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1104.120. 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 § 1104.61(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 (§§ 1104.110 through 1104.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1104.122 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 § 1104.70.

PART 1106—MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1106 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1106.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1106.2 Oklahoma Metropolitan marketing area.

"Oklahoma Metropolitan marketing area", hereinafter called the "Marketing Area", means all the territory within Tulsa County, the city of Sapulpa, and the township of Sapulpa in Creek County; that part of Black Dog Township in 20 North. Ranges 10, 11, and 12 East in Osage County; the cities of Muskogee, McAlester, Ponca City, and Tahlequah; Oklahoma County, except Deer Creek, Deep Fork, and Luther Townships; Moore, Taylor, Case, Liberty, Norman, and Noble Townships in Cleveland County; Bales, Davis, Dent, Brinton, Rock Creek, Forest, and Earlsboro Townships in Pottawatomie County; the city and township of Guthrie in Logan County; the city and township of Stillwater and Union Township, including the city of Cushing in Payne County; and the city of Enid and Vance Air Force Base in Garfield County; all in the State of Oklahoma.

§ 1106.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery in bulk to a milk or filled milk plant.

§ 1106.4 [Reserved]

§ 1106.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Approved by a duly constituted health authority for the handling of milk approved for fluid consumption;

(b) In which fluid milk products are processed or packaged; and

(c) From which there is route disposition of fluid milk products.

§ 1106.6 Supply plant.

"Supply plant" means a plant from which fluid milk products are transferred to a distributing plant(s) during the month.

§ 1106.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Total route disposition (except filled milk) in an amount not less than 50 percent of the total quantity of fluid milk products (except filled milk) received at the plant or diverted to a nonpool plant by the plant operator under the limitations of § 1106.13; and

(2) Route disposition (except filled milk) in the marketing area in an amount not less than 15 percent of the total route disposition of the plant.

(b) A supply plant from which fluid milk products (except filled milk) are transferred during the month to a plant(s) described in paragraph (a) of this section in an amount not less than 50 percent of milk received at the supply plant from dairy farmers who would be eligible as producers under § 1106.12 if such plant qualifies pursuant to this paragraph and milk of such dairy farmers diverted from such plant by the plant operator. Any plant that qualifies under this paragraph during each of the months of September through December shall continue so qualified in each of the following months of January through August until any month of such period in which less than 20 percent of the plant receipts and diverted milk specified previously herein is transferred to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such January–August period shall be qualified under this paragraph in any remaining month of the year only if transfers of fluid milk products (except filled milk) from the plant during the month to plant(s) described in paragraph (a) of this section are at least 50 percent of the plant receipts and diverted milk specified previously herein.

(c) A plant(s) operated by a cooperative association and located not more than 50 miles from the City Hall of Tulsa or Oklahoma City, Okla., at which milk is received from dairy farmers producing milk approved by a duly constituted health authority for fluid consumption if the total of fluid milk products described in paragraph (c) (1) and (2) of this section received at plants described pursuant to paragraph (a) of this section is not less than 50 percent of total milk of member producers during the month:

(1) Fluid milk products (except filed milk) transferred from such cooperative association plant(s); and

(2) Milk of member producers received from such producers.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or governmental agency plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order and from which there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; or

(4) A supply plant qualified pursuant to paragraph (b) of this section which meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part.

§ 1106.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant, a governmental agency plant, nor a producer-handler plant, from which there is route disposition in the marketing area in consumer-type packages or dispenser units during the month.

(d) "Unregulated supply plant" means a nonpool plant, except an other order plant, a governmental agency plant, or a producer-handler plant, from which fluid milk products are moved during the month to a pool plant qualified pursuant to § 1106.7

(e) "Governmental agency plant" means a plant owned and operated by a governmental agency or establishment which processes or packages milk or filled milk that is distributed in the marketing area. Such plant shall be exempt from all provisions of this part.

§ 1106.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants: *Provided*, That in the case of recognized divisions of a corporation which are operated as separate business units, each such division shall be deemed to be a handler;

(b) Any cooperative association with respect to the milk of producers which it causes to be diverted pursuant to § 1106.13 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of its member producers delivered to the pool plant of another handler in a tank truck owned or operated by such cooperative association for the account of such cooperative association. Such milk shall be considered to have been received by such cooperative association at the location of the plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1106.7(d).

§ 1106.10 Producer-handler.

"Producer-handler" means any person who produces milk and operates a plant which meets the standards in § 1106.5(a) from which there is route disposition in the marketing area, but who receives no milk from producers or other dairy farmers, and whose disposition of Class I milk does not exceed his own production and fluid milk products received from pool plants.

§ 1106.11 [Reserved]

§ 1106.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for fluid consumption by a duly constituted health authority, which is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1106.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under this order and such milk is allocated to Class II or Class III utilization pursuant to § 1106.44(a)(8)(iii) and the corresponding step of § 1106.44(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.

§ 1106.13 Producer milk.

"Producer milk" means skim milk and butterfat in milk from producers that is:

(a) Received by the operator of a pool plant at such pool plant from producers.

(b) Diverted by the operator of a pool plant from such pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(c) Received from producers by a handler described in § 1106.9(c).

(d) Diverted by a cooperative association for its account from the pool plant of another handler to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section.

(e) Milk diverted from a pool plant to a nonpool plant shall be subject to the following conditions:

(1) A cooperative association may divert for its account, subject to the conditions of paragraph (e)(3) of this section, a total quantity of milk not in excess of total milk of its member-producers received at all pool plants during the month. Diversions in excess of such quantity shall not be eligible under this section and the diverting cooperative shall specify the dairy farmers whose diverted milk is not so eligible. If the cooperative association fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such cooperative association;

(2) The operator of a pool plant other than a cooperative association may divert for his account, subject to the conditions of paragraph (e)(3) of this section, milk of producers not members of a cooperative association diverting milk pursuant to paragraph (e)(1) of this section, in a total quantity not in excess of the milk of producers not members of such cooperative association received at such pool plant(s) during the month. Milk diverted in excess of such quantity shall not be eligible under this section and the diverting handler shall specify the dairy farmers whose diverted milk is not so eligible. If a handler fails to designate such persons, status under this section shall be forfeited with respect to all milk diverted by such handler;

(3) Milk of a producer shall not be eligible for diversion from a pool plant under this section if during the month less than 15 percent of the total milk of such person as a producer is received at a pool plant; and

(4) Milk qualified as producer milk that is diverted by a handler to a nonpool plant pursuant to this section shall be accounted for as received by the diverting handler at the location of the nonpool plant.

§ 1106.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1106.40(b)(1) from any source other than producers, handlers described in § 1106.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1106.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1106.40(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 § 1106.40(b)(1)) for which the handler fails to establish a disposition.

§ 1106.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1106.40 (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.

§ 1106.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1106.17 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 products, and contains less than 6 percent nonmilk fat (or oil).

§ 1106.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales or marketing milk or its products for its members.

§ 1106.19 Accounting period.

"Accounting period" shall mean a calendar month unless the handler during any calendar month makes a request in writing to the market administrator requesting two accounting periods during the month. No accounting period shall be of less than 5 days duration and the request for two accounting periods must be made at least 48 hours prior to the end of the first accounting period in the month.

HANDLER REPORTS

§ 1106.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for each accounting period in the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1106.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the accounting period of fluid milk products and products specified in § 1106.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1106.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1106.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1106.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1106.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1106.32 Other reports.

(a) Each handler who causes milk to be diverted to a nonpool plant, shall, prior to such diversion, report to the market administrator and to the 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 §§ 1106.30 and 1106.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1106.40 Classes of utilization.

Except as provided in § 1106.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1106.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1106.15; and

(6) In shrinkage assigned pursuant to § 1106.41(a) to the receipts specified in § 1106.41(a)(2) and in shrinkage specified in § 1106.41 (b) and (c).

§ 1106.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1106.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1106.9(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 § 1106.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1106.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or buttterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1106.44(a)(7) or the corresponding step of § 1106.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the tranferor-handler received during the month other source milk to be allocated pursuant to § 1106.44(a) (11) or (12) or the corresponding steps of § 1106.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1106.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to a governmental agency plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a governmental agency plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1106.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1106.43 General classification rules.

In determining the classification of producer milk pursuant to § 1106.44, the following rules shall apply:

(a) Each accounting period the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1106.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1106.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1106.40, 1106.41, and 1106.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1106.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1106.44 Classification of producer milk.

For each accounting period the market administrator shall determine the classification of producer milk of each handler described in § 1106.9(a) for each of his pool plants separately and of each handler described in § 1106.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1106.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under

any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1106.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1106.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1106.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1106.40(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 a governmental agency 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 location step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(*a*) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all pool plants of the handler;

(*b*) Subtract from the above result the sum of the pounds of skim milk in receipts at all pool plants of the handler of producer milk, milk from a handler described in § 1106.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to 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 § 1106.40(b)(1) in inventory at the beginning of the accounting period 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 § 1106.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 § 1106.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1106.44(a)(14) and the corresponding step of § 1106.44(b).

§ 1106.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1106.44(a)(12) and the corresponding step of § 1106.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current avavilable data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1106.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk caused to be delivered by such cooperative association either directly or from producers who are members of such cooperative association, to each handler to whom the cooperative association sells milk. For the purposes of this report, the milk caused to be so delivered by a cooperative association shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1106.50 Class prices.

Subject to the provisions of § 1106.52, the class prices for the month per hundred weight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.98.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1106.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.32.

§ 1106.52 Plant location adjustments for handlers.

(a) At a plant in the State of Oklahoma, north of Beckham, Washita, Caddo, Canadian, Oklahoma, Pottawatomie, and Seminole Counties or east of Seminole, Pontotoc, Johnston, and Marshall Counties, and 50 miles or more from the city hall in Oklahoma City, the price specified in § 1106.50(a) for milk received from producers shall be reduced 10 cents plus 1.5 cents for each 10 miles or fraction thereof that such plant is more than 150 miles from Oklahoma City.

(b) At a plant outside the States of Oklahoma and Texas, the price specified in § 1106.50(a) for milk received from producers shall be the price applicable at Tulsa or Ponca City, Okla., pursuant to paragraph (a) of this section reduced by 1.5 cents for each 10 miles or fraction thereof that such plant is from the nearer of the city halls in Tulsa or Ponca City.

(c) The distances applied pursuant to paragraphs (a) and (b) of this section shall be the shortest hard-surfaced highway distances as determined by the market administrator.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(e) For purposes of calculating location adjustments, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which 105 percent of Class I disposition at the transferee plant exceeds the sum of receipts at such plant from producers and handlers described in § 1106.9(c), and the pounds assigned to 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.

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1106.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1106.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1106.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1106.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1106.44(a)(14) and the corresponding step of § 1106.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1106.44 (a)(9) and the corresponding step of § 1106.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7) (i) through (iv) and the corresponding step of § 1106.44(b) excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(7) (v) and (vi) and the corresponding step of § 1106.44(b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1106.44(a)(11) and the corresponding step of § 1106.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1106.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1106.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1106.60 for all handlers who made the reports prescribed in § 1106.30 and who made the payments pursuant to §§ 1106.71 and 1106.73 for the preceding month.

(b) Add the aggregate of the values of all allowable location adjustments to producers pursuant to § 1106.75.

(c) Add not less than one-half of the cash balance on hand in the producer-settlement fund less the total amount of the contingent obligations to handlers pursuant to § 1106.72.

(d) 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 § 1106.60(f).

(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.

§ 1106.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1106.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1106.71, 1106.76, and 1106.77 and from which he shall make all payments to handlers pursuant to §§ 1106.72 and 1106.77.

§ 1106.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1106.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1106.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1106.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1106.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler including a cooperative association which is a handler the amount, if any, by which the amount computed pursuant to § 1106.71(a)(2) exceeds the amount computed pursuant to § 1106.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments

as soon as the necessary funds are available.

§ 1106.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer to whom payment is not made pursuant to paragraph (c) of this section, at not less than the applicable uniform price(s) for such month computed pursuant to § 1106.61, as adjusted pursuant to §§ 1106.74 and 1106.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided*, That if by such date such handler has not received full payment pursuant to § 1106.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payment from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator;

(b) On or before the last day of each month, to each producer for whom payment is not made pursuant to paragraph (d) of this section for milk received from him during the first 15 days of the month at not less than the Class III price for the preceding month;

(c) To a cooperative association with respect to milk for which the cooperative association is a handler on or before the 10th day of each month for milk which is caused to be delivered to such handler during the preceding month at not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1106.74, that are applicable at the location of the receiving handler's pool plant; and

(d) (1) Upon receipt of written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall:

(i) Pay to the cooperative association on or before the 13th and 27th days of each month in lieu of payments pursuant to paragraphs (a) and (b), respectively of this section, an amount equal to the gross sum due for all milk received from certified members, less amounts owed by each member producer to the handler for supplies purchased from him on prior written order or as evidenced by a delivery ticket signed by the producer;

(ii) Submit to the cooperative association on or before the 10th day of each month written information which shows for each member producer:

(*a*) The total pounds of milk received during the preceding month;

(*b*) The total pounds of butterfat contained in such milk;

(*c*) The number of days on which milk was received; and

(*d*) The amounts withheld by the handler in payment for supplies sold; and

(iii) Submit to the cooperative association on or before the 25th day of each month, written information which shows for each member producer the total pounds of milk received during the first 15 days of the current month. The foregoing payment and submission of information shall be made with respect to milk of each producer, who the cooperative association certifies is a member, which is received on and after the first day of the calendar month next following the receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative and shall be subject to verification at his discretion through audits of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member or by a handler shall be made by written notice to the market administrator and shall be subject to his determination.

§ 1106.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1106.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1106.73 for producer milk received at a pool plant, the uniform price computed pursuant to § 1106.61 shall be reduced according to the location of the pool plant at the rates set forth in § 1106.52;

(b) For the purpose of computations pursuant to §§ 1106.71 and 1106.72, the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1106.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price); and

(c) In making payments to producers pursuant to § 1106.73 for producer milk diverted from a pool plant to a nonpool plant, the uniform price computed pursuant to § 1106.61 shall be reduced according to the location of the nonpool plant at which the milk is received at the rates set forth in § 1106.52.

§ 1106.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1106.30(b) and 1106.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price 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) And 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 § 1106.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the

partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to 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 § 1106.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1106.60 for such handler shall include, in lieu of the value of other source milk specified in § 1106.60(f) less the value of such other source milk specified in § 1106.71(a)(2)(ii), a value of milk determined pursuant to § 1106.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1106.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1106.30 (b) and 1106.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1106.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1106.74, 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 § 1106.74, 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.

§ 1106.77 Adjustments of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in money due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1106.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. For each handler using two accounting periods in a month, the rate of payment shall be twice the rate for monthly accounting periods, or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular costs of administering the additional accounting period:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1106.44(a) (7) and (11) and the corresponding steps of § 1106.44(b), except such other source milk that is excluded from the computations pursuant to § 1106.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1106.76(a)(2).

§ 1106.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1106.73 shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to sample, test, and check the weights of milk received from producers and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of the month pay such deduction to the cooperative association rendering such services, identified by a statement showing for each such producer the information required to be reported to the market administrator pursuant to § 1106.31(a). In lieu of such statement a handler may authorize the market administrator to furnish such cooperative association the information with respect to such producers reported pursuant to § 1106.31(a).

Advertising and Promotion Program

§ 1106.110 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 § 1106.121(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.

§ 1106.111 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 § 1106.113(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 § 1106.113(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 § 1106.113(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.

§ 1106.112 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.

§ 1106.113 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 § 1106.111 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.

§ 1106.114 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.

§ 1106.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1106.110;

(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 §§ 1106.110 and 1106.117.

§ 1106.116 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 §§ 1106.110 and 1106.117;

(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.

§ 1106.117 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.

§ 1106.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1106.121(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.

§ 1106.119 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.

§ 1106.120 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.

§ 1106.121 Duties of the market administrator.

Except as specified in § 1106.116, 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 § 1106.113(c).

(b) Set aside the amounts subtracted under § 1106.61(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 § 1106.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1106.120. 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 § 1106.61(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 (§§ 1106.110 through 1106.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1106.122 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 § 1106.70.

PART 1120—MILK IN LUBBOCK-PLAINVIEW, TEXAS, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1120 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1120.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1120.2 Lubbock-Plainview, Tex., marketing area.

"Lubbock-Plainview, Tex., marketing area", hereinafter called the "marketing area", means all the territory within the boundaries of the counties of:

Bailey.
Castro.
Cochran.
Cottle.
Crosby.
Dickens.
Floyd.
Gaines.
Garza.
Hale.
Hockley.
Lamb.
Lubbock.
Lynn.
Motley.
Terry.
Yoakum.

all within the State of Texas, including all territory within such boundaries occupied by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments.

§ 1120.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk from a plant to wholesale or retail outlets (including any disposition by a vendor, from a plant store, or through a vending machine) other than a delivery to a plant.

§ 1120.4 Plant.

"Plant" means the land, buildings together with their surroundings, facilities and equipment, whether owned or operated by one or more persons, constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received from dairy farmers or processed or packaged: *Provided*, That a separate establishment used only for the purpose of transferring bulk milk from one tank truck to another tank truck, or only as a distribution depot for fluid milk products in transit on routes shall not be a plant under this definition.

§ 1120.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of any Grade A fluid milk product during the month in the marketing area.

§ 1120.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk acceptable for distribution under a Grade A label is moved during the month to a distributing plant.

§ 1120.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) during the month unless the volume so disposed of in the marketing area is less than 15 percent of such receipts or less than 1,500 pounds on a daily average: *Provided*, That if a portion of such plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be a part of such pool plant pursuant to this paragraph.

(b) A supply plant from which a volume of fluid milk products, except filled milk, equal to not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from a handler described in § 1120.9(c) is transferred during the month to a distributing plant from which during the month there is total route disposition, except filled milk, in an amount equal to not less than 50 percent of its receipts of Grade A milk from dairy farmers, cooperative associations, and from other plants and the volume to disposed of in the marketing area is at least 15 percent of such receipts or a daily average of 1,500 pounds, whichever is less: *Provided*, That if a portion of such supply plant, physically apart from the Grade A portion of such a plant, is operated separately and is not approved by any health authority for the receiving, transferring, processing, or packaging of any fluid milk product for Grade A disposition, it shall not be considered to be part of such pool plant pursuant to this paragraph: *And provided further*, That any plant which was a pool plant pursuant to this paragraph in each of the months of September through November shall be a pool plant for the following months of March through June, unless written application is filed with the market administrator on or before the first day of any such months for designation as a nonpool plant for the remaining months through June.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or a State institution plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area, unless notwithstanding the provisions of this subparagraph it is regulated under such other order; or

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is fully regulated under such other Federal order.

§ 1120.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means any nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

(e) "State institution plant" means a State owned and operated institution or establishment which processes or packages fluid milk products distributed solely on its premises or those of other State institutions or establishments. Such plant shall be exempt from all provisions of this part.

§ 1120.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to the milk of any producer which it causes to be diverted for its account pursuant to § 1120.12;

(c) A cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm to the pool plant of another handler in a tank truck owned and operated by, under contract to, or under the control of such association, unless the association notifies the market administrator and the operator of the pool plant in writing prior to the time of delivery that the transferee-handler is to be the responsible handler on such milk;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1120.7(c); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1120.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and whose only source of supply for Class I milk is his own farm production and transfers from pool plants: *Provided*, That such person furnishes satisfactory proof to the market administrator that the maintenance, care and management of all dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprises of and at the personal risks of such person.

§ 1120.11 [Reserved]

§ 1120.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is:

(1) Received at a pool plant either directly or by a handler described in § 1120.9(c); or

(2) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of either the operator of the pool plant or a cooperative association:

(i) Any day during the months of March through June; and

(ii) Not more than 15 days production during any month of July through February: *Provided*, That milk so diverted shall be deemed to have been received at the location of the pool plant from which diverted.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1120.44(a)(8)(iii) and the corresponding step of § 1120.44(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 a person as a producer under that order with respect to such milk.

