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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 7—Agriculture

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

PART 201—FEDERAL SEED ACT REGULATIONS

Certifying Agency Standards and Procedures to Assure Genetic Purity and Identity of Certified Seed

On October 17, 1969, section 101(a)(25) of the Federal Seed Act was amended, in part, to provide that a "seed certifying agency" must have "standards and procedures approved by the Secretary (after due notice, hearings, and full consideration of the views of farmer users of certified seed and other interested parties) to assure the genetic purity and identity of the seed certified."

Following passage of this legislation the Association of Official Seed Certifying Agencies appointed an Advisory Board consisting of representatives of the seed trade, regulatory agencies, research agencies, State seed certifying agencies, and certified seed growers associations to recommend a minimum set of standards and procedures to assure genetic purity and identity of certified seed. The recommendations of the Advisory Board were adopted by the Association of Official Seed Certifying Agencies in August 1970.

The following amendments to the rules and regulations under the Federal Seed Act essentially consist of the minimum standards and procedures adopted by that Association.

Pursuant to