§ 1120.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in:

(a) Milk received at a pool plant directly from producers;

(b) Milk from producers diverted in accordance with the conditions set forth in § 1120.12; or

(c) Milk received by a handler described in § 1120.9(c): *Provided*, That such milk shall be deemed to have been received by such cooperative association at a pool plant at the location of the pool plant to which it was delivered.

§ 1120.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1120.40 (b)(1) from any source other than producers, handlers described in § 1120.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1120.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1120.40 (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 § 1120.40(b)(1)) for which the handler fails to establish a disposition.

§ 1120.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1120.40 (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 instant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk in any modified product specified in paragraph (a) of this section that is in excess of the quantity of skim milk in an equal volume of an unmodified product of the same nature and butterfat content.

§ 1120.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1120.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1120.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

§ 1120.19 Accounting periods.

A handler may account for receipts, utilization, and classification of skim milk and butterfat at any of his pool plants for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not later than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

HANDLER REPORTS

§ 1120.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for each accounting period in the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1120.9(c);

(3) Receipts of fluid milk products and 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 § 1120.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1120.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1120.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1120.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1120.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1120.32 Other reports.

(a) Each handler shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

(1) On or before the first day other source milk is received in the form of any fluid milk product at any of his pool plants his intention to receive such product, and on or before the last day such product is received his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1120.30 and 1120.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1120.40 Classes of utilization.

Except as provided in § 1120.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1120.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1120.15; and

(6) In shrinkage assigned pursuant to § 1120.41(a) to the receipts specified in § 1120.41(a)(2) and in shrinkage specified in § 1120.41 (b) and (c).

§ 1120.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1120.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1120.9(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 § 1120.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1120.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1120.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1120.44(a)(12) and the corresponding step of § 1120.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1120.44(a)(7) or the corresponding step of § 1120.44 (b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1120.44(a) (11) or (12) or the corresponding steps of § 1120.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other

order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1120.40.

(c) *Transfers to producer-handlers and to State institution plants.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order or a State institution plant shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or a State institution plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1120.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1120.43 General classification rules.

In determining the classification of producer milk pursuant to § 1120.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1120.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1120.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1120.40, 1120.41, and 1120.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1120.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1120.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1120.9(a) for each of his pool plants separately and of each handler described in § 1120.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1120.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1120.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds in skim milk in Class II the pounds of skim milk in products specified in § 1120.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1120.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1120.40(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 a State institution 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, milk from a handler described in § 1120.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to 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 § 1120.40(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 § 1120.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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;

(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 § 1120.9(c) according to the classification of such products pursuant to § 1120.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1120.44(a)(14) and the corresponding step of § 1120.44(b).

§ 1120.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1120.44(a)(12) and the corresponding step of § 1120.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and 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 § 1120.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month report to each cooperative association, upon request by such association, the percentage of producer milk caused to be delivered by such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1120.50 Class prices.

Subject to the provisions of § 1120.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.42.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1120.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1120.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located either outside of the State of Texas, or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall, Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is assigned to Class I pursuant to paragraph (b) of this section or otherwise classified as Class I milk, the price specified in § 1120.50(a) shall be reduced at the rate set forth in the following table according to the location of the plant where such milk is received:

Miles from Lubbock City Hall:	*Rate per hundredweight (cents)*
100 miles but less than 110 miles	10
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1120.9(c) and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1120.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1120.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1120.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1120.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1120.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1120.44(a)(14) and the corresponding step of § 1120.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1120.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1120.44 (a)(9) and the corresponding step of § 1120.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(7) (i) through (iv) and the corresponding step of § 1120.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(7) (v) and (vi) and the corresponding step of § 1120.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1120.44(a)(11) and the corresponding step of § 1120.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1120.61 Computation of uniform price.

For each month, the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1120.60 for all pool handlers who made the reports prescribed in § 1120.30 for the month and who have made the payments required pursuant to § 1120.71 for the preceding month;

(b) Add an amount equal to the sum of the deductions to be made for location adjustments pursuant to § 1120.75;

(c) Add an amount equal to not less than one-half the unobligated balance on hand in the producer-settlement fund;

(d) 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 such computations;

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1120.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents. The result shall be the "uniform price" for producer milk.

§ 1120.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1120.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" in which he shall deposit all payments made by handlers pursuant to §§ 1120.71, 1120.76, and 1120.77, subject to the provision of § 1120.78, and from which he shall make all payments pursuant to §§ 1120.72 and 1120.77: *Provided*, That payments due to any handler shall be offset by any payment due from such handler.

§ 1120.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1120.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1120.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1120.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1120.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1120.71(a)(2) exceeds the amount computed pursuant to § 1120.-71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments due pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1120.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall

make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, to each producer from whom milk is currently being received, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month;

(2) On or before the 15th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1120.61 as adjusted pursuant to § 1120.74; and less

(i) Payments made pursuant to paragraph (a)(1) of this section;

(ii) Location adjustments pursuant to § 1120.75;

(iii) Deduction for marketing services pursuant to § 1120.86; and

(iv) Proper deductions authorized by such producer;

Provided, That if by the date specified, such handler has not received full payment for such month pursuant to § 1120.72, he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator, and payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after receipt of the balance due from the market administrator;

(b) Each handler shall pay to a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk on or before the 26th day of the month and the 13th day of the month following, respectively, the amounts otherwise payable pursuant to paragraph (a) of this section, for milk received from producers whom such association certifies are its members: *Provided,* That such cooperative association submits to the handler and to the market administrator before the first day of the month for which it is to receive such payment, a written request for such payment for milk received from such certified members who are producers together with a written promise to reimburse the handler for the amount of any actual loss incurred by him because of any improper claim on the part of such association. Such request shall be honored with respect to milk received until the first day of the month in which it receives from such association, in writing, notice either of termination of membership, or of withdrawal of the original request. Exceptions, if any, to the accuracy of certification of membership by the cooperative association, by a producer who is claimed to be a member or by a handler shall be made in writing to the market administrator and shall be subject to his determination;

(c) Each handler shall make payment to a cooperative association for each hundredweight of milk received from such association as a handler pursuant to § 1120.9(c) as follows:

(1) On or before the 26th day of each month for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month; and

(2) On or before the 13th day after the end of each month an amount equal to not less than the class prices, as adjusted by the butterfat differential specified in § 1120.74, that are applicable at the location of the receiving handler's pool plant, less the amounts paid pursuant to paragraph (c)(1) of this section; and

(d) In making payments to producers pursuant to paragraph (a)(2) of this section and to a cooperative association pursuant to paragraph (b) of this section each handler shall furnish each producer from whom he has received milk, or each such cooperative association with respect to each producer member, whichever is applicable, with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The applicable month;

(2) The identity of the handler, the Federal milk order under which the producer's milk was priced, and the producer;

(3) The daily and total pounds and the average butterfat content of milk received from such producer;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this part;

(5) The rate which is used in making the payment;

(6) The amount or the rate per hundredweight, and the nature of each deduction made by the handler; and

(7) The net amount of payment to such producer or cooperative association.

§ 1120.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a 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.

§ 1120.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price determined pursuant to § 1120.61 to be paid for milk which is received from producers at pool plants located either outside the State of Texas or within the State but north of the counties of Parmer, Castro, Swisher, Briscoe, Hall, and Childress and 100 miles or more from the city hall of Lubbock, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the table contained in § 1120.52 according to the location of the pool plant at which such milk was received from producers; and

(b) For purposes of computations pursuant to §§ 1120.71 and 1120.72 the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1120.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1120.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1120.30(b) and 1120.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price 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 § 1120.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool

plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to 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 § 1120.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1120.60 for such handler shall include, in lieu of the value of other source milk specified in § 1120.60(f) less the value of such other source milk specified in § 1120.71(a)(2)(ii), a value of milk determined pursuant to § 1120.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1120.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1120.30 (b) and 1120.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1120.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1120.74, 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 § 1120.74, 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.

§ 1120.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or account discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provision under which such error occurred.

§ 1120.78 Charges on overdue accounts.

There shall be added to any balance due to the market administrator pursuant to §§ 1120.71, 1120.76, 1120.77, 1120.85, and 1120.86 an amount equal to one-half of 1 percent of such balance for each month or portion thereof that payment of such balance is overdue.

Administrative Assessment and Marketing Service Deduction

§ 1120.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1120.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk specified in paragraphs (a), (b), and (c) of this section: *Provided*, That if a handler elects pursuant to § 1120.19 to use two accounting periods in any month the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1120.9(c);

(b) Other source milk allocated to Class I pursuant to § 1120.44(a)(7) and (11) and the corresponding steps of § 1120.44(b), except such other source milk that is excluded from the computations pursuant to § 1120.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant during the month that exceeds the skim milk and butterfat subtracted pursuant to § 1120.76(a)(2).

§ 1120.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1120.73(a)(2) shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator no later than the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to verify the weights, samples and tests of milk received by handlers from such producers during the month. Such services shall be performed by the market administrator or by an agent engaged by or responsible to him.

(b) In the case of a producer for whom the Secretary determines a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make in lieu of the deductions specified in said paragraph (a) of this section, such deductions from payments to be made directly to such producers pursuant to § 1120.73(a)(2) as are authorized by such producers and on or before the 15th day after the end of each month pay such deductions to the cooperative association rendering such services.

Advertising and Promotion Program

§ 1120.110 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 § 1120.121(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.

§ 1120.111 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 § 1120.113(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 § 1120.113 (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 § 1120.113(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.

§ 1120.112 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.

§ 1120.113 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 § 1120.111 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.

§ 1120.114 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.

§ 1120.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of agency authority pursuant to § 1120.110;

(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 §§ 1120.110 and 1120.117.

§ 1120.116 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 §§ 1120.110 and 1120.117;

(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.

§ 1120.117 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.

§ 1120.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1120.121(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.

§ 1120.119 Personal liability.

No member of the Agency shall be held personally responsible, either individually or jointy 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.

§ 1120.120 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 by the producer. Only that information 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.

§ 1120.121 Duties of the market administrator.

Except as specified in § 1120.116, 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 § 1120.113(c).

(b) Set aside the amounts subtracted under § 1120.61(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 § 1120.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1120.120. 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 § 1120.61(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 (§§ 1120.110 through 1120.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1120.122 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 § 1120.70.

PART 1126—MILK IN NORTH TEXAS MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1126 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1126.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1126.2 North Texas marketing area.

"North Texas marketing area", hereinafter called the marketing area, means all territory, including all municipal corporations, Federal military reservations, facilities, and State institutions, within the following counties, all in the State of Texas:

Anderson.
Bosque.
Camp.
Cherokee.
Cooke.
Collin.
Dallas.
Delta.
Denton.
Ellis.
Erath.
Fannin.
Franklin.
Freestone.
Grayson.
Gregg.
Harrison.
Henderson.
Hill.
Hood.
Hopkins.
Hunt.
Johnson.
Kaufman.
Lamar.
Limestone.
Marion.
Morris.
Navarro.
Panola.
Parker.
Rains.
Red River.
Rockwall.
Rusk.
Sabine.
San Augustine.
Shelby.
Smith.
Somervell.
Tarrant.
Titus.
Upshur.
Van Zandt.
Wood.

§ 1126.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of a fluid milk product classified as Class I milk other than a delivery in bulk form to a milk processing plant.

§ 1126.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed and/or packaged. Separate facilities used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1126.5 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted State or municipal health authority, or acceptable to an agency of the State or Federal Government for the disposition of Grade A fluid milk products in the marketing area, at which milk products are received, processed and/or packaged, and from which there is route disposition of fluid milk products in the marketing area.

§ 1126.6 Supply plant.

"Supply plant" means any plant approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a pool distributing plant as follows:

(a) During the month 50 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19;

(b) During the last month of any four or less consecutive months during which period an average of 50 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19 and 15 percent or more of such receipts are thus moved and assigned during the month; or

(c) During each of the months of January through August, if (1) such plant was a supply plant pursuant to paragraph (a) or (b) of this section during each of the immediately preceding months of September through December: *Provided*, That, to remain a supply plant during August, 15 percent or more of the receipts of Grade A milk at such plant is moved as milk or skim milk in bulk to a distributing plant and assigned to reserve supply credit pursuant to § 1126.19, and (2) the operator of such plant has filed a written request on or before January 31 with the market administrator requesting that such plant be designated as a supply plant through August of such year.

§ 1126.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which during the month there is:

(1) Route disposition, except filled milk, in the marketing area equal to 10 percent or more of the receipts of Grade A milk at such plant; and

(2) Total route disposition, except filled milk equal to 50 percent or more of the receipts of Grade A milk at such plant, except that if two or more distributing plants operated by the same handler each meet the performance requirement of paragraph (a)(1) of this section and total route disposition, except filled milk, of such plants is 50 percent or more of receipts of Grade A milk at such plants, each such plant shall be deemed to have met the requirement of this subparagraph.

(b) Any supply plant.

(c) Any plant operated by a cooperative association which has been approved by any duly constituted state or municipal health authority and at which milk is received from dairy farmers holding permits or authorization from such health authority, and at least 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from the plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless, notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, in this marketing area than in such other marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A plant qualified pursuant to paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of January through August if such plant retains automatic pooling status under this part.

§ 1126.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units (other than to pool plants) in the marketing area during the month.

§ 1126.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk diverted pursuant to § 1126.13 for the account of such cooperative association;

(c) Any cooperative association with respect to:

(1) Producer milk which it causes to be delivered during any period of less than a full month from its members directly to the pool plant of another handler if (i) during the same month such cooperative association is a handler pursuant to paragraph (a) or (b) of this section with respect to any milk of such producer, and (ii) such association notifies the handler and the market administrator in writing of its intent to become a handler with respect to such milk prior to delivery. For the purpose of location adjustments such milk shall be considered to have been received by the cooperative association at the location of the pool plant to which it is delivered; and

(2) The milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing that it wishes to be the handler for such milk. The cooperative association shall be considered the handler for such milk, effective the first day of the month following receipt of such notice, and milk so delivered shall be

considered for purposes of location adjustments to have been received by such cooperative association at the location of the pool plant to which it is delivered; and

(d) Any person in his capacity as the operator of a partially regulated distributing plant.

§ 1126.10 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from producers;

(c) Disposes of no other source milk as Class I milk; and

(d) Receives from pool plants an amount of milk equal to not more than 5 percent of his own production.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which milk is:

(1) Received at a pool plant, including milk of a dairy farmer delivered to the pool plant by a handler described in § 1126.9(c); or

(2) Diverted by a handler for his account pursuant to § 1126.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person during periods of temporary degrading by any duly constituted State or municipal health authority if such health authority notifies the operator of the pool plant or the market administrator in writing of the effective date or dates of such action and subsequent reapproval;

(3) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1126.44(a)(8)(iii) and the corresponding step of § 1126.44(b); and

(4) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk.

§ 1126.13 Producer milk.

"Producer milk" of a handler operating a pool plant means only that skim milk and butterfat contained in milk described in paragraphs (a) and (b) of this section, and producer milk of a handler described in § 1126.9 (b) and (c) means milk described in paragraphs (c) and (d) of this section:

(a) Milk received from producers at a pool plant except that received from a handler described in § 1126.9(c);

(b) Milk of a producer diverted by the operator of a pool plant for his account to a nonpool plant that is not a producer-handler plant, subject to the conditions of paragraph (e) of this section;

(c) Milk of a producer diverted by a cooperative association from the pool plant of another handler (or the pool plant of the cooperative) to a nonpool plant that is not a producer-handler plant for the account of such cooperative association, subject to the conditions of paragraph (e) of this section;

(d) Milk received from a producer by a handler described in § 1126.9(c);

(e) With respect to milk diverted to nonpool plants, milk diverted in excess of the limit specified herein shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the diverting handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler:

(1) A cooperative association may divert for its account a total quantity of producer milk equal to not more than one-third of the total producer milk of its members physically received at all pool plants during the month;

(2) A handler, other than a cooperative association, operating a pool plant(s) may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to paragraph (e)(1) of this section, in a total quantity equal to not more than one-third of the milk physically received at such handler's pool plant(s) during the month from producers who are not members of such a cooperative association;

(3) Diverted milk shall be deemed to have been received by the diverting handler at the location of the plant to which it was diverted; and

(4) Milk shall be eligible for diversion as producer milk only if the person producing such milk has been delivering milk as producer milk to a pool plant on a regular basis prior to the diversion.

§ 1126.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1126.40(b)(1) from any source other than producers, handlers described in § 1126.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1126.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1126.40(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 § 1126.40(b)(i)) for which the handler fails to establish a disposition.

§ 1126.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1126.40 (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.

§ 1126.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1126.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1126.18 Cooperative association.

"Cooperative Association" means any cooperative marketing association of producers which the Secretary determines, after application by the Association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

§ 1126.19 Reserve supply credit.

The hundredweight of reserve supply credit that may be assigned to milk moved from a supply plant to a distributing plant shall be calculated as follows: From the total hundredweight of milk classified as Class I

milk, except filled milk, at the distributing plant during the month, deduct Class I sales, except filled milk, to other pool plants(s) and from this result deduct an amount equal to 85 percent of the total hundredweight of milk received from producers during the month at such plant. Any plus figure resulting from this calculation shall be assigned pro rata to milk moved to such plant from supply plants unless the operator of the distributing plant notifies the market administrator in writing of a different assignment on or before the seventh day after the end of the month.

HANDLER REPORTS

§ 1126.30 Monthly reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1126.9(c);

(3) Receipts of fluid milk products and 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 § 1126.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1126.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1126.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1126.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) The market administrator shall furnish a cooperative association for its members the data furnished pursuant to paragraph (a) of this section.

§ 1126.32 Other reports.

(a) Each handler who causes milk to be diverted for his account directly from producers' farms to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) Each handler, with respect to fluid milk products and products specified in § 1126.40(b) disposed of for animal feed, shall report to the market administrator such information and at such time as the market administrator may prescribe.

(c) In addition to the reports required pursuant to §§ 1126.30 and 1126.31 and paragraphs (a) and (b) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1126.40 Classes of utilization.

Except as provided in § 1126.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1126.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1126.15; and

(6) In shrinkage assigned pursuant to § 1126.41(a) to the receipts specified in § 1126.41(a)(2) and in shrinkage specified in § 1126.41(b) and (c).

§ 1126.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1126.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1126.9(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 § 1126.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1126.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1126.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1126.44(a)(12) and the corresponding step of § 1126.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1126.44(a)(7) or the corresponding step of § 1126.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1126.44(a)(11) or (12) or the coresponding steps of § 1126.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim mik or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1126.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1126.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(b) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(c) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk 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.

§ 1126.43 General classification rules.

In determining the classification of producer milk pursuant to § 1126.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1126.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1126.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1126.40, 1126.41, and 1126.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1126.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1126.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1126.9(a) for each of his pool plants separately and of each handler described in § 1126.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1126.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1126.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1126.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1126.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1126.40(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 § 1126.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to 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 § 1126.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraph (a)(5) and (7)(i) of this scetion;

(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 paragraphs (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 § 1126.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 or a handler described in § 1126.9(c) according to the classification of such products pursuant to § 1126.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1126.44(a)(14) and the corresponding step of § 1126.44(b).

§ 1126.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1126.44(a)(12) and the corresponding step of § 1126.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products

from an other order plant, the class to which such receipts are allocated pursuant to § 1126.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1126.50 Class prices.

Subject to the provisions of § 1126.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.32.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1126.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1126.52 Plant location adjustments for handlers.

(a) The following zones are defined for the purpose of determining location adjustments:

(1) "Zone I" means all territory within the following Texas counties in the marketing area:

Bosque.	Hood.
Cooke.	Hopkins.
Collin.	Hunt.
Dallas.	Johnson.
Delta.	Kaufman.
Denton.	Lamar.
Ellis.	Limestone.
Erath.	Navarro.
Fannin.	Parker.
Freestone.	Rockwall.
Grayson.	Somervell.
Hill.	Tarrant.

(2) "Zone II" means all territory in the marketing area outside Zone I and all territory in Bowie and Cass Counties, Tex., and the city of Texarkana, Ark.

(b) For producer milk received at a pool plant which is classified as Class I milk, subject to paragraph (c) of this section, the price specified in § 1126.50 (a) shall be adjusted for the location of such plant as follows:

(1) At a plant located in Zone II, such price shall be increased by any amount by which the applicable Class I price at such location pursuant to Part 1121 regulating the handling of milk in the South Texas marketing area exceeds the price specified in § 1126.50(a); and

(2) At a plant located outside Zones I and II and 110 miles or more from the city hall in Dallas, Tex., such price shall be reduced at the rate of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the Dallas city hall by shortest hard-surface highway distance as determined by the market administrator.

(c) For purposes of calculating such location adjustments transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of receipts at such plant from producers and handlers described in § 1126.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such an assignment to be made first to transferor-plants having the same Class I price, next to transferor-plants having a higher Class I price and then in sequence to plants having a lower Class I price, beginning with the plant at which the highest Class I price would apply.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1126.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1126.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1126.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1126.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1126.44(a)(14) and the corresponding step of § 1126.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1126.44 (a)(9) and the corresponding step of § 1126.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (i) through (iv) and the corresponding step of § 1126.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(7) (v) and (vi) and the corresponding step of § 1126.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the

pounds of skim milk and butterfat subtracted from Class I pursuant to § 1126.44(a)(11) and the corresponding step of § 1126.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1126.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content at pool plants at which no location adjustment applies as follows:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers who made the reports prescribed in § 1126.30 and who made the payments pursuant to § 1126.71 for the preceding month;

(b) Add not less than one-fourth of the cash balance on hand in the producer-settlement fund, less the total amount of the contingent obligations to handlers pursuant to § 1126.72;

(c) Add the aggregate of the values of minus location adjustments and subtract the aggregate of all plus location adjustments pursuant to § 1126.75;

(d) 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 § 1126.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1126.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1126.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1126.71, 1126.76, and 1126.77 and from which he shall make all payments to handlers pursuant to §§ 1126.72 and 1126.77.

§ 1126.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1126.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1126.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1126.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in paragraph (b)(1) of this section to route disposition in this marketing area by mutiplying the quantity of such skim milk by the difference between the Class I price under this part that is applicable at the location of the other order plant (but not to be less than the Class III price) and the Class III price.

§ 1126.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(a)(2) exceeds the amount computed pursuant to § 1126.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available: *And provided further*, That any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator for such handler pursuant to §§ 1126.71, 1126.77, 1126.85, and 1126.86.

§ 1126.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 1126.61, as adjusted pursuant to §§ 1126.74 and 1126.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided*, That if by such date such handler has not received full payment for such month pursuant to § 1126.72 he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month, to each producer (1) for whom payment is not made pursuant to paragraph (c) of this section and (2) who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month computed at not less than the Class III price for 3.5 percent milk of the preceding month, without deduction for hauling.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b) of this section, respectively, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payments, an amount equal to the sum of the individual payments otherwise payable to such producers. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1126.31.

(d) On or before the 13th day after the end of the month each handler shall pay to each cooperative association which is also a handler for milk received from it not less than the value of such milk as classified pursuant to § 1126.42 (a) at the respective class prices, as adjusted by the butterfat differential specified in § 1126.74, that are applicable at the location of the receiving handler's pool plant.

§ 1126.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. § 1126.75 plant location adjustments for producers and on nonpool milk.

§ 1126.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1126.73 (a) or (c) the uniform price computed pursuant to

§ 1126.61 to be paid for producer milk received at a pool plant shall be adjusted according to the location of the pool plant at the rate set forth in § 1126.52.

(b) For purposes of computation pursuant to §§ 1126.71 and 1126.72 the uniform price shall be adjusted at the rates set forth in § 1126.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1126.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1126.30(b) and 1126.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price 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 § 1126.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to 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 § 1126.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1126.60 for such handler shall include, in lieu of the value of other source milk specified in § 1126.60(f) less the value of such other source milk (specified in § 1126.71(a)(2)(ii), a value of milk determined pursuant to § 1126.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1126.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1126.30(b) and 1126.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1126.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1126.74, 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 § 1126.74, 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.

§ 1126.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts or payments discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1126.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1126.71, 1126.73, 1126.76, 1126.77, 1126.85, or 1126.86 shall be increased three-fourths of 1 percent per month beginning on the first day after the due date, and on each date of subsequent months following the day on which such type of obligation is normally due: *Provided*, That:

(a) The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation, which shall include any unpaid interest charges previously computed pursuant to this section; and

(b) For the purpose of this section any obligation that was determined at a date later than that prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1126.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each han-

dler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Receipts from producers (including such handler's own production) except receipts by a handler described in § 1126.9(c);

(b) Receipts from a handler described in § 1126.9(c);

(c) Other source milk allocated to Class I pursuant to § 1126.44(a) (7) and (11) and the corresponding steps of § 1126.44(b), except such other source milk that is excluded from the computations pursuant to § 1126.60 (d) and (f); and

(d) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1126.76(a)(2).

§ 1126.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1126.73, shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of each month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1126.110 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 § 1126.121(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.

§ 1126.111 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 § 1126.113(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 § 1126.113(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 § 1126.113(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.

§ 1126.112 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.

§ 1126.113 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 § 1126.111 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.

§ 1126.114 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.

§ 1126.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1126.110,

(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 §§ 1126.110 and 1126.117.

§ 1126.116 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 §§ 1126.110 and 1126.117;

(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.

§ 1120.117 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.

§ 1126.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1126.121(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.

§ 1126.119 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.

§ 1126.120 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 assesment 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.

§ 1126.121 Duties of the market administrator.

Except as specified in § 1126.116, 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 § 1126.113(c).

(b) Set aside the amounts subtracted under § 1126.61(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 § 1126.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1126.120. 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 § 1126.61(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 (§§ 1126.110 through 1126.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1126.122 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 § 1126.70.

PART 1127—MILK IN SAN ANTONIO, TEXAS, MARKETING AREA

Subpart—Order Regulating Handling

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1127.85 Assessment for order administration.
1127.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1127 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1127.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1127.2 San Antonio, Tex., marketing area.

"San Antonio, Tex., marketing area", hereinafter called the "marketing area", means all the territory including all municipal corporations and all Federal military reservations, facilities and installations located within the boundaries of Bexar County, Tex.

§ 1127.3 Route disposition.

"Route disposition" means any delivery of any fluid milk product classified as Class I milk (including any delivery by a vendor or disposition at a plant store) to wholesale or retail outlets, except deliveries in bulk form to other pool plants.

§ 1127.4 [Reserved]

§ 1127.5 Distributing plant.

"Distributing plant" means all the buildings, premises, and facilities of a plant:

(a) Which is approved by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority for the processing of Grade A milk or which is acceptable to an agency of the Federal Government for distribution of milk to its installations in the marketing area;

(b) In which milk or skim milk is processed or packaged; and

(c) From which there is route disposition during the month in the marketing area or from which Class I milk is supplied to installations located in the marketing area of an agency of the Federal Government.

§ 1127.6 Supply plant.

"Supply plant" means all the buildings, premises, and facilities of a plant equipped to either receive or cool milk which is approved by the appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area, and from which an amount equal to not less than 50 percent of its receipts from dairy farmers, who would be producers if the plant qualified as a pool plant, are shipped to a distributing plant during the month: *Provided*, That any plant which qualifies as a supply plant for each of the months of July through February shall be considered to be a supply plant for the following months of March through June of such year, except that if the operator of such plant files a written request with the market administrator, supply plant status shall be terminated as of the first of the following month.

§ 1127.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant which has route disposition, except filled milk, in the marketing area equal to 15 percent or more of its receipts of milk during the month from pool plants and from dairy farmers conforming to the requirements set forth in § 1127.12.

(b) A supply plant.

(c) Any plant approved by an appropriate health authority having jurisdiction in the marketing area to supply milk for distribution as Grade A milk in the marketing area which is operated by a cooperative association, and 50 percent or more of the producer milk of members is received during the month in the pool plants of other handlers, or is transferred to such plants from the plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements for pooling pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all of the provisions of this part in the immediately preceding month, it shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area unless notwithstanding the provisions of this subparagraph it is fully regulated under such other order; and

(3) A plant meeting the requirements for pooling pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area, but which plant is fully regulated under such other Federal order.

§ 1127.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1127.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of a member producer diverted for its account pursuant to § 1127.12 for each day's milk production that such producer's milk is diverted during the month. Milk so diverted shall be deemed to have been received by the association at a pool plant at the location of the pool plant at which the milk was received prior to diversion;

(c) A cooperative association with respect to the producer milk of its members which is delivered directly from the farm to the pool plant of a handler in a tank truck owned and operated by or under contract to such cooperative association unless the cooperative association notifies the market administrator

and the handler to whom the milk is delivered in writing, prior to the first day of the month, that it does not desire to be the handler for such milk. Milk for which the cooperative association is the handler pursuant to this paragraph shall be deemed to have been received by the association at a pool plant at the location of the pool plant to which it is delivered; and

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area.

§ 1127.10 [Reserved]

§ 1127.11 [Reserved]

§ 1127.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk (1) under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk, issued by an appropriate health authority having jurisdiction in the marketing area or by another health authority whose certification is accepted by such health authority, or (2) which is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases located in the marketing area; which is received directly from the farm at a pool plant or diverted from a pool plant to a nonpool plant that is not a producer-handler plant for the account of a cooperative association: *Provided*, That if the days of production of such person for which milk is diverted exceed one-third of the days of production that milk is delivered to a pool plant during the month, such milk shall cease to be producer milk for the entire period of such diversion.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1127.44 (a)(8)(iii) and the corresponding step of § 1127.44(b);

(3) Any person with respect to milk produced by him which is diverted from a pool plant to an other order plant if the other order designates such person as a producer under that order with respect to such milk; and

(4) A dairy farmer during the months of March through June, if milk from the same dairy farmer (or farm) was received at a nonpool plant operated by the same handler, as other than producer milk, on more than half the days of delivery during the preceding months of July through February.

§ 1127.13 Producer milk.

"Producer milk" means any skim milk or butterfat contained in milk of a producer received at a pool plant or diverted by a cooperative association in accordance with § 1127.9(b).

§ 1127.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1127.40 (b)(1) from any source other than producers, handlers described in § 1127.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1127.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1127.40 (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 § 1127.40(b)(1)) for which the handler fails to establish a disposition.

§ 1127.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1127.40 (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.

§ 1127.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1127.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1127.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association (a) to have its entire activities under the control of its members, (b) to have full authority in the sale of milk of its members, and (c) to be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act."

HANDLER REPORTS

§ 1127.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1127.9(c);

(3) Receipts of fluid milk products and 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 § 1127.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1127.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1127.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1127.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1127.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1127.32 Other reports.

In addition to the reports required pursuant to §§ 1127.30 and 1127.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1127.40 Classes of utilization.

Except as provided in § 1127.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1127.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1127.15; and

(6) In shrinkage assigned pursuant to § 1127.41(a) to the receipts specified in § 1127.41(a)(2) and in shrinkage specified in § 1127.41 (b) and (c).

§ 1127.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1127.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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;

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1127.9(c), except that if the operator of the plant to which the milk is delivered purchases 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) [Reserved]

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in 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 § 1127.9 (b) or (c), but not in excess of 0 5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1127.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1127.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1127.44(a)(12) and the corresponding step of § 1127.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1127.44(a)(7) or the corresponding step of § 1127.44(b), the skim milk or butterfat so transferred

shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3 If the transferor-handler received during the month other source milk to be allocated pursuant to § 1127.44(a) (11) or (12) or the corresponding steps of § 1127.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1127.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1127.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1127.43 General classification rules.

In determining the classification of producer milk pursuant to § 1127.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1127.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1127.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1127.40, 1127.41, and 1127.42;

(b) If any of the water contained in the milk from which a product is made

is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1127.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1127.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1127.9(a) for each of his pool plants separately and of each handler described in § 1127.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1127.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1127.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1127.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1127.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1127.40(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;

(vi) Receipts of reconstituted skim milk in filled milk from an other order plant that is regulated under any Federal milk order providing for individual-handler pooling, to the extent that reconstituted skim milk is allocated to Class I at the transferor-plant; and

(vii) Receipts of fluid milk products from persons described in § 1127.12 (b) (4);

(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 § 1127.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to 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 § 1127.40(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 § 1127.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 or a handler described in § 1127.9(c) according to the classification of such products pursuant to § 1127.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1127.44(a) (14) and the corresponding step of § 1127.44(b).

§ 1127.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1127.44(a) (12) and the corresponding step of § 1127.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1127.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be assigned to each class in the proportion that the total producer milk in each class is to the total receipts of producer milk by such handler.

Class Prices

§ 1127.50 Class prices.

Subject to the provisions of § 1127.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.74.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1127.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1127.52 Plant location adjustments for handlers.

(a) For milk which is received from producers at a pool plant located more than 50 miles from the city hall in San Antonio, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator and which is classified as Class I milk, the price specified in § 1127.50(a) shall be reduced 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the city hall in San Antonio, Tex.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess

of the sum of receipts at such plant from producers and handlers described in § 1127.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1127.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1127.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1127.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1127.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1127.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1127.44(a)(14) and the corresponding step of § 1127.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1127.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1127.44 (a)(9) and the corresponding step of § 1127.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(7) (i) through (iv) and (vii) and the corresponding step of § 1127.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(7) (v) and (vi) and the corresponding step of § 1127.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1127.44(a)(11) and the corresponding step of § 1127.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1127.40(b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1127.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content as follows:

(a) Combine into one total the values computed pursuant to § 1127.60 for all handlers who have made the reports prescribed by § 1127.30 for the month and who have made the payment required pursuant to § 1127.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1127.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) 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 § 1127.60(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.

§ 1127.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1127.70 Producer-settlement fund.

The market administrator shall establish a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1127.71, 1127.76, and 1127.77 and from which he shall make all payments pursuant to §§ 1127.72 and 1127.77.

§ 1127.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1127.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1127.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1127.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1127.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which

the amount computed pursuant to § 1127.71(a)(2) exceeds the amount computed pursuant to § 1127.71(a)(1).

§ 1127.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay to a cooperative association on or before the 13th day of the month, for milk received from it during the preceding month for which such association is a handler described in § 1127.9(c), the value of such milk at not less than the class prices as adjusted by the butterfat differential specified in § 1127.74, that are applicable at the location of the receiving handler's pool plant: *Provided, however*, That for each hundredweight of milk so received during the first 15 days of any month, such handler shall, upon written request of the cooperative association make a partial payment to such association by the 26th day of the month at not less than the Class III price of the preceding month, in which case the obligation of the handler otherwise payable on or before the 13th day of the following month shall be reduced by the amount of such partial payment.

(b) Except as provided in paragraph (b)(3) of this section each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the last day of each month, for milk received during the first 15 days of such month at not less than the price per hundredweight for Class III milk for the preceding month.

(2) On or before the 15th day after the end of the month during which the milk was received at not less than the uniform price per hundredweight computed for such month pursuant to § 1127.61 subject to the following adjustments: (i) The butterfat differential pursuant to § 1127.74, (ii) the location adjustment pursuant to § 1127.75, (iii) the payment made pursuant to paragraph (b)(1) of this section, (iv) deductions for marketing services pursuant to § 1127.86, and (v) proper deductions authorized by such producer: *Provided*, That if by such date such handler has not received full payment pursuant to § 1127.72 he may reduce his total payment to all producers pro rata by not more than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this subparagraph not later than the date for making such payments next following receipt of the balance due from the market administrator.

(3)(i) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association, each handler shall on or before the 20th day of each month furnish the cooperative association information showing the daily and total pounds of milk received from each of the association's member producers for the first 15 days of such month and, on or before the 10th day after the end of each month, such information for the 16th through the end of such month, and shall pay to such association on or before the 26th and 13th day of each month, in lieu of payments pursuant to paragraph (a)(1) and (2) respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(ii) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(4) In making the payments to producers pursuant to paragraph (b)(2) and (3) 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:

(i) The month for which payment is made and the identity of the handler and of the producer;

(ii) The total pounds and average butterfat test of milk received from such producer;

(iii) The minimum rate or rates at which payment to such producer is required;

(iv) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(v) The amount or rate per hundredweight of each deduction claimed by the handler; together with a description of the respective deductions; and

(vi) The net amount of payment to such producer.

§ 1127.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1127.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1127.73 for that milk which is received from producers at a pool plant located more than 50 miles from the city hall in San Antonio, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, the handler may deduct an amount equal to not more than 1.5 cents per hundredweight for each 10 miles or fraction thereof that such plant is distant from the city hall in San Antonio, Tex.

(b) For the purposes of computations pursuant to §§ 1127.71 and 1127.72 the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1127.52 applicable at the location of the nonpool plant from which the milk was received (but not to be less than the Class III price).

§ 1127.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1127.30(b) and 1127.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price 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 § 1127.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to 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 § 1127.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1127.60 for such handler shall include, in lieu of the value of other source milk specified in § 1127.60(f) less the value of such other source milk specified in § 1127.71(a)(2)(ii), a value of milk determined pursuant to § 1127.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1127.7(b) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1127.30 (b) and 1127.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1127.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1127.74, 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 § 1127.74, 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.

§ 1127.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's books, reports, records, or accounts discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payment set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1127.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Skim milk and butterfat received from producers (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1127.44(a) (7) and (11) and the corresponding steps of § 1127.44(b), except other source milk that is excluded from the computations pursuant to § 1127.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1127.76(a)(2).

§ 1127.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section each handler, in making payments to producers (other than himself) shall make a deduction of 6 cents per hundredweight of milk or such lesser deduction as the Secretary from time to time may prescribe. Such deductions shall be paid by the handler to the market administrator on or before the 15th day after the end of the month. Such moneys shall be expended by the market administrator for verification of weights and tests of milk received from such producers and in providing market information to such producers.

(b) In the case of each producer who is a member of, or who has given written authorization for the rendering of marketing services and the taking of a deduction therefor to a cooperative association, which the Secretary has determined is performing the services described in paragraph (a) of this section, such handler, in lieu of the deduction specified under paragraph (a) of this section, shall deduct from the payments to such producer the amount per hundredweight specified by such association which is not in excess of the rate authorized by such producer and shall pay such deduction to the cooperative association entitled to receive it on or before the 15th day after the end of the month during which such milk was received.

Advertising and Promotion Program

§ 1127.110 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 § 1127.121(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.

§ 1127.111 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 § 1127.113(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 § 1127.113(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 § 1127.113(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.

§ 1127.112 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.

§ 1127.113 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 § 1127.111 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.

§ 1127.114 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.

§ 1127.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1127.110;

(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 §§ 1127.110 and 1127.117.

§ 1127.116 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 §§ 1127.110 and 1127.117;

(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.

§ 1127.117 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.

§ 1127.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1127.121(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 producers participation.

(d) Agency funds may be used only for programs and projects promoting the domestic marketing and consumption of milk and its products.

§ 1127.119 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.

§ 1127.120 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.

§ 1127.121 Duties of the market administrator.

Except as specified in § 1127.116, 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 § 1127.113(c).

(b) Set aside the amounts subtracted under § 1127.61(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 § 1127.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1127.120. 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 § 1127.61(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 (§§ 1127.110 through 1127.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1127.122 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 § 1127.70.

PART 1128—MILK IN CENTRAL WEST TEXAS MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

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DEFINITIONS

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AUTHORITY: The provisions of this Part 1128 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1128.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1128.2 Central West Texas marketing area.

"Central West Texas marketing area," hereafter called the "marketing area," means all territory within the boundaries of the Abilene Air Force Base and within the corporate limits of the following cities and towns, all in the State of Texas:

Abilene.	Lamesa.
Albany.	Merkel.
Anson.	Midland.
Aspermont.	Mineral Wells.
Ballinger.	Munday.
Big Spring.	Odessa.
Breckenridge.	Ranger.
Brownwood.	Rochester.
Cisco.	Rotan.
Coleman.	Rule.
Colorado City.	San Angelo.
Comanche.	Snyder.
Eastland.	Stamford.
Hamlin.	Sweetwater.
Haskell.	Tye.
Knox City.	Winters.

§ 1128.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or at a plant store) of a fluid milk product classified as Class I milk other than in bulk to a milk or filled milk processing plant.

§ 1128.4 [Reserved]

§ 1128.5 [Reserved]

§ 1128.6 [Reserved]

§ 1128.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A milk plant approved by and under the routine inspection of the health authority of any municipality in the marketing area:

(1) From which there is route disposition of Grade A fluid milk products, other than filled milk, in consumer packages in the marketing area; or

(2) At which milk is received from producers as defined in § 1128.12(a)(1) and which serves as a receiving station at which producer milk is received, weighed, and commingled and from which milk or skim milk (i) is moved during the month to a pool plant(s) specified in paragraph (a)(1) or (b) of this section, or (ii) was moved to any such plant(s) in an amount equal to 60 percent or more of the total receipts of producer milk during the months of October through January immediately preceding any month of April, May, or June during which no milk was moved to such plant(s).

(b) A milk plant approved by and under the routine inspection of a health authority other than that of a municipality in the marketing area from which there is route disposition of Grade A fluid milk products, other than filled milk, in consumer packages in the marketing area in an amount equal to 10 percent or more of the total disposition of Class I milk, except filled milk, from such plant during the month.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a)(1) or (b) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which there is a greater proportion of route disposition in such other marketing area unless notwithstanding the provisions of this subparagraph it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a)(1) or (b) of this section which also meets the pooling requirements of another Federal order on the basis of route disposition in such other marketing area and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is fully regulated under such other Federal order; and

(4) A plant meeting the requirements of paragraph (a)(2) of this section which (i) meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part or (ii) retains automatic pooling status for the month under another Federal order by virtue of its performance in previous months.

§ 1128.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

§ 1128.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to the milk of any producer which it causes to be diverted pursuant to § 1128.12 for the account of such cooperative association;

(c) Any cooperative association with respect to the milk of producers which it causes to be delivered directly from the farm for its own account, in tank truck(s) owned or operated by such association, to the pool plant of another handler described in § 1128.7 (a)(1) or (b): *Provided*, That such milk shall be deemed to have been received by the cooperative association at a pool plant at the location of the plant to which it is delivered; or

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition during the month in the marketing area.

§ 1128.10 Producer-handler.

"Producer-handler" means any person:

(a) Who operates a dairy farm and a milk plant approved by and under the routine inspection of the appropriate health authority from which there is route disposition of Grade A fluid milk products in consumer-type packages in the marketing area; and

(b) Whose disposition of fluid milk products does not exceed his own farm production and receipts of fluid milk products from pool plants.

§ 1128.11 [Reserved]

§ 1128.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person described in paragraph (a)(1) or (2) of this section and shall include any such person whose milk is received by a handler described in § 1128.9 (c) or whose milk is regularly received at a pool plant but is caused to be diverted by a handler to a nonpool plant that is not a producer-handler plant, and milk so diverted shall be deemed to have been received by the handler at the location of the pool plant at which it was received immediately prior to its being so diverted:

(1) Who produces milk under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by the health authority of any municipality in the marketing area, which milk is received at a pool plant described in § 1128.7(a); or

(2) Who produces milk under a dairy farm permit or rating for the production of milk to be disposed of for consumption as Grade A milk issued by a health authority whose certification is accepted by the appropriate health authority of a municipality in the marketing area, which milk is received at a pool plant described in § 1128.7(b).

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1128.44(a)(8)(iii) and the corresponding step of § 1128.44(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.

§ 1128.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in:

(a) Milk received at a pool plant directly from producers;

(b) Milk of producers that is diverted pursuant to § 1128.12; or

(c) Milk received by a handler described in § 1128.9(c).

§ 1128.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1128.40 (b)(1) from any source other than producers, handlers described in § 1128.9 (c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1128.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1128.40 (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 § 1128.40(b)(1)) for which the handler fails to establish a disposition.

§ 1128.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1128.40 (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.

§ 1128.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1128.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1128.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1128.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1128.9(c);

(3) Receipts of fluid milk products and 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 § 1128.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1128.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1128.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1128.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1128.76 (b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

(c) The market administrator shall furnish to a cooperative association upon request the data with respect to milk of its members furnished pursuant to paragraph (a) of this section.

§ 1128.32 Other reports.

(a) Each handler who causes milk to be diverted to a nonpool plant shall, prior to such diversion, report to the market administrator and to the cooperative association of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant §§ 1128.30 and 1128.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1128.40 Classes of utilization.

Except as provided in § 1128.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1128.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1128.15; and

(6) In shrinkage assigned pursuant to § 1128.41(a) to the receipts specified in § 1128.41(a)(2) and in shrinkage specified in § 1128.41(b) and (c).

§ 1128.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1128.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1128.9(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 § 1128.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1128.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1128.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1128.44(a)(12) and the corresponding step of § 1128.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1128.44(a)(7) or the corresponding step of § 1128.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1128.44(a)(11) or (12) or the corresponding steps of § 1128.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1128.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1128.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1128.43 General classification rules.

In determining the classification of producer milk pursuant to § 1128.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1128.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1128.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1128.40, 1128.41, and 1128.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1128.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1128.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1128.9(a) for each of his pool plants separately and of each handler described in § 1128.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1128.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1128.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1128.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1128.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1128.40(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 § 1128.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to 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 § 1128.40(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 § 1128.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 § 1128.9(c) according to the classification of such products pursuant to § 1128.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1128.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1128.44(a)(12) and the corresponding step of § 1128.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1128.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1128.50 Class prices.

Subject to the provisions of § 1128.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.57.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1128.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1128.52 Plant location adjustments for handlers.

For producer milk classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price set forth in § 1128.50(a) shall be subject to the following adjustments:

(a) For milk received from producers at a pool plant located (1) east of the 103d principal meridian, (2) more than 180 highway miles from the U.S. Post Office in Midland, Tex., and also (3) at the following highway distances from the U.S. Post Office in Abilene, Tex., such price shall be reduced as follows:

	Cents
More than 70 miles but less than 105 miles	20
105 miles or more	25

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1128.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1128.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1128.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1128.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1128.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1128.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1128.44(a)(14) and the corresponding step of § 1128.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1128.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1128.44(a)(9) and the corresponding step of § 1128.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(7) (i) through (iv) and the corresponding step of § 1128.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(7) (v) and (vi) and the corresponding step of § 1128.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1128.44(a)(11) and the corresponding step of § 1128.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1128.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for all milk of 3.5 percent butterfat content received at a pool plant as follows:

(a) Combine into one total the values computed pursuant to § 1128.60 for all handlers who have made the reports prescribed in § 1128.30 and who have made the payments due pursuant to § 1128.71 for the preceding month;

(b) Add the aggregate of the values of all minus location adjustments pursuant to § 1128.75;

(c) Add not less than one-half of the unobligated cash balance on hand in the producer-settlement fund;

(d) 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 such computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1128.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1128.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payment for Milk

§ 1128.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1128.71, 1128.76, and 1128.77, and from which he shall make all payments to handlers pursuant to §§ 1128.72 and 1128.77.

§ 1128.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1128.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1128.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1128.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1128.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler, including a cooperative association which is a handler, the amount, if any, by which the amount computed pursuant to § 1128.71(a)(2) exceeds the amount computed pursuant to § 1128.71(a)(1): *Provided*, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

§ 1128.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 15th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price for such month computed pursuant to § 1128.61, as adjusted pursuant to §§ 1128.74 and 1128.75, and less the amount of the payment made pursuant to paragraph (b) of this section: *Provided*, That if by such date such handler has not received full payment pursuant to § 1128.72, he may reduce his total payments to all producers uniformly by not less than the amount of reduction in payments from the market administrator; he shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b) On or before the 25th day of each month, to each producer for whom payment is not made pursuant to paragraph (c) of this section for milk received during the first 15 days of such month at not less than the Class III price of the preceding month.

(c) On or before the 13th and 23d days of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, with respect to producers for whose milk such cooperative association is authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producer. Such payment shall be accompanied by a statement showing for each producer the items required to be reported pursuant to § 1128.31.

§ 1128.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1128.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments to producers pursuant to § 1128.73, the uniform price for all milk computed pursuant to § 1128.61 for milk received from producers at a pool plant shall be adjusted

at the rates set forth in § 1128.52(a), applicable at the location of such plant.

(b) For purposes of computations pursuant to §§ 1128.71 and 1128.72 the uniform price for all milk shall be adjusted at the rates set forth in § 1128.52(a) applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1128.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1128.30(b) and 1128.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price 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 § 1128.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to 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 § 1128.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1128.60 for such handler shall include, in lieu of the value of other source milk specified in § 1128.60(f) less the value of such other source milk specified in § 1128.71(a)(2)(ii), a value of milk determined pursuant to § 1128.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1128.7(a)(2) subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1128.30(b) and 1128.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1128.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments by the operator of such partially regulated distributing plan, adjusted to a 3.5 percent butterfat basis by the butterfat differential specified in § 1128.74, 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 § 1128.74, 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.

§ 1128.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due;

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amounts so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1128.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1128.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1128.9(c);

(b) Other source milk allocated to Class I pursuant to § 1128.44(a) (7) and (11) and the corresponding steps of § 1128.44(b), except such other source milk that is excluded from the computations pursuant to § 1128.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1128.76(a)(2).

§ 1128.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers (other than himself) pursuant to § 1128.73(a), shall deduct 5 cents per hundredweight or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such moneys shall be used by the market administrator to sample, test, and check the weights of milk received and to provide producers with market information.

(b) In the case of producers for whom a cooperative asociation is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers and on or before the 15th day after the end of each month pay such deduction to the cooperative association rendering such services, accompanied by a statement showing the quantity of milk for which such deduction was computed for each such producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1128.110 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 § 1128.121(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.

§ 1128.111 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 § 1128.113(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 § 1128.113(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 § 1128.113(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.

§ 1128.112 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.

§ 1128.113 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 § 1128.111 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.

§ 1128.114 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.

§ 1128.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuit to § 1128.110;

(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 §§ 1128.110 and 1128.117.

§ 1128.116 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 §§ 1128.110 and 1128.117;

(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.

§ 1128.117 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.

§ 1128.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1128.121(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.

§ 1128.119 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.

§ 1128.120 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.

§ 1128.121 Duties of the market administrator.

Except as specified in § 1128.116, 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 § 1128.113(c).

(b) Set aside the amounts subtracted under § 1128.61(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 § 1128.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1128.120. 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 § 1128.61(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 (§§ 1128.110 through 1128.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1128.122 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 § 1128.70.

PART 1129—MILK IN AUSTIN-WACO, TEX., MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1129 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1129.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1129.2 Austin-Waco marketing area.

"Austin-Waco Marketing Area," hereinafter called the marketing area, means all territory, including all municipal corporations and all Federal military reservations, facilities and installations, located within or partially within the boundaries of Travis, Hays, Lampasas, Burnet, Caldwell, Bastrop, Williamson, Bell, Falls, McLennan, Coryell, Comal and Guadalupe Counties, all in the State of Texas.

§ 1129.3 Route disposition.

"Route disposition" means the delivery (including delivery by a vendor or sale at a plant store) of fluid milk products classified as Class I milk other than as follows:

(a) Delivery in bulk to a plant, or

(b) Delivery in consumer packages from a milk processing plant to a distributing plant in an amount not in excess of the amount of producer milk received by such processing plant during the month from the operator of such distributing plant and classified as Class I milk: *Provided*, That for the purposes of this paragraph milk so transferred to such processing plant shall be considered to be producer milk to the extent that total receipts during the month of producer milk by the operator of such distributing plant exceed his gross Class I sales less: (1) Receipts of Class I milk from other fluid milk plants; (2) milk transferred as Class I milk to such milk processing plant; and (3) milk received in consumer packages from such milk processing plant.

§ 1129.4 [Reserved]

§ 1129.5 Distributing plant.

"Distributing plant" means any milk processing or packaging plant from which there is route disposition, except filled milk, in the marketing area during the month equal to more than an average of 500 pounds per day or 5 percent, whichever is less, of the Grade "A" milk and skim milk received from dairy farmers or other plants.

§ 1129.6 Supply plant.

"Supply plant" means any plant from which fluid milk or fluid skim milk is received at a distributing plant:

(a) For any of the months of February through July, on 4 or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month; and

(b) For any of the months of August through January:

(1) On 10 or more days during the month, or in an amount equal to a daily average of not less than 8,300 pounds for such month; or

(2) On 4 or more days during the month, or in an amount equal to a daily average of not less than 3,300 pounds for such month, and such plant was a supply plant pursuant to paragraph (a) of this section during any month of the immediately preceding period of February through July.

§ 1129.7 Fluid milk plant.

Except as provided in paragraph (c) of this section, "fluid milk plant" means:

(a) A distributing plant or a supply plant.

(b) Any plant approved by the appropriate health authority to supply milk for distribution as Grade A milk in the marketing area if such plant is operated by a cooperative association, and 75 percent or more of the milk of the members of such association, including receipts pursuant to § 1129.9 (b) and (c), is received at the fluid milk plants of other handlers.

(c) The term "fluid milk plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) An approved distributing plant which also meets the pooling requirements of another Federal order and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in the Austin-Waco marketing area;

(3) An approved distributing plant which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in the Austin-Waco marketing area than in such other Federal order marketing area, but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) An approved supply plant which (i) meets the pooling requirements of another Federal order and from which greater qualifying shipments, except filled milk, are made during the month to plants regulated under such other order than are made to plants regulated under this part, or (ii) retains automatic pooling status under another Federal order.

§ 1129.7a Approved plant.

"Approved plant" means: (a) A fluid milk plant, or (b) any milk plant from which there is route disposition in the marketing area.

§ 1129.8 Nonfluid milk plant.

"Nonfluid milk plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a fluid milk plant. The following categories of nonfluid milk plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonfluid milk plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonfluid milk plant from which fluid milk products are moved to a fluid milk plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1129.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more approved plants;

(b) Any cooperative association with respect to the milk of any producer which it diverts pursuant to § 1129.12; and

(c) Any cooperative association with respect to the milk of any producer which it causes to be delivered directly from the farm in bulk tank pickup truck(s) owned and/or controlled by such association, to the fluid milk plant of another handler. Such milk shall be deemed to have been received by the cooperative association at the location of the fluid milk plant to which it is delivered.

§ 1129.10 Producer-handler.

"Producer-handler" means a person who operates both a dairy farm(s) and a milk processing or bottling plant at which milk is received from the dairy farm(s) of such person but from no other dairy farm: *Provided*, That such person shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the maintenance, care, and management of the dairy animals and other resources necessary for the production of milk in his name are and continue to be the personal enterprise of and at the personal risk of such producer and the processing, packaging and distribution of the milk are and continue to be the personal enterprise of and at the personal risk of such producer in his capacity as a handler.

§ 1129.11 [Reserved]

§ 1129.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is:

(1) Received at a fluid milk plant; or

(2) Diverted for his account by the operator of a fluid milk plant or cooperative association from such plant to a nonfluid milk plant that is not a producer-handler plant during the period January through July and on not more than one-third of the days of delivery during the month for the period August through December: *Provided*, That milk so diverted shall be deemed to have been received by the diverting handler at the plant from which it was diverted.

(b) "Producer" shall not include:

(1) A producer-handler as described in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a fluid milk plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III pursuant to § 1129.44(a)(8)(iii) and the corresponding step of § 1129.44(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.

§ 1129.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk produced by a producer and received at a fluid milk plant directly from producers or diverted pursuant to § 1129.12.

§ 1129.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1129.40(b)(1) from any source other than producers, handlers described in § 1129.9(c), fluid milk plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1129.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1129.40(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 § 1129.40(b)(1)) for which the handler fails to establish a disposition.

§ 1129.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1129.40 (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.

§ 1129.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition or other ingredients.

§ 1129.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1129.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 10, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1129.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his fluid milk plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the fluid milk plant to other plants;

(2) Receipts of milk from handlers described in § 1129.9(c);

(3) Receipts of fluid milk products and 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 § 1129.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler described in § 1129.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to his receipts and utilization of milk, filled milk and milk products in such manner as the market administrator may prescribe.

§ 1129.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1129.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) The market administrator, upon request, shall furnish to a cooperative association for its members the data reported pursuant to paragraph (a) (1), (2), and (3) of this section.

§ 1129.32 Other reports.

(a) Each handler, who causes milk to be diverted for his account directly from producers' farms to an unapproved plant, shall prior to such diversion, report to the market administrator and to the cooperative association, of which such producer is a member, his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1129.30 and 1129.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1129.40 Classes of utilization.

Except as provided in § 1129.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1129.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1129.15; and

(6) In shrinkage assigned pursuant to § 1129.41(a) to the receipts specified in § 1129.41(a) (2) and in shrinkage specified in § 1129.41 (b) and (c).

§ 1129.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1129.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each fluid milk plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1129.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1129.9(c), except that if the operator of the plant to which the milk is delivered purchases 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 § 1129.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1129.42 Classification of transfers and diversions.

(a) *Transfers to fluid milk plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to another fluid milk plant or by a handler described in § 1129.9(c) to another handler's fluid milk plant shall be classified as Class I milk unless both handlers request the same classification in another class. The percentage of the total quantities of skim milk and butterfat, respectively, in products thus transferred and assigned to Class I milk shall not be greater than the percentage of skim milk and butterfat in producer milk classified as Class I milk in the plant of the transferee-handler. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computation pursuant to § 1129.44(a) (12) and the corresponding step of § 1129.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1129.44(a) (7) or the corresponding step of § 1129.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1129.44(a) (11) or (12) or the corresponding steps of § 1129.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case

if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a fluid milk plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or 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 § 1129.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a fluid milk plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonfluid milk plants.* Skim milk or butterfat transferred or diverted in the following forms from a fluid milk plant to a nonfluid milk plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1129.30 for the month within which such transaction occurred; and

(*b*) The nonfluid milk plant operator maintains books and records showing utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonfluid milk plant and transfers of packaged fluid milk products from such nonfluid milk plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonfluid milk plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonfluid milk plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonfluid milk plant from fluid milk plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonfluid milk plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonfluid milk plant from fluid milk plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonfluid milk plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonfluid milk plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonfluid milk plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant; and

(*b*) To such nonfluid milk plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonfluid milk plant;

(vi) Any remaining unassigned receipts of 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.

§ 1129.43 General classification rules.

In determining the classification of producer milk pursuant to § 1129.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1129.30 and shall compute separately for each fluid milk plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1129.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1129.40, 1129.41, and 1129.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1129.9 (b) or

(c) shall be determined separately from the operations of any fluid milk plant operated by such cooperative association.

§ 1129.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1129.9(a) for each of his fluid milk plants separately and of each handler described in § 1129.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1129.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant as follows:

(i) From Class III milk, the lesser of the pounds remaining or 2 percent of such receipts; and

(ii) From Class I milk, the remainder of such receipts;

(4) Subtract from the pounds of skim milk in Class II the pounds of skim milk in products specified in § 1129.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1129.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1129.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1129.40(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 substracted from Class II and Class III combined exceed the pounds of skim milk remaining in such classes, the pounds of skim milk in Class II and Class III shall be increased (increasing Class III first to the extent permitted by the handler's total Class III utilization at his other fluid milk plants) by an amount equal to such quantity to be subtracted and the pounds of skim milk in Class I shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other fluid milk plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment:

(a) Multiply by 1.25 the sum of the pounds of skim milk remaining in Class I at this allocation step at all fluid milk plants of the handler;

(b) Subtract from the above result the sum of the pounds of skim milk in receipts at all fluid milk plants of the handler of producer milk, milk from a handler described in § 1129.9(c), fluid milk products from fluid milk plants of other handlers, and bulk fluid milk products from other order plants; and

(c) Multiply any plus quantity resulting above by the percentage that the receipts of skim milk in fluid milk products from unregulated supply plants that remain at this fluid milk plant is of all such receipts remaining at this allocation step at all fluid milk plants of the handler; and

(iii) The pounds of skim milk in receipts of bulk fluid milk products from an other order plant that are in excess of bulk fluid milk products transferred or diverted to such plant, if Class II or Class III classification is requested by the operator of the other order plant and the handler, but not in excess of the pounds of skim milk remaining in Class II and Class III combined;

(9) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in fluid milk products and products specified in § 1129.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to 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 bulk fluid milk products from an other order plant that were not subtracted pursuant to paragraph (a)(8)(iii) of this section and that are in excess of bulk fluid milk products transferred or diverted to such plant:

(i) Should the pounds of skim milk to be subtracted from any class pursuant to this subparagraph exceed the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other fluid milk plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another fluid milk plant or a handler described in § 1129.9(c) according to the classification of such products pursuant to § 1129.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1129.44(a)(14) and the corresponding step of § 1129.44(b).

§ 1129.45 Market administrator's reports concerning classification.

The market administrator shall make the following reports concerning classification:

(a) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1129.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(b) Furnish to each handler operating a fluid milk plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(c) On or before the 12th day after the end of each month, report to each cooperative association, which so requests, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report, the milk so received shall be prorated to each class in the proportion that the total receipts of milk from producers by such handler were used in each class.

Class Prices

§ 1129.50 Class prices.

Subject to the provisions of § 1129.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.70.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1129.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1129.52 Plant location adjustments for handlers.

For milk received from producers at a fluid milk plant located outside of Zone I (Zone I comprises all the territory south of the northern boundaries of Guadalupe, Comal, Kendall, Kerr, Edwards, and Val Verde Counties, all in the State of Texas, and all territory south of a boundary formed by U.S. Highway 90 east of the marketing area to the Colorado River and thence south along the Colorado River) which is classified as Class I milk, the price specified in § 1129.50(a) shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the county court house of the county in which such plant is located is from the county court house in New Braunfels, Tex.

§ 1129.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1129.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1129.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1129.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1129.44(a)(14) and the corresponding step of § 1129.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1129.74, that are applicable at the location of the fluid milk plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the fluid milk plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1129.44(a)(9) and the corresponding step of § 1129.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1129.44(a)(9) and the corresponding step of § 1129.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III

(exclusive of shrinkage) after the computations pursuant to § 1129.44(a)(11) and the corresponding step of § 1129.44 (b) for the preceding month, less the hundredweight of skim milk and butterfat specified in paragraph (c)(1) of this section; and

(d) Add or subtract, as the case may be, an amount necessary to correct errors discovered by the market administrator in the verification of reports of such handler of receipts and utilization of skim milk and butterfat for previous months.

§ 1129.61 Computation of uniform price for each handler.

For each month, the market administrator shall compute a uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers by each handler as follows:

(a) Add to the amount computed pursuant to § 1129.60 the total of the location adjustments to be made pursuant to § 1129.75;

(b) Add the amount represented by any deductions made for eliminating fractions of a cent in computing the uniform price(s) for such handler for the preceding month;

(c) Subtract an amount computed by multiplying the total hundredweight of producer milk in each class by 5 cents; and

(d) Divide the resulting amount by the total hundredweight of producer milk received by such handler. The result, less any fraction of a cent, shall be known as the uniform price for such handler for milk of 3.5 percent butterfat content, at fluid milk plants in Zone I.

§ 1129.62 Announcement of uniform price for each handler and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for each handler for such month.

PAYMENTS FOR MILK

§ 1129.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (d) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the 28th day of each month, for milk received during the first 15 days of the month at not less than the Class III price for the preceding month.

(b) On or before the 15th day after the end of each month for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1129.61 as adjusted pursuant to §§ 1129.74 and 1129.75; plus or minus adjustments for errors made in previous payments to such producers; and less (1) payment made pursuant to paragraph (a) of this section; (2) deductions for marketing services pursuant to § 1129.86 and (3) proper deductions authorized by such producer.

(c) On or before the 13th and 26th days of each month in lieu of the payments pursuant to paragraphs (a) and (b) of this section, respectively, each handler shall pay to a cooperative association for milk which it caused to be delivered to such handler from producers and for which such cooperative association is not a handler pursuant to § 1129.9 (c), if such cooperative association is authorized to collect such payments for its member-producers and has so requested the handler, an amount equal to the sum of the individual payments otherwise payable to such producers.

(d) On or before the 13th and 26th days of each month, each handler shall pay to a cooperative association for milk which was caused to be delivered to such handler by such cooperative association, and for which it is a handler pursuant to § 1129.9(c), an amount not less than the value of such milk computed by multiplying the pounds of such milk classified in each class pursuant to § 1129.44 by the class prices, as adjusted by the butterfat differential specified in § 1129.74, that are applicable at the location of the receiving handler's fluid milk plant.

(e) In making the payments to producers pursuant to paragraphs (b) and (c) or (d) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

§ 1129.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1129.75 Plant location adjustments for producers.

In making payment to producers pursuant to § 1129.73, the uniform price to be paid for producer milk received at a fluid milk plant located outside of Zone I shall be reduced 1.5 cents for each 10 miles or fraction thereof by the straight line distance as determined by the market administrator that the county courthouse of the county in which such plant is located is from the county courthouse in New Braunfels, Tex.

§ 1129.76 [Reserved]

§ 1129.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or verification of weights and butterfat tests of milk or milk products discloses errors resulting in money due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall notify such handler of any amount so due, and payment thereof shall be made on or before the next date for making payments, as set forth in the provisions under which such error occurred.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1129.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, except a handler described in § 1129.9(c), shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production) and milk received from a handler described in § 1129.9(c);

(b) Other source milk allocated to Class I pursuant to § 1129.44(a) (7) and (11) and the corresponding steps of § 1129.44(b); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds Class I milk received during the month at such plant from fluid milk plants and other order plants.

§ 1129.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1129.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of each month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the

payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers on or before the 13th day after the end of each month and pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1129.110 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 § 1129.121(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.

§ 1129.111 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 § 1129.113(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 § 1129.113(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 § 1129.113(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.

§ 1129.112 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.

§ 1129.113 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 § 1129.111 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.

§ 1129.114 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.

§ 1129.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1129.110;

(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 §§ 1129.110 and 1129.117.

§ 1129.116 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 §§ 1129.110 and 1129.117;

(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.

§ 1129.117 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.

§ 1129.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1129.121(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.

§ 1129.119 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 willful misconduct, gross negligence, or those which are criminal in nature.

§ 1129.120 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.

§ 1129.121 Duties of the market administrator.

Except as specified in § 1129.116, 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 § 1129.113(c).

(b) Set aside the amounts subtracted under § 1129.61(c) and received pursuant to § 1129.123 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 § 1129.61(c).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1129.120. 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 § 1129.61(c) 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 (§§ 1129.110 through 1129.123).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1129.122 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.

§ 1129.123 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 § 1129.61(c).

PART 1130—MILK IN CORPUS CHRISTI, TEX., MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1130 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1130.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1130.2 Corpus Christi, Tex., marketing area.

"Corpus Christi, Tex., marketing area", called the "marketing area" in this part, means all the territory within the following counties, all in the State of Texas:

Brooks.
Cameron.
Duval.
Hidalgo.
Jim Wells.
Kleberg.
Live Oak.
Nueces.
San Patricio.

§ 1130.3 Route disposition.

"Route disposition" means any delivery (including any delivery by a vendor or disposition at a plant store) of any fluid milk product classified as Class I milk other than a delivery to a milk or filled milk plant.

§ 1130.4 Plant.

"Plant" means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products (including filled milk) are received, processed, or packaged. Separate facilities without storage tanks which are used only as a reload point for transferring bulk milk from one tank truck to another shall not be a plant under this definition if the milk transferred at such facilities can be identified as receipts from specific farmers until the milk is received at a plant. Facilities used only as a distribution point for storing fluid milk products in transit for route disposition shall not be a plant under this definition.

§ 1130.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition of Grade A fluid milk products during the month in the marketing area.

§ 1130.6 Supply plant.

"Supply plant" means any plant approved by an appropriate health authority to supply fluid milk for distribution as Grade A milk in the marketing area and from which milk is moved to a distributing plant.

§ 1130.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any distributing plant from which during the month:

(1) The route disposition of fluid milk products, except filled milk, within the marketing area is 10 percent or more of the receipts of Grade A milk at such plant; and

(2) The total route disposition of fluid milk products, except filled milk, is 50 percent or more of the receipts of Grade A milk at such plant.

(b) A supply plant:

(1) During any month in which 50 percent or more of the receipts of Grade A milk from dairy farmers and handlers described in § 1130.9(c) at such plant is moved as fluid milk products, except filled milk, to pool distributing plants; or

(2) During each of the months of January through August, if such plant was a pool plant pursuant to paragraph (b)(1) of this section during each of the immediately preceding months of September through December, unless the operator of such plant has filed with the market administrator before the first day of any month written request that such plant not be a pool plant for each month through August during which it does not otherwise qualify as a pool plant.

(c) Any plant located in the marketing area and operated by a cooperative association approved by any duly constituted State or municipal health authority, and at which milk is received from dairy farmers holding permits to authorizations for such health authority, if 50 percent or more of the producer milk of members of such cooperative association is physically received during the month at pool plants of other handlers described in paragraph (a) of this section or is transferred to such pool plants from a plant of the cooperative association.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which, the Secretary determines, there is a greater quantity of route disposition, except filled milk, during the month in such other Federal order marketing area than in this marketing area, except that if such plant was subject to all the provisions of this part in the immediately preceding month, it shall continue to be subject to all the provisions of this part until the third consecutive month in which a greater proportion of its route disposition, except filled milk, is made in such other marketing area unless notwithstanding the provisions of this subparagraph, it is regulated under such other order;

(3) A plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which the Secretary determines there is a greater quantity of route disposition, except filled milk, during the month in this marketing area than in such other marketing area but which plant is nevertheless, fully regulated under such other Federal order; and

(4) A plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months January through August, if such plant retains automatic pooling status under this part.

§ 1130.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another Federal order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Unregulated supply plant" means a noonpool plant from which fluid milk products are moved to a pool plant during the month but which is neither an other order plant nor a producer-handler plant.

(d) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

§ 1130.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to producer milk which it causes to be diverted pursuant to § 1130.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producer members which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person in his capacity as the operator of an other order plant with route disposition in the marketing area.

§ 1130.10 Producer-handler.

"Producer-handler" means any person who:

(a) Produces milk and operates a distributing plant;

(b) Receives no milk from other dairy farmers;

(c) Disposes of no other source milk as Class I milk except that represented by nonfat solids used in the fortification of fluid milk products;

(d) Receives during the month from pool plants fluid milk products in a total quantity of not more than 10,000 pounds, or 5 percent of his Class I disposition, whichever is less; and

(e) Furnishes satisfactory proof to the market administrator that the maintenance, care, and management of all dairy animals and other resources necessary to produce the entire amount of

fluid milk handled (excluding transfers from pool plants) and the operation of the plant are each the personal enterprise of and at the personal risk of such person.

§ 1130.11 [Reserved]

§ 1130.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk approved for consumption as Grade A milk by any duly constituted State or municipal health authority, which is:

(1) Received at a pool plant; or

(2) Diverted pursuant to § 1130.13 by a handler for his account.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1130.44(a)(8)(iii) and the corresponding step of § 1130.44(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.

§ 1130.13 Producer milk.

"Producer milk" means skim milk and butterfat for each handler's account in milk from producers as follows:

(a) With respect to operations of a pool plant:

(1) Received directly from such producers;

(2) Received from a handler described in § 1130.9(c); or

(3) Diverted by the operator of such pool plant to a nonpool plant that is not a producer-handler plant for his account, subject to the conditions of paragraph (c) of this section.

(b) With respect to additional receipts by a cooperative association handler:

(1) Diverted by such cooperative association from the pool plant of another handler to a nonpool plant that is not a producer-handler plant for the account of such cooperative association, subject to the conditions of paragraph (c) of this section; or

(2) Received by such cooperative association from producers' farms as a handler described in § 1130.9(c) in excess of the quantity delivered to pool plants pursuant to paragraph (a)(2) of this section.

(c) With respect to diversions to nonpool plants:

(1) A cooperative association may divert for its account a total quantity of milk not in excess of one-third of the total producer milk of its members received at all pool plants during the month. Diversions in excess of such quantity shall not be producer milk and the diverting cooperative shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If the cooperative association fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such cooperative association;

(2) A handler operating a pool plant may divert for his account milk of producers other than members of a cooperative association diverting milk pursuant to paragraph (c)(1) of this section, in a total quantity not in excess of one-third of the milk at such pool plant during the month from producers who are not members of such a cooperative association. Milk diverted in excess of such quantity shall not be producer milk and the diverting handler shall specify the dairy farmers whose diverted milk is ineligible as producer milk. If a handler fails to designate such producers, producer milk status shall be forfeited with respect to all milk diverted by such handler;

(3) For the purposes of location adjustments pursuant to §§ 1130.52 and 1130.75, diverted milk shall be priced at the location of the nonpool plant to which diverted; and

(4) For purposes of determining qualification of pool plants pursuant to § 1130.7 (a) and (b), milk diverted pursuant to paragraph (a)(3) of this section shall be considered receipts of Grade A milk at the plant from which diverted.

§ 1130.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1130.40(b)(1) from any source other than producers, handlers described in § 1130.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1130.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1130.40(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 § 1130.40(b)(1)) for which the handler fails to establish a disposition.

§ 1130.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less that 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1130.40(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.

§ 1130.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1130.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1130.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales or marketing milk or its products for its members.

HANDLER REPORTS

§ 1130.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1130.9(c);

(3) Receipts of fluid milk products and 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 § 1130.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1130.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1130.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1130.9 (a), (b), and (c), shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1130.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1130.32 Other reports.

(a) Each handler who causes milk to be delivered for his account directly from producers' farms to a nonpool plant shall, prior to such diversion, report to the market administrator his intention to divert such milk, the proposed date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required in §§ 1130.30 and 1130.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1130.40 Classes of utilization.

Except as provided in § 1130.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1130.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1130.15; and

(6) In shrinkage assigned pursuant to § 1130.41(a) to the receipts specified in § 1130.41(a)(2) and in shrinkage specified in § 1130.41 (b) and (c).

§ 1130.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1130.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts sepcified 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 § 1130.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1130.9(c), except that if the operator of the plant to which the milk is delivered purchases 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 § 1130.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1130.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1130.44(a)(7) or the corresponding step of § 1130.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1130.44(a) (11) or (12) or the corresponding steps of § 1130.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall lowing manner: Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1130.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 paragraphs (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 § 1130.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1130.43 General classification rules.

In determining the classification of producer milk pursuant to § 1130.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1130.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1130.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1130.40, 1130.41, and 1130.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1130.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1130.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1130.9(a) for each of his pool plants separately and of each handler described in § 1130.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1130.41 (b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1130.40(b) (1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1130.40(b) (1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1130.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a) (5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1130.40(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 prod-

ucts 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 § 1130.40(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 § 1130.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 and bulk fluid cream products from another pool plant according to the classification of such products pursuant to § 1130.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1130.44(a)(14) and the corresponding step of § 1130.44(b).

§ 1130.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1130.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month report to each cooperative association, upon request by such association, the amount and class utilization of milk received by each handler from producers who are members of such cooperative association. For the purpose of this report the milk so received shall be prorated to each class in the proportion that the total receipts of producer milk by such handler were used in each class.

Class Prices

§ 1130.50 Class prices.

Subject to the provisions of § 1130.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $3.07.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1130.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1130.52 Plant location adjustments for handlers.

(a) For milk which is received from producers or a cooperative association at a pool plant located more than 80 miles, but not more than 150 miles from the city hall in Mercedes, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1130.50(a) shall be reduced 9 cents per hundredweight and for milk which is received from producers or a cooperative association at a pool plant located more than 150 miles from the city hall in Mercedes, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 1130.50(a) shall be reduced 1-cent per hundredweight for each 10 miles distance or fraction thereof that such plant is from the city hall in Mercedes, Tex.

(b) For purposes of calculating such location adjustment, transfers between pool plants shall be assigned Class I location credit as follows:

(1) If in packaged form without limit; and

(2) If in bulk form, to the extent that Class I disposition at the transferee-plant exceeds the sum of (i) 95 percent of receipts at such plant from producers and handlers described in § 1130.9(c), (ii) the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, and (iii) assignments pursuant to paragraph (b)(1) of this section, such assignment to be made first to transferor plants having the same location adjustment, then in sequence to plants having a greater location adjustment, beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1130.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1130.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1130.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1130.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1130.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1130.44(a)(14) and the corresponding step of § 1130.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1130.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(9) and the corresponding step of § 1130.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1130.44(a)(9) and the corresponding step of § 1130.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1130.44(a)(12) and the corresponding step of § 1130.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in 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 § 1130.44(a)(7) (i) through (iv) and the corresponding step of § 1130.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(7) (v) and (vi) and the corresponding step of § 1130.44 (b);

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1130.44(a)(11) and the corresponding step of § 1130.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(g) For the first month that this paragraph is effective, subtract the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class II price, both for the preceding month, by the hundredweight of skim milk and butterfat in any fluid milk product or product specified in § 1130.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1130.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight applicable for milk of 3.5 percent butterfat content at pool plants at which no location differential applies as follows:

(a) Combine into one total the values computed pursuant to § 1130.60 for all handlers who have made the reports prescribed in § 1130.30 for the month and who have made the payments required pursuant to § 1130.71 for the preceding month;

(b) Add not less than one-fourth of the unobligated cash balance on hand in the producer-settlement fund;

(c) Add the aggregate of the values of the minus location adjustments pursuant to § 1130.75;

(d) 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 § 1130.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents.

§ 1130.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1130.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," into which he shall deposit all payments made by handlers pursuant to §§ 1130.71, 1130.76, and 1130.77, and from which he shall make all payments to handlers pursuant to §§ 1130.72 and 1130.77.

§ 1130.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1130.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1130.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1130.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1130.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1130.71(a)(2) exceeds the amount computed pursuant to § 1130.71(a)(1). If the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available. Any amount due a handler pursuant to this section may be reduced by the amount of any unpaid balances due the market administrator from such handler, pursuant to § 1130.71, 1130.77, 1130.85, or 1130.86.

§ 1130.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(1) On or before the 25th day of each month, to each producer who has not discontinued delivery of milk to such handler, a partial payment for milk received from such producer during the first 15 days of such month at not less than the Class III milk price for the preceding month;

(2) On or before the 15th day after the end of each month, for milk received during such month, an amount not less than the uniform price computed pursuant to § 1130.61, subject to adjustments pursuant to §§ 1130.74 and 1130.75, plus or minus adjustments for errors made in previous payments to such producers, and less:

(i) Payments made pursuant to paragraph (a)(1) of this section;

(ii) Deductions for marketing services pursuant to § 1130.86; and

(iii) Proper deductions authorized by such producer;

(3) If by the date for payment pursuant to paragraph (a)(2) of this section, a handler has not received full payment for such month pursuant to § 1130.72, he may reduce his total payments to all producers uniformly by not more than the amount of reduction in payments from the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator.

(b)(1) Upon receipt of a written request from a cooperative association, which the market administrator determines is authorized by its members to collect payment for their milk, and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 23d and 14th days of each month in lieu of payments pursuant to paragraph (a) (1) and (2), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association; and

(2) A copy of each such request, promise to reimburse, and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(c) In making the payments pursuant to paragraphs (a)(2) and (b) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount of the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producers.

(d) As follows, to each cooperative association for milk for which it is the handler pursuant to § 1130.9(c):

(1) On or before the 23d day of the month, a partial payment for milk received during the first 15 days of such month, at not less than the amount specified in paragraph (b) of this section; and

(2) On or before the 14th day of the following month, in final settlement, the value of such milk received during the month, at the uniform price, as adjusted pursuant to §§ 1130.74 and 1130.75, less the amount of payment made pursuant to paragraph (d)(1) of this section.

(e) On or before the 14th day after the end of the month, for milk received from the pool plant of a cooperative association, to such cooperative association not less than the value of such milk at the applicable price(s) for the class(es) at which transferred pursuant to § 1130.42(a), as adjusted by the butterfat

differential specified in § 1130.74, that are applicable at the location of the transferee-handler's pool plant.

§ 1130.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each 0.1-percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest 0.1 cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1130.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1130.73, the uniform price computed pursuant to § 1130.61 to be paid for such milk received at a pool plant at which a location adjustment pursuant to § 1130.52 applies may be reduced by the amount of such location adjustments.

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1130.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1130.30(b) and 1130.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price 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 § 1130.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to 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 § 1130.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1130.60 for such handler shall include, in lieu of the value of other source milk specified in § 1130.60(f) less the value of such other source milk specified in § 1130.71(a)(2)(ii), a value of milk determined pursuant to § 1130.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1130.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1130.30(b) and 1130.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1130.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1130.74, 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 § 1130.74, 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.

§ 1130.77 Adjustment of accounts.

Whenever verification by the market administrator of any handler's reports, books, records, accounts, or payments discloses errors resulting in money due:

(a) The market administrator from such handler;

(b) Such handler from the market administrator; or

(c) Any producer or cooperative association from such handler, the market administrator shall promptly notify such handler, of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1130.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1130.71, 1130.77(a), 1130.85, or 1130.86 shall be increased one-half of 1 percent on the first day of the calendar month next following the due date of such obligation and, on the first day of each calendar month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1130.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 13th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that pursuant to § 1130.13(a)(2) and such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1130.44(a) (7) and (11) and the corresponding steps of § 1130.44(b), except such other source milk that is excluded from the computations pursuant to § 1130.60 (d) and (f); and

(c) Route disposition from a partially regulated distributing plant in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1130.76(a)(2).

§ 1130.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1130.73, shall deduct 6 cents per hundredweight, or such amount not exceeding 6 cents per hundredweight, as may be prescribed by the Secretary, and shall pay such deductions to the market administrator, on or before the 13th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of milk from producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of any such deductions and the amount of milk for which such deduction was computed for each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1130.110 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 § 1130.121(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.

§ 1130.111 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 § 1130.113(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 § 1130.113(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 § 1130.113(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.

§ 1130.112 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.

§ 1130.113 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 § 1130.111 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 discontniues 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.

§ 1130.114 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.

§ 1130.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1130.110;

(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 §§ 1130.110 and 1130.117.

§ 1130.116 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 §§ 1130.110 and 1130.117;

(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.

§ 1130.117 Advertising, Research, Education, and Promotion Program.

The Agency shall develop and submit to the Secretary for approval of 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.

§ 1130.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1130.121(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.

§ 1130.119 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.

§ 1130.120 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.

§ 1130.121 Duties of the market administrator.

Except as specified in § 1130.116, 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 § 1130.113(c).

(b) Set aside the amounts subtracted under § 1130.61(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 § 1130.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1130.120. 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 § 1130.61(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 (§§ 1130.110 through 1130.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1130.122 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 § 1130.70.

PART 1131—MILK IN CENTRAL ARIZONA MARKETING AREA

Subpart—Order Regulating Handling

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1131.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1131 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1131.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1131.2 Central Arizona marketing area.

"Central Arizona marketing area", hereinafter called the "marketing area", means all territory within the counties of Cochise, Graham, Greenlee, Maricopa, Pima, and Pinal, and that part of Yuma County south of 33 degrees latitude (North from the Equator), all in the State of Arizona.

§ 1131.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or a plant store) of a fluid milk product classified as Class I milk other than a delivery to a plant described in § 1131.7(a).

§ 1131.4 [Reserved]

§ 1131.5 [Reserved]

§ 1131.6 [Reserved]

§ 1131.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant approved by a duly constituted state or municipal health authority for the receipt or processing of Grade A milk or which supplies processed milk to an agency of the U.S. Government located within the marketing area, from which during the month:

(1) There is route disposition, except filled milk, equal to at least 50 percent of the total receipts at the plant (i) of milk qualified by inspection to become producer milk pursuant to § 1131.13(a), and (ii) from other milk plants and handlers described in § 1131.9(c) in the form of fluid milk products, except filled milk, qualified for fluid consumption; and

(2) There is route disposition, except filled milk, in the marketing area in a volume not less than 25 percent of such receipts and also greater than an average of 600 pounds per day.

(b) Any plant which ships fluid milk products, except filled milk, approved by any health authority having jurisdiction in the marketing area as eligible for distribution under a Grade A label in a volume not less than 50 percent of its receipts of milk (from dairy farmers who would be producers if this plant qualifies as a pool plant) in the current month during the period of July through October or 20 percent in the current month during the period of November through June to a plant specified in paragraph (a) of this section: *Provided*, That if a plant qualifies in each of the months of July through October in the manner prescribed in this section such plant shall upon written application to the market administrator on or before October 31 following such compliance be designated as a pool plant until the end of the following June.

(c) A milk plant located within the marketing area at which milk may be received from the farms of dairy farmers holding permits or authorization issued by health authorities having jurisdiction in the marketing area and which is operated by a cooperative association qualified under § 1131.18 which has 75 percent or more of its member producers' milk received at the pool plants of other handlers. Milk received by such cooperative, in a truck owned or under contract to the cooperative, from a pool plant and transferred in such truck to an other pool plant for the account of the cooperative shall be considered a receipt at the cooperative's plant and a transfer from such plant.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Central Arizona marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period November through June, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of an other order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

§ 1131.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products are moved during the month to a pool plant and which is not an other order plant nor a producer-handler plant.

§ 1131.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association with respect to milk of any producer which such cooperative association causes to be diverted pursuant to § 1131.13 for the account of such association;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association, if the cooperative association notifies the market administrator and the handler to whom the milk is delivered in writing prior to the first day of the month in which the milk is delivered, that it elects to be the handler for such milk;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person in his capacity as the operator of an other order plant described in § 1131.7(d).

§ 1131.10 Producer-handler.

"Producer-handler" means:

(a) Any person who is both a dairy farmer and the operator of a plant from which fluid milk products are disposed of as route disposition in the marketing area and who:

(1) Receives at his plant, or acquires for route disposition fluid milk products only from:

(i) His own farm production; and

(ii) Fluid milk products obtained by transfer from pool plants or other order plants in an amount not to exceed 5 percent of his total fluid milk product disposition for the month or 5,000 pounds, whichever is less;

(2) Does not reprocess or convert milk products into a fluid milk product except to increase the nonfat milk solids content above that of the fluid milk product received;

(3) Furnishes proof satisfactory to the market administrator that:

(i) The maintenance, care, and management of all the dairy animals and other resources necessary to produce the entire amount of milk handled (other than that received from regulated plants) is the personal enterprise of and at the personal risk of such person in his capacity as a producer; and

(ii) The operation of such plant is the personal enterprise of and at the personal risk of such person in his capacity as a handler.

(b) The governmental agency that operates a milk plant, except that a plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant that is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for 1 month and thereafter resumes the status of a nonpool plant, it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk pursuant to the requirements specified in paragraph (a) (1) or (2) of this section, and whose milk is received directly from the farm at a pool plant or is diverted as producer milk pursuant to § 1131.13.

(1) Produces milk, on a dairy farm subject to the regular inspection by a duly constituted State or municipal health authority, under a dairy farm permit or rating issued by such authority for the production of milk to be disposed of for fluid consumption.

(2) Produces milk which is acceptable to an agency of the Federal Government for fluid consumption in its institutions or bases.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1131.44(a)(8)(iii) and the corresponding step of § 1131.44(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.

§ 1131.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat produced by producers:

(a) With respect to receipts at a pool plant:

(1) Received directly from such producers; and

(2) Diverted from such pool plant to a nonpool plant that is not a producer-handler plant for the account of the operator of the pool plant, subject to the limitations and conditions of paragraph (c) of this section;

(b) With respect to additional receipts of a cooperative association:

(1) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the limitations and conditions of paragraph (c) of this section; and

(2) For which the cooperative association is the handler pursuant to § 1131.9(c); and

(c) With respect to diversions to nonpool plants pursuant to paragraphs (a)(2) and (b)(1) of this section:

(1) Such diversions may be without limit during the months of December through April, but shall not be for more than 8 days' production of any producer during any other month, otherwise only milk of such producer received at a pool plant shall be producer milk; and

(2) For purposes of location adjustments pursuant to §§ 1131.52 and 1131.75, milk so diverted shall be priced at the location of the plant to which diverted.

§ 1131.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1131.40(b)(1) from any source other than producers, handlers described in § 1131.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1131.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1131.40(b)(1), and products produced at the plant during the 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 § 1131.40(b)(1)) for which the handler fails to establish a disposition.

§ 1131.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1131.40 (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.

§ 1131.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1131.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1131.18 Cooperative association.

"Cooperative association" means any cooperative association of producers which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have and to be exercising full authority in the sale of milk for its members.

HANDLER REPORTS

§ 1131.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1131.9(c);

(3) Receipts of fluid milk products and 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 § 1131.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1131.9(b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1131.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1131.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

(a) Each handler, except a producer-handler or a handler making payment pursuant to § 1131.76(a), shall report to the market administrator in the detail and on forms prescribed by the market administrator:

(1) On or before the 20th day after the end of the month, the payments made to a cooperative association pursuant to § 1131.73(d);

(2) On or before the first day other source milk is received in the form of a fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(3) On or before the day prior to diverting producer milk pursuant to § 1131.13 his intention to divert such milk, the date or dates of such diversion and the nonpool plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1131.30 and 1131.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1131.40 Classes of utilization.

Except as provided in § 1131.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1131.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1131.15; and

(6) In shrinkage assigned pursuant to § 1131.41(a) to the receipts specified in § 1131.41(a)(2) and in shrinkage specified in § 1131.41(b) and (c).

§ 1131.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1131.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b)(1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b)(1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1131.9(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 detefmined 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 § 1131.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1131.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1131.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1131.44(a)(7) or the corresponding step of § 1131.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1131.44 (a) (11) or (12) or the corresponding steps of § 1131.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant; and

(4) Unless a different utilization is claimed by both handlers, skim milk and butterfat transferred to the pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant described in § 1131.7(c) shall be classified pro rata to the respective quantities of skim milk and butterfat remaining in each class for such month at the pool plant(s) of the receiving handler after the computations pursuant to § 1131.44(a)(13)(i) and the corresponding step of § 1131.44(b).

(b) *Transfers or diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1131.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1131.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(d) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(a) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(b) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(a) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(b) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1131.43 General classification rules.

In determining the classification of producer milk pursuant to § 1131.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1131.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1131.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1131.40, 1131.41, and 1131.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1131.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1131.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1131.9(a) for each of his pool plants separately and of each handler described in § 1131.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1131.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1131.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1131.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 months.

(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 § 1131.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1131.40(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 § 1131.9(c), fluid milk products from pool plants of other handlers, and bulk fluid milk products from other order plants that were not subtracted pursuant to 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 § 1131.40(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 § 1131.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 § 1131.9(c) according to the classification of such products pursuant to § 1131.42(a); and

(ii) A cooperative association in its capacity as a handler pursuant to § 1131.9 (c) or as the operator of a pool plant described in § 1131.7(c) according to the classification of such products pursuant to § 1131.42(a)(4); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to § 1131.44(a)(14) and the corresponding step of § 1131.44(b).

§ 1131.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1131.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated

by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 12th day after the end of each month, report to each cooperative association which so requests the percentage of producer milk delivered by members of such association which was used in each class by each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

CLASS PRICES

§ 1131.50 Class prices.

Subject to the provisions of § 1131.52, the class prices for the month per hundredweight of milk containing 3.5-percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.52.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1131.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5-percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest 0.1 cent) per 0.1-percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1131.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located outside Pima County and more than 30 miles by shortest highway distance as measured by the market administrator, from the nearer of the Courthouses in Maricopa and Graham Counties, Ariz., and classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1131.50(a) shall be reduced by 10 cents if such plant is located not more than 130 miles from the nearer courthouse and by an additional cent for each 10 miles or fraction thereof that such distance exceeds 130 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1131.9(c), plus the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) For other source milk to which a location adjustment is applicable and for milk received from producers at a plant located in Pima County, Ariz., and which is classified as Class I milk, the price computed under § 1131.50(a) shall be increased 12 cents.

(d) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1131.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

UNIFORM PRICE

§ 1131.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1131.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1131.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1131.44(a)(14) and the corresponding step of § 1131.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1131.74, that are applicable at the location of the pool plant;

(c) Add the following:

(1) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant for the current month by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(9) and the corresponding step of § 1131.44(b); and

(2) The amount obtained from multiplying the difference between the Class III price for the preceding month and the Class II price for the current month by the lesser of:

(i) The hundredweight of skim milk and butterfat subtracted from Class II pursuant to § 1131.44(a)(9) and the corresponding step of § 1131.44(b) for the current month; or

(ii) The hundredweight of skim milk and butterfat remaining in Class III after the computations pursuant to § 1131.44(a)(12) and the corresponding step of § 1131.44(b) for the preceding month, less the hundredweight of skim milk and butterfat specified in 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 § 1131.44(a)(7) (i) through (iv) and the corresponding step of § 1131.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(7) (v) and (vi) and the corresponding step of § 1131.44 (b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1131.44(a)(11) and the corresponding step of § 1131.44 (b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1131.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1131.60 for all handlers who filed the reports prescribed by § 1131.30 for the month and who made the payments pursuant to §§ 1131.71 and 1131.73 for the preceding month:

(b) Add an amount equal to the total value of the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1131.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1131.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 11th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1131.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1131.71 and 1131.76 and out of which he shall make all payments pursuant to § 1131.72: *Provided*, That payments due to any handler shall be offset by any payments due from such handler.

§ 1131.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1131.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1131.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1131.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(a)(2) exceeds the amount computed pursuant to § 1131.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) On or before the 27th day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount not less than 1.3 times the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this paragraph; and

(2) On or before the 15th day of the following month, an amount equal to not less than the appropriate uniform price as adjusted pursuant to §§ 1131.74 and 1131.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments: (i) Less payments made to such producer pursuant to paragraph (a)(1) of this section, (ii) less deductions made for marketing services pursuant to § 1131.86, (iii) plus or minus adjustments for errors made in previous payments made to such producer, and (iv) less proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment from the market administrator pursuant to § 1131.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payments to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following after the receipt of the balance due from the market administrator;

(b) In the case of a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and which has so requested any handler in writing, such handler shall on or before the second day prior to the date on which payments are due individual producers, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the total due such producer-members as determined pursuant to paragraph (a) of this section;

(c) Each handler who receives milk during the month from producers for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association or to the market administrator for transmittal to such cooperative association for each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the seventh day of the following month (i) the pounds of milk received each day and the total for the month, together with the butterfat content of such milk, (ii) the amount or rate and nature of any authorized deductions to be made from payments, and (iii) the amount and nature of payments due pursuant to § 1131.77; and

(d) Each handler who receives milk from a cooperative association in its capacity as a handler pursuant to § 1131.9(c) or as the operator of a pool plant shall, on or before the second day prior to the date payments are due individual producers, pay such cooperative association for such milk as follows:

(1) A partial payment for milk received from such cooperative association during the first 15 days of the month at not less than 1.3 times the Class III price for the preceding month; and

(2) In final settlement, the value of such milk as classified pursuant to § 1131.44 at the class prices, as adjusted by the butterfat differential specified in § 1131.74, that are applicable at the location of the receiving handler's pool plant, less payment made pursuant to paragraph (d)(1) of this section.

§ 1131.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115

times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1131.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be adjusted according to the location of the pool plant, at the rates set forth in § 1131.52; and

(b) The uniform price applicable to other source milk shall be subject to the same adjustments applicable to the uniform price under paragraph (a) of this section, except that the adjusted uniform price shall not be less than the Class III price.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1131.30(b) and 1131.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in 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 § 1131.60 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 § 1131.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1131.60 for such handler shall include, in lieu of the value of other source milk specified in § 1131.60(f) less the value of such other source milk specified in § 1131.71(a)(2)(ii), a value of milk determined pursuant to § 1131.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1131.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1131.30(b) and 1131.31(b) similar reports for each such nonpool supply plant;

(*b*) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(*c*) The value of milk determined pursuant to § 1131.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1131.74, 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 § 1131.74, 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.

§ 1131.77 Adjustment of accounts.

Whenever audit by the market administrator of any reports, books, records, or accounts or other verification discloses errors resulting in monies due (a) the market administrator from a handler, (b) a handler from the market administrator, or (c) any producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments set forth in the provisions under which such error occurred.

§ 1131.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1131.71 or § 1131.77 relative to payments to the producer-settlement fund shall be increased one-half of 1 percent on the second day following the due date of such obligation and on the 15th day of each month thereafter until such obligation is paid.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1131.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1131.44(a) (7) and (11) and the corresponding steps of § 1131.44(b), except such other source milk that is excluded from the computa-

tions pursuant to § 1131.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant as route disposition in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1131.76(a)(2).

§ 1131.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers for milk (other than milk of his own production) pursuant to § 1131.73, shall deduct 5 cents per hundredweight, or such amount not exceeding 5 cents per hundredweight as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 15th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of their milk for producers who are not receiving such service from a cooperative association; and

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall (in lieu of the deduction specified in paragraph (a) of this section), make such deductions from the payments to be made to such producers as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 13th day after the end of each month, pay such deductions to the cooperative association of which such producers are members, furnishing a statement showing the amount of such deductions and the amount of milk for which such deduction was computed for each producer.

PART 1132—MILK IN TEXAS PANHANDLE MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1132 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1132.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1132.2 Texas Panhandle marketing area.

"Texas Panhandle marketing area," hereinafter called the "marketing area," means all of the territory within the counties of Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Moore, Oldham, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler, all in the State of Texas, and Beckham in the State of Oklahoma.

§ 1132.3 [Reserved]

§ 1132.4 [Reserved]

§ 1132.5 Distributing plant.

"Distributing plant" means a plant which is approved by an appropriate health authority for the processing or packaging of Grade A milk and from which any fluid milk product is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) located in the marketing area.

§ 1132.6 Supply plant.

"Supply plant" means a plant from which milk or skim milk which is acceptable to the appropriate health authority for distribution in the marketing area under a Grade A label is shipped during the month to a pool plant qualified pursuant to § 1132.7(a).

§ 1132.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant from which a volume of Class I milk, except filled milk:

(1) Not less than 50 percent of the Grade A milk received at such plant from dairy farmers, from handlers described in § 1132.9(c), and from other plants, is disposed of during the month on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants); and

(2) Not less than 15 percent of such receipts, or an average of not less than 10,000 pounds per day, whichever is less, is so disposed of to such outlets in the marketing area.

(b) A supply plant from which the volume of fluid milk products, except filled milk, shipped during the month to pool plants qualified pursuant to paragraph (a) of this section is not less than 50 percent of the Grade A milk received at such plant from dairy farmers and from handlers described in § 1132.9(c) during such month: *Provided*, That if such shipments are not less than 75 percent of the receipts of Grade A milk at such plant during the immediately preceding period of September through November, such plant may, upon written application to the market administrator on or before March 1 of any year, be designated as a pool plant for the months of March through June of such year.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order

and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month on routes in such other Federal order marketing area than was disposed of to retail and wholesale outlets (excluding pool plants) in this marketing area, except that if such plant was subject to all the provisions of this order in the immediately preceding month, it shall continue to be subject to all the provisions of this order until the third consecutive month in which a greater proportion of such Class I disposition is made in such other marketing area unless notwithstanding the provisions of this subparagraph it is regulated under such other order. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the Class I dispositions in the respective marketing areas to be used for purposes of this subparagraph shall exclude (for a specified period of time) such Class I disposition made under limited term contracts to governmental bases and institutions;

(3) A distributing plant meeting the requirements of paragraph (a) of this section which also meets the pooling requirements of another Federal order on the basis of distribution in such other marketing area and from which, the Secretary determines, a greater quantity of Class I milk, except filled milk, is disposed of during the month to retail and wholesale outlets (excluding pool plants) in this marketing area than is disposed of on routes in such other marketing area but which plant is nevertheless fully regulated under such other Federal order; and

(4) That portion of a plant that is physically apart from the Grade A portion of such plant, is operated separately and is not approved by any health authorities for the receiving, processing, or packaging of any fluid milk product for Grade A disposition.

§ 1132.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products in consumer-type packages or dispenser units are distributed on routes (including routes operated by vendors) or through plant stores to retail or wholesale outlets (except pool plants) in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant during the month, but which is neither an other order plant nor a producer-handler plant.

§ 1132.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of producers which is diverted pursuant to § 1132.13 for the account of such association;

(c) Any cooperative association with respect to milk of its member producers picked up at the farm for delivery to the pool plant of another handler in a tank truck owned or operated by such association or under control of such association, by contract or otherwise, in such a way that the association supervises and controls the determination of farm weights and tests of the milk of each of such member producers;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1132.7(c).

§ 1132.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant but who receives no milk from other dairy farmers and who disposes of no fluid milk products in excess of his own milk production and fluid milk products received from pool plants.

§ 1132.11 [Reserved]

§ 1132.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with Grade A inspection requirements of a duly constituted health authority, which milk is (1) received at a pool plant, or (2) diverted pursuant to § 1132.13.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1132.44(a)(8)(iii) and the corresponding step of § 1132.44(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.

§ 1132.13 Producer milk.

"Producer milk" means the skim milk and butterfat in milk from a producer that is handled by a pool plant operator or a handler described in § 1132.9 (b) and (c) as follows:

(a) Producer milk of a handler operating a pool plant is skim milk and butterfat in milk:

(1) Diverted by the operator of such pool plant for his account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section; and

(2) Received at such pool plant directly from producers and from a handler described in § 1132.9(c). If the handler to which the milk is delivered purchases the milk on the basis of weights determined by farm bulk tank calibration and butterfat tests determined from farm bulk tank samples, the entire truckload shall be considered a receipt of producer milk at the first plant of delivery.

(b) Producer milk of a handler described in § 1132.9(b) is skim milk and butterfat in milk received by such handler from producers' farms and diverted by such handler for its account to a nonpool plant that is not a producer-handler plant, subject to the limits prescribed in paragraph (d) of this section.

(c) Producer milk of a handler described in § 1132.9(c) is skim milk and butterfat in milk received by such handler from producers' farms in excess of the quantity delivered to pool plants. Such milk shall be priced to such handler at the location of the pool plant to which most of the milk in the tank truck was delivered during the month.

(d) Diverted milk is producer milk in any month only to the extent it meets conditions set forth in this paragraph:

(1) It is claimed as producer milk by the diverting handler in his report filed pursuant to § 1132.30;

(2) It is milk received from a dairy farmer who had producer status immediately prior to such diversion;

(3) It is not in excess of 15 days' production of each producer during any of the months July through February; and

(4) Such diverted producer milk shall be priced at the location of the pool plant where the producer's milk was last physically received.

§ 1132.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1132.40(b)(1) from any source other than producers, handlers described in § 1132.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1132.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1132.40 (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 § 1132.40(b)(1)) for which the handler fails to establish a disposition.

§ 1132.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product"

means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1132.40 (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.

§ 1132.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1132.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified, by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1132.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

HANDLER REPORTS

§ 1132.30 Reports of receipts and utilization.

On or before the seventh day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1132.9(c);

(3) Receipts of fluid milk products and 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 § 1132.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition of fluid milk products in the marketing area.

(c) Each handler described in § 1132.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1132.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1132.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1132.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1132.32 Other reports.

(a) Each handler, except a producer-handler, shall report to the market administrator in detail and on forms prescribed by the market administrator:

(1) On or before the first day other source milk is received in the form of any fluid milk product at his pool plant(s), his intention to receive such product, and on or before the last day such product is received, his intention to discontinue receipt of such product; and

(2) Prior to his diversion of producer milk to a nonpool plant, his intention to divert such milk, the proposed date or dates of such diversion and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to §§ 1132.30 and 1132.31 and paragraph (a) of this section, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1132.40 Classes of utilization.

Except as provided in § 1132.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1132.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1132.15; and

(6) In shrinkage assigned pursuant to § 1132.41(a) to the receipts specified in § 1132.41(a)(2) and in shrinkage specified in § 1132.41 (b) and (c).

§ 1132.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1132.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1132.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1132.9(c), except that if the operator of the plant to which the milk is delivered purchases 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 § 1132.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1132.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1132.44(a)(7) or the corresponding step of § 1132.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be allocated pursuant to § 1132.44 (a) (11) or (12) or the corresponding steps of § 1132.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1132.40.

(c) *Transfers to producer-handlers.* Skim milk or butterfat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1132.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition of fluid milk products in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1132.43 General classification rules.

In determining the classification of producer milk pursuant to § 1132.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1132.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1132.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1132.40, 1132.41, and 1132.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1132.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1132.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1132.9(a) for each of his pool plants separately and of each handler described in § 1132.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1132.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtacted pursuant to 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 § 1132.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1132.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. This subparagraph shall apply only if the pool plant was subject to the provi-

sions 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 § 1132.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1132.40(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 § 1132.40(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 § 1132.45(a); or

(*b*) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 ad-

justed 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 § 1132.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1132.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classifications:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1132.44(a)(12) and the corresponding step of § 1132.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1132.44 on the basis of such report and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 10th day after the end of each month, report to each cooperative association, which so requests, the percentage of the milk caused to be delivered by the cooperative association or by its members to the pool plant(s) of each handler during the month, which was utilized in each class. For the purpose of this report, the milk so delivered shall be allocated to each class for each handler in the same ratio as all producer milk received by such handler during the month.

Class Prices

§ 1132.50 Class prices.

Subject to the provisions of § 1132.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.25.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1132.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1132.52 Plant location adjustments for handlers.

(a) For that milk which is received from producers at a pool plant located 100 miles or more from the city hall, Amarillo, Tex., by the shortest hard-surfaced highway distance, as determined by the market administrator, and which is transferred to a distributing plant which is a pool plant in the form of a fluid milk product and assigned to Class I pursuant to paragraph (b) of this section, or otherwise classified as Class I milk, the price specified in § 1132.50(a) shall be reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received:

	Rate per hundredweight (cents)
Distance from the Amarillo City Hall (miles):	
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in § 1132.9(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraph (a) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1132.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1132.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1132.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1132.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1132.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1132.44(a)(14) and the corresponding step of § 1132.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1132.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1132.44(a)(9) and the corresponding step of § 1132.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(7)(i) through (iv) and the corresponding step of § 1132.44(b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(7)(v) and (vi) and the corresponding step of § 1132.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1132.44(a)(11) and the corresponding step of § 1132.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1132.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price for all milk of 3.5 percent butterfat content f.o.b. pool plants located within 100 miles of the City Hall of Amarillo, Tex., as follows:

(a) Combine into one total the values computed pursuant to § 1132.60 for all handlers who made the reports prescribed in § 1132.30 for such month, except those in default of payments required pursuant to § 1132.71 for the preceding month;

(b) Add an amount equal to the sum of the location adjustments to be made pursuant to § 1132.75;

(c) Add an amount equal to one-half of the unobligated cash balance in the producer-settlement fund;

(d) 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 § 1132.60(f); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be the "uniform price" for producer milk.

§ 1132.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 10th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1132.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1132.71, 1132.76, and 1132.77, and from which he shall make all payments pursuant to §§ 1132.72 and 1132.77: *Provided*, That payments due to any handler shall be offset by payments due from such handler.

§ 1132.71 Payments to the producer-settlement fund.

(a) On or before the 12th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1132.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1132.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1132.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which is allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more market-wide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1132.72 Payments from the producer-settlement fund.

On or before the 13th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1132.71(a)(2) exceeds the amount computed pursuant to § 1132.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly per hundredweight such payments and shall complete such payments as soon as the appropriate funds are available.

§ 1132.73 Payments to producers and to cooperative associations.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

(a) On or before the last day of each month, for milk received during the first 15 days of the month, at not less than the Class III price for the preceding month.

(b) On or before the 15th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price for hundredweight pursuant to § 1132.61, subject to the butterfat differential computed pursuant to § 1132.74, and plus or minus adjustments for errors made in previous payments to such producer; and less (1) payment made pursuant to paragraph (a) of this section, (2) location adjustments pursuant to § 1132.75, (3) deductions for marketing services pursuant to § 1132.86, and (4) proper deductions authorized by such producer: *Provided*, That if such handler has not received full payment for such month pursuant to § 1132.72 he may reduce uniformly per hundredweight for all producers his payments pursuant to this paragraph by an amount not in excess of the per hundredweight reduction in payment from the market administrator. The handler shall make such balance of payment to those producers to whom it is due on or before the date for making payments pursuant to this paragraph next following that on which such balance of payment is received from the market administrator.

(c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the 26th and 13th days of each

month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(3) Each handler who receives milk from a cooperative association which collects payments for its members pursuant to paragraph (c)(1) of this section shall, on or before the 20th of each month, furnish such association information showing the daily and total pounds milk received from each of the association's member producers for the first 15 days of such month and, on or before the fifth day after the end of each month, such information for the 16th through the end of such month.

(4) For producer milk received from a handler described in § 1132.9(c), each handler shall make payments as follows:

(i) On or before the 26th day of the month, a partial payment for milk received during the first 15 days of such month at not less than the amount specified in paragraph (a) of this section; and

(ii) On or before the 13th day of the following month, in final settlement, the value of such milk received during the month, at the applicable uniform price as adjusted pursuant to §§ 1132.74 and 1132.75, less the amount of payment made pursuant to paragraph (c)(4)(i) of this section.

(d) In making the payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement in such form that it may be retained by the producer, which shall show:

(1) The month and identity of the handler and of the producer;

(2) The daily and total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to the producer is required pursuant to the order;

(4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer or cooperative association.

§ 1132.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1132.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payment pursuant to § 1132.73 the uniform price pursuant to § 1132.61 to be paid for milk which is received from producers at a pool plant located 100 miles or more from the City Hall, Amarillo, Tex., by the shortest hard-surfaced highway distance as determined by the market administrator shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from the Amarillo City Hall (miles):	*Rate per hundredweight (cents)*
100 but less than 110	15.0
For each additional 10 miles or fraction thereof an additional	1.5

(b) For purposes of computations pursuant to §§ 1132.71 and 1132.72, the uniform price plus 5 cents shall be adjusted at the rates set forth in § 1132.52 applicable at the location of the nonpool plant from which the milk was received (but the resulting price shall not be less than the Class III price).

§ 1132.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1132.30(b) and 1132.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition of fluid milk products in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the uniform price 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 § 1132.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class purusant 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 § 1132.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but

not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1132.60 for such handler shall include, in lieu of the value of other source milk specified in § 1132.60(f) less the value of such other source milk specified in § 1132.71(a)(2)(ii), a value of milk determined pursuant to § 1132.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1132.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1132.30 (b) and 1132.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1132.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1132.74, 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 § 1132.74, 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.

§ 1132.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund pursuant to § 1132.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever verification discloses that payment is due from the market administrator to any handler, pursuant to § 1132.72, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer or cooperative association for milk received by such handler discloses payment of less than is required by § 1132.73, the handler shall pay such balance due such producer or cooperative association not later than the time of making payment to producers or cooperative associations next following such disclosure.

§ 1132.78 Charges on overdue accounts.

There shall be added to any balance due the market administrator pursuant to §§ 1132.71, 1132.76, 1132.77, 1132.85, and 1132.86 an amount equal to one-half of 1 percent of such balance for each month or any portion thereof that payment of the balance is overdue.

Administrative Assessment and Marketing Service Deduction

§ 1132.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month 5 cents per 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 § 1132.44(a) (7) and (11) and the corresponding steps of § 1132.44(b), except such other source milk that is excluded from the computations pursuant to § 1132.60 (d) and (f); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds the skim milk and butterfat subtracted pursuant to § 1032.76(a)(2).

§ 1132.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to each producer pursuant to § 1132.73(b) shall deduct 6 cents per hundredweight or such lesser amounts as the Secretary may prescribe, with respect to all milk received by such handler from such producer (except such handler's own farm production), during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of milk received by handlers from such producers during the month and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Producers' cooperative associations: In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

Advertising and Promotion Program

§ 1132.110 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 § 1132.121(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.

§ 1132.111 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 § 1132.113(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 § 1132.113(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 § 1132.113(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.

§ 1132.112 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.

§ 1132.113 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 § 1132.111 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.

§ 1132.114 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.

§ 1132.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1132.110;

(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 §§ 1132.110 and 1132.117.

§ 1132.116 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 §§ 1132.110 and 1132.117;

(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.

§ 1132.117 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.

§ 1132.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1132.121(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.

§ 1132.119 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.

§ 1132.120 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.

§ 1132.121 Duties of the market administrator.

Except as specified in § 1132.116, 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 § 1132.113(c).

(b) Set aside the amounts subtracted under § 1132.61(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 § 1132.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1132.120. 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 § 1132.61(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 (§§ 1132.110 through 1132.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1132.122 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 § 1132.70.

PART 1138—MILK IN RIO GRANDE VALLEY MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1138 issued under secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1138.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1138.2 Rio Grande Valley marketing area.

"Rio Grande Valley marketing area," hereinafter called the "marketing area," means all the territory within the boundaries of the counties of Bernalillo, Chaves, Curry, De Baca, Dona Ana, Eddy, Grant, Guadalupe, Harding, Lea, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Quay, Rio Arriba, Roosevelt, Sandoval, San Juan, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, Valencia, all in the State of New Mexico; El Paso in the State of Texas; and Archuleta, Montezuma, and La Plata, in the State of Colorado.

§ 1138.3 Route disposition.

"Route disposition" means any delivery to retail or wholesale outlets (including delivery by a vendor or a sale from a plant or plant store) of any fluid milk products classified as Class I milk, other than a delivery to a pool plant or nonpool plant.

§ 1138.4 [Reserved]

§ 1138.5 [Reserved]

§ 1138.6 [Reserved]

§ 1138.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any plant hereinafter referred to as a "distributing pool plant" in which fluid milk products are pasteurized or packaged and from which there is route disposition in the marketing area equal to not less than 15 percent of the total Class I sales of such plant, except filled milk, or 10,000 pounds daily (average), whichever is less: *Provided*, That the total quantity of Class I milk, except filled milk, disposed from such plant during the month is not less than 50 percent of such plant's receipts of Grade A milk, which receipts shall include all milk diverted from such pool plant to a nonpool plant by the handler operating such pool plant.

(b) Any plant hereinafter referred to as a "supply pool plant" from which during the month not less than 50 percent of its dairy farm supply of Grade A milk is moved to plants from each of which there is route disposition, except filled milk, equal to not less than 50 percent of its receipts of Grade A

milk during the month and route disposition, except filled milk, in the marketing area equal to at least 15 percent of such receipts or a daily average of 10,000 pounds, whichever is less.

(c) Any plant, hereinafter referred to as a "cooperative standby pool plant," which is operated by a cooperative association, and is located within the marketing area, if 50 percent or more of the milk delivered during the month by producers who are members of such association is delivered directly or is transferred by the association to pool plants of other handlers.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) Any plant qualified pursuant to paragraph (a) of this section which disposes of a lesser volume of Class I milk, except filled milk, in the Rio Grande Valley marketing area than in a marketing area where the handling of milk is regulated pursuant to another order issued pursuant to the Act, and which is subject to the classification and pricing provisions of such other order; and

(3) Any plant qualified pursuant to paragraph (b) of this section for any portion of the period March through July, inclusive, that the milk of producers at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act and the Secretary determines that such plant should be exempted from this part.

§ 1138.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant from which fluid milk products eligible for distribution in the marketing area are moved to a pool plant qualified pursuant to § 1138.7 and which is not an other order plant nor a producer-handler plant.

§ 1138.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) A cooperative association with respect to the milk of any member producer which such cooperative association causes to be diverted pursuant to § 1138.12 for the account of such cooperative association;

(c) A cooperative association with respect to the milk of its member producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association, if the cooperative association notified the market administrator and the operator of the pool plant to whom the milk is delivered, in writing prior to the first day of the month in which the milk is delivered, that it elects to be a handler for such milk. For purposes of location adjustments to producers such milk is considered to have been received from producers by the cooperative association at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a nonpool plant from which there is route disposition in the marketing area; and

(e) Any person in his capacity as the operator of a nonpool plant from which Grade A milk as shipped to a pool plant pursuant to § 1138.7(a).

§ 1138.10 Producer-handler.

(a) "Producer-handler" means any person who processes and packages milk from his own farm production, who has route disposition within the marketing area consisting of any portion of such milk, and who receives no fluid milk products from other dairy farmers or from any source other than a pool plant and receipts from pool plants shall not be in excess of 11,000 pounds per month or, any person who processes and packages certified milk from his own farm production and disposes of such milk to another plant and who receives no milk from any source except his certified herd: *Provided*, That any person who desires to qualify as a producer-handler shall furnish to the market administrator for his verification, subject to review by the Secretary, evidence that the care and management of all the dairy animals and other resources necessary to produce the entire amount of fluid milk products handled (excluding receipts from pool plants) is the personal enterprise of and at the personal risk of such person and the operation of the processing and distribution business is the personal enterprise of and at the personal risk of the same person.

(b) In the case of a producer-handler of certified milk, the certified dairy herd and the milk plant in which the certified milk is handled shall be considered one business unit and shall not include milk which is delivered to other handlers' plants from a noncertified herd maintained on the same farm.

(c) A governmental agency which operates a milk, or filled milk plant shall be considered a producer-handler: *Provided*, That the plant operated by such agency shall be a pool plant if bulk milk is delivered during the month by such governmental agency to another plant which is a pool plant and a written request is filed by the agency with the market administrator asking that its plant be considered a pool plant. If such a plant is made a pool plant at the request of the governmental agency for one month and thereafter resumes the status of a nonpool plant it shall not be eligible for pool plant status again until it has been a nonpool plant for 12 consecutive months.

§ 1138.11 [Reserved]

§ 1138.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk eligible for distribution as Grade A milk in compliance with the fluid milk product requirements of a duly constituted health authority, whose milk is:

(1) Received at a pool plant; or

(2) Diverted for the account of the diverting handler from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(i) A cooperative association may divert for its account the milk of any member producer, whose milk is received at a distributing pool plant for at least 3 days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of its member producer milk received at all pool plants during the month. Diversions in excess of such percentages shall not be considered producer milk, and the diverting cooperative shall specify the dairy farmers whose milk is ineligible as producer milk. Two or more cooperative associations may have their allowable diversions computed on the basis of the combined deliveries of milk by their member producers provided each association has filed such a request in writing with the market administrator;

(ii) A handler in his capacity as the operator of a distributing pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (a)(2)(i) of this section, whose milk is received at his pool plant for at least 3 days during the month, without limit during the other days of such month. However, the total quantity of milk so diverted may not exceed 25 percent in the months of March, April, May, June, July, and December and 15 percent in other months of the milk received at such pool plant during the month from producers who are not members of a cooperative association which has diverted milk pursuant to paragraph (a)(2)(i) of this section. Diversions in excess of such percentages shall not be considered producer milk, and the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk;

(iii) For purposes of the requirements of § 1138.7, milk diverted for the account of the operator of a pool plant shall be included in the receipts of the pool plant from which diverted; and

(iv) For the purposes of location adjustments pursuant to §§ 1138.52 and 1138.75, milk diverted to a nonpool plant shall be considered to have been received at the location of the pool plant from which diverted when the farm on which the milk is produced is located within the marketing area and at the location of the nonpool plant where received when the farm on which the milk is produced is located outside the marketing area.

(b) "Producer" shall not include:

(1) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(2) Any person with respect to milk produced by him which is diverted to a pool plant from an other order plant if the other order designates such person as a producer under that order and such milk is allocated to Class II or Class III utilization pursuant to § 1138.44(a)(8)(iii) and the corresponding step of § 1138.44(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.

§ 1138.13 Producer milk.

"Producer milk" means all skim milk and butterfat in milk produced by a producer and received at a pool plant directly from producers or diverted pursuant to § 1138.12. Milk received at a pool plant from a handler described in § 1138.9(c) shall be considered under this part as producer milk of the pool plant operator. Milk received from producers by a handler described in § 1138.9(c) but not delivered to a pool plant shall be considered under this part as producer milk of such handler.

§ 1138.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk products specified in § 1138.40(b)(1) from any source other than producers, handlers described in § 1138.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1138.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1138.40(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 § 1138.40(b)(1) for which the handler fails to establish a disposition.

§ 1138.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, "fluid milk product" means any of the following products in fluid or frozen form:

(1) Milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted; and

(2) Any milk product not specified in paragraph (a)(1) of this section or in § 1138.40 (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.

§ 1138.16 Fluid cream product.

"Fluid cream product" means cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1138.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers, or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1138.18 Cooperative association.

"Cooperative association" means any cooperative marketing association which the Secretary determines, after application by the association:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members; and

(c) Has its entire activities under the control of its members.

§ 1138.19 Accounting periods.

A handler may account for receipts, utilization and classification of skim milk and butterfat at his pool plant(s) for two periods within a month, each period not to be less than 7 days, in the same manner as for a month if he provides to the market administrator in writing not less than 24 hours prior to the end of an accounting period notification of his intention to use two accounting periods.

HANDLER REPORTS

§ 1138.30 Reports of receipts and utilization.

On or before the eighth day after the end of each month, each handler shall report for the month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1138.9(c);

(3) Receipts of fluid milk products and 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 § 1138.40(b)(1); and

(6) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1138.9 (b) and (c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1138.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1138.9 (a), (b), and (c) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to

make payment pursuant to § 1138.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1138.32 Other reports.

In addition to the reports required pursuant to §§ 1138.30 and 1138.31, each handler shall report such other information as the market administrator deems necessary to verify or establish such handler's obligation under the order.

CLASSIFICATION OF MILK

§ 1138.40 Classes of utilization.

Except as provided in § 1138.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1138.30 shall be classified as follows:

(a) *Class I milk.* 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 § 1138.15; and

(6) In shrinkage assigned pursuant to § 1138.41(a) to the receipts specified in § 1138.41(a)(2) and in shrinkage specified in § 1138.41 (b) and (c).

§ 1138.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1138.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant to the respective quantities of skim milk and butterfat:

(1) In the receipts specified in paragraph (b) (1) through (6) of this section on which shrinkage is allowed pursuant to such paragraph; and

(2) In other source milk not specified in paragraph (b) (1) through (6) of this section which was received in the form of a bulk fluid milk product;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in 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 § 1138.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1138.9(c), except that if the operator of the plant to which the milk is delivered purchases 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 § 1138.9 (b) or (c), but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined 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.

§ 1138.42 Classification of transfers and diversions.

(a) *Transfers to pool plants.* Skim milk or butterfat transferred in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant after the computations pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1138.44(a)(7) or the corresponding step of § 1138.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler received during the month other source milk to be

allocated pursuant to § 1138.44(a) (11) or (12) or the corresponding steps of § 1138.44(b), the skim milk or butterfat so transferred up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1138.40.

(c) *Transfers to producer-handlers.* Skim milk or butter fat transferred in the following forms from a pool plant to a producer-handler under this or any other Federal order shall be classified:

(1) As Class I milk, if transferred in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the producer-handler's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to his receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in 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 § 1138.30 for the month within which such transaction occurred; and

(*b*) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(*b*) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from other order plants;

(*c*) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(*d*) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from other order plants;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and other order plants;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant fully regulated under any Federal milk order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the transferee-plant, shall be assigned to the extent possible in the following sequence:

(*a*) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(*b*) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from other order plants;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(*a*) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(*b*) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal milk order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of 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.

§ 1138.43 General classification rules.

In determining the classification of producer milk pursuant to § 1138.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1138.30 and shall compute separately for each pool plant and for each cooperative association with respect to milk for which it is the handler pursuant to § 1138.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1138.40, 1138.41, and 1138.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk

solids contained in such product plus all of the water originally associated with such solids; and

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1138.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1138.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1138.9(a) for each of his pool plants separately and of each handler described in § 1138.9 (b) and (c) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1138.41(b);

(2) Subtract in the following order from the total pounds of skim milk in Class I:

(i) The pounds of skim milk in receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(ii) The pounds of skim milk in receipts of packaged certified fluid milk products from a producer-handler if disposed of in the same form as received;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products received in packaged form from an other order plant, except that to be subtracted pursuant to 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 § 1138.40(b)(1) that were received in packaged form from other plants, but not in excess of the pounds of skim milk remaining in Class II;

(5) Subtract from the remaining pounds of skim milk in Class II the pounds of skim milk in products specified in § 1138.40(b)(1) that were in inventory at the beginning of the month in packaged form, but not in excess of the pounds of skim milk remaining in Class II. 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 § 1138.40(b), but not in excess of the pounds of skim milk remaining in Class II;

(7) Subtract in the order specified below from the pounds of skim milk remaining in each class, in series beginning with Class III, the pounds of skim milk in each of the following:

(i) Other source milk (except that received in the form of a fluid milk product) and, if paragraph (a)(5) of this section applies, packaged inventory at the beginning of the month of products specified in § 1138.40(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 that were not subtracted pursuant to paragraph (a)(2)(ii) of this section;

(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 § 1138.40(b)(1) in inventory at the beginning of the month that were not subtracted pursuant to paragraphs (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 § 1138.45(a); or

(b) The total pounds of skim milk remaining in each class at this allocation step at all pool plants of the handler;

(ii) Should the proration pursuant to 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 § 1138.42(a); and

(14) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class III. Any amount so subtracted shall be known as "overage";

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section; and

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraph (a)(14) of this section and the corresponding step of paragraph (b) of this section.

§ 1138.45 Market administrator's reports and announcements concerning classification.

The market administrator shall make the following reports and announcements concerning classification:

(a) Whenever required for the purpose of allocating receipts from other order plants pursuant to § 1138.44(a)(12) and the corresponding step of § 1138.44(b), estimate and publicly announce the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

(b) Report to the market administrator of the other order, as soon as possible after the report of receipts and utilization for the month is received from a handler who has received fluid milk products or bulk fluid cream products from an other order plant, the class to which such receipts are allocated pursuant to § 1138.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 13th day after the end of each month, report to each cooperative association which so requests the amount and class utilization of producer milk delivered by members of such cooperative association to each handler receiving such milk. For the purpose of this report the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by such handler.

Class Prices

§ 1138.50 Class prices.

Subject to the provisions of § 1138.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.35.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 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.

§ 1138.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1138.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant in Zone I (comprising the counties of Bernalillo, Dona Ana, Grant, Guadalupe, Harding, Lincoln, Los Alamos, Luna, McKinley, Mora, Otero, Rio Arriba, Sandoval, San Miguel, Santa Fe, Sierra, Socorro, Taos, Torrance, and Valencia, all in the State of New Mexico, and El Paso, Tex.), which is classified as Class I milk, the Class I price shall be the price computed pursuant to § 1138.50(a).

(b) For milk received from producers at a pool plant in Zone II (comprising the counties of Archuleta, La Plata, and Montezuma, Colorado, and San Juan, N. Mex.), and in Zone III (comprising the counties of Eddy, Chaves, Curry, De Baca, Lea, Quay, and Roosevelt, N. Mex.), which is classified as Class I milk or assigned Class I location adjustment

credit pursuant to paragraph (d) of this section, the Class I price shall be the price computed pursuant to § 1138.50 (a) minus 15 cents.

(c) For milk received from producers at a pool plant located outside the marketing area and more than 100 miles by the shortest highway distance, as determined by the market administrator, from the nearest of the county courthouses in Bernalillo or Santa Fe Counties, N. Mex., or El Paso, Tex., and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (c) of this section, the price computed pursuant to § 1138.50(a) shall be reduced by 15 cents and by an additional cent for each 10 miles or fraction thereof, that such distance calculated from the Bernalillo, Santa Fe, or El Paso County Courthouse, whichever is nearer, exceeds 110 miles.

(d) For purposes of calculating such adjustment, bulk transfers of fluid milk products between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(e) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (b) and (c) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

§ 1138.54 Equivalent price.

If for any reason a price or pricing constituent required by this part for computing class prices or for other purposes is not available as prescribed in this part, the market administrator shall use a price or pricing constituent determined by the Secretary to be equivalent to the price or pricing constituent that is required.

Uniform Price

§ 1138.60 Handler's value of milk for computing uniform price.

For the purpose of computing the uniform price, the market administrator shall determine for each month the value of milk of each handler with respect to each of his pool plants and of each handler described in § 1138.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1138.44 by the applicable class prices and add the resulting amounts;

(b) Add the amounts obtained from multiplying the pounds of overage subtracted from each class pursuant to § 1138.44(a)(14) and the corresponding step of § 1138.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1138.74, that are applicable at the location of the pool plant;

(c) Add the amount obtained from multiplying the difference between the Class III price for the preceding month and the Class I price applicable at the location of the pool plant or the Class II price, as the case may be, for the current month by the hundredweight of skim milk and butterfat subtracted from Class I and Class II pursuant to § 1138.44(a)(9) and the corresponding step of § 1138.44(b);

(d) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the pool plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (i) through (iv) and the corresponding step of § 1138.44 (b), excluding receipts of bulk fluid cream products from an other order plant;

(e) Add the amount obtained from multiplying the difference between the Class I price applicable at the location of the transferor-plant and the Class III price by the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(7) (v) and (vi) and the corresponding step of § 1138.44(b); and

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1138.44(a)(11) and the corresponding step of § 1138.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

§ 1138.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight for milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1138.60 for all handlers who filed the reports prescribed by § 1138.30 for the month and who made the payments pursuant to §§ 1138.71 and 1138.73 for the preceding month;

(b) Add an amount equal to the sum of the deductions for location adjustments computed pursuant to § 1138.75;

(c) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(d) 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 § 1138.60(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.

§ 1138.62 Announcement of uniform price and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The fifth day after the end of each month the butterfat differential for such month; and

(b) The 12th day after the end of each month the uniform price for such month.

Payments for Milk

§ 1138.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 1138.71, 1138.76 and 1138.77 and from which he shall make all payments pursuant to §§ 1138.72 and 1138.77: *Provided*, That any payments due any handler shall be offset by any payments due from such handler.

§ 1138.71 Payments to the producer-settlement fund.

(a) On or before the 13th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1138.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1138.75, of such handler's receipts of producer milk; and

(ii) The value at the uniform price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1138.60(f).

(b) On or before the 25th day after the end of the month each person who operated an other order plant that was regulated during such month under an order providing for individual-handler pooling shall pay to the market administrator an amount computed as follows:

(1) Determine the quantity of reconstituted skim milk in filled milk in route disposition from such plant in the marketing area which was allocated to Class I at such plant. If there is such route disposition from such plant in marketing areas regulated by two or more marketwide pool orders, the reconstituted skim milk allocated to Class I shall be prorated to each order according to such

route disposition in each marketing area; and

(2) Compute the value of the reconstituted skim milk assigned in 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.

§ 1138.72 Payments from the producer-settlement fund.

On or before the 14th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1138.71(a)(2) exceeds the amount computed pursuant to § 1138.71(a)(1). If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the funds are available.

§ 1138.73 Payments to producers and to cooperative associations.

Except as provided in paragraphs (c) and (e) of this section, each handler, except a cooperative association, shall make payment to each producer from whom milk is received as specified in paragraphs (a) and (b) of this section:

(a) On or before the last day of the month, to each producer who had not discontinued shipping milk to such handler before the 28th day of the month, a partial payment equal to the uniform price for the preceding month multiplied by the hundredweight of milk delivered during the first 15 days of the current month less authorized deductions.

(b) On or before the 16th day after the end of each month, for milk received during such month, an amount computed at not less than the uniform price per hundredweight pursuant to § 1138.61, as adjusted pursuant to §§ 1138.74 and 1138.75, plus or minus adjustments for errors made in previous payments to such producers and less (1) payments made pursuant to paragraph (a) of this section, (2) deductions for marketing services pursuant to § 1138.86 and (3) proper deductions authorized in writing by such producer: *Provided*, That if by such date such handler has not received full payment for such delivery period pursuant to § 1138.72 he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall, however, complete such payments not later than the date for making such payments pursuant to this paragraph next following receipt of the balance from the market administrator.

(c)(1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperative association each handler shall pay to the cooperative association on or before the second day prior to the date of payment to producers in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section an amount equal to the sum of the individual payments otherwise payable to such producers. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the calendar month next following receipt of such certification through the last day of the month next preceding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making payments to producers pursuant to paragraphs (b) and (c) of this section, each handler shall furnish each producer or cooperative association from whom he has received milk with a supporting statement which shall show for each month:

(1) The month and the identity of the handler and of the producer;

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this order;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler; and

(6) The net amount of payment to such producer.

(e) Each handler who receives milk from a handler described in § 1138.9(c), shall, on or before the second day prior to the date payments are due individual producer, pay such cooperative association for such milk as follows:

(1) A partial payment in the amount specified in paragraph (a) of this section; and

(2) In making final settlement, the value of such milk at the applicable uniform price as adjusted pursuant to §§ 1138.74 and 1138.75, less the amount of partial payment made on such milk.

(f) Each handler who receives milk from producers for which payment is to be made to a cooperative association pursuant to paragraph (c) of this section shall report on or before the eighth day after the end of the month to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(a) The days of delivery, the total pounds of milk, and the average butterfat test of milk received from such producer during the month;

(b) The amount or rate and nature of any deductions; and

(c) The amount of any payments due such producer pursuant to § 1138.77.

§ 1138.74 Butterfat differential.

For milk containing more or less than 3.5 percent butterfat, the uniform price shall be increased or decreased, respectively, for each one-tenth percent butterfat variation from 3.5 percent by a butterfat differential, rounded to the nearest one-tenth cent, which shall be 0.115 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92 score) bulk butter per pound at Chicago, as reported by the Department for the month.

§ 1138.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located in Zones II and III or at pool plants located outside the marketing area and more than 100 miles, as determined by the market administrator, from the nearest of the county courthouses in El Paso County, Tex., or Bernalillo, or Santa Fe Counties, N. Mex., there shall be deducted an adjustment for each such plant for all milk at the rates specified pursuant to § 1138.52.

(b) For purposes of computations pursuant to §§ 1138.71 and 1138.72, the uniform price shall be adjusted at the rates set forth in § 1138.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted uniform price plus 5 cents shall not be less than the Class III price.

§ 1138.76 Payments by handler operating a partially regulated distributing plant.

Each handler who operates a partially regulated distributing plant shall pay on or before the 25th day after the end of the month to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section. If the handler submits pursuant to §§ 1138.30(b) and 1138.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that sub-

tracted 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 § 1138.60 for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the partially regulated distributing plant from a pool plant or an other order plant shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or an other order plant shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from pool plants and other order plants that are classified in the corresponding class pursuant to 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 § 1138.60 shall be priced at the uniform price (or at the weighted average price if such is provided) of the respective order regulating the handling of milk at the transferee plant, with such uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest class price of the respective order), except that transfers of reconstituted skim milk in filled milk shall be priced at the lowest class price of the respective order; and

(iii) If the operator of the partially regulated distributing plant so requests, the value of milk determined pursuant to § 1138.60 for such handler shall include, in lieu of the value of other source milk specified in § 1138.60(f) less the value of such other source milk specified in § 1138.71(a)(2)(ii), a value of milk determined pursuant to § 1138.60 for each nonpool plant that is not an other order plant which serves as a supply plant for such partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § 1138.7(b) subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1138.30(b) and 1138.31(b) similar reports for each such nonpool supply plant;

(b) The operator of such nonpool supply plant maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available if requested by the market administrator for verification purposes; and

(c) The value of milk determined pursuant to § 1138.60 for such nonpool supply plant shall be determined in the same manner prescribed for computing the obligation of such partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to 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 § 1138.74, 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 § 1138.74, 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.

§ 1138.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts or other verification discloses errors resulting in moneys due a producer or the market administrator from such handler or due such handler from the market administrator, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred. Whenever such audit discloses errors resulting in moneys due such handler from the market administrator, payment shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

Administrative Assessment and Marketing Service Deduction

§ 1138.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 16th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to the milk described in paragraphs (a), (b), and (c) of this section. If a handler elects pursuant to § 1138.19 to use two accounting periods in any month, the applicable rate of assessment for such handler shall be the rate set forth above multiplied by two or such lesser rate as the Secretary may determine is demonstrated as appropriate in terms of the particular cost of administering the additional accounting period:

(a) Producer milk including such handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1138.44(a)(7) and (11) and the corresponding steps of § 1138.44(b), except such other source milk that is excluded from the computations pursuant to § 1138.60 (d) and (f); and

(c) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1138.76(a)(2).

§ 1138.86 Deduction for marketing.

(a) Except as set forth in paragraph (b) of this section, each handler in making payments to producers other than himself for milk pursuant to § 1138.73, shall deduct 6 cents per hundredweight, or such lesser amount as may be prescribed by the Secretary, and shall pay such deductions to the market administrator on or before the 16th day after the end of the month. Such money shall be used by the market administrator to provide market information and to check the accuracy of the testing and weighing of milk for producers who are not receiving such services from a cooperative association.

(b) In the case of producers who are members of a cooperative association which the Secretary has determined is actually performing the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, such deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and its members, and on or before the 16th day after the end of each month, the handler shall pay the aggregate amount

of such deductions to the cooperative association, furnishing a statement showing the amount of the deduction and the quantity of milk on which the deduction was computed from each producer.

ADVERTISING AND PROMOTION PROGRAM

§ 1138.110 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 § 1138.121 (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.

§ 1138.111 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 § 1138.113(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 § 1138.113(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 § 1138.113(b), has a majority of the participating producers, representation from such coopeative 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.

§ 1138.112 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.

§ 1138.113 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 § 1138.111 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.

§ 1138.114 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.

§ 1138.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1138.110;

(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 §§ 1138.110 and 1138.117.

§ 1138.116 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 §§ 1138.110 and 1138.117;

(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.

§ 1138.117 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.

§ 1138.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1138.121(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 recom-

mending 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.

§ 1138.119 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.

§ 1138.120 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.

§ 1138.121 Duties of the market administrator.

Except as specified in § 1138.116, 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 § 1138.113(c).

(b) Set aside the amounts subtracted under § 1138.61(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 § 1138.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1138.120. 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 § 1138.61(d) for such calendar quarter, less the amount of any refund otherwise made to the producer pursuant to subparagraph (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 (§§ 1138.110 through 1138.122).

(d) Make necessary audits to establish that all Agency funds are used only for authorized purposes.

§ 1138.122 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 § 1138.70.

Signed at Washington, D.C., on August 27, 1973.

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

[FR Doc.73-18665 Filed 9-11-73;8:45 am]

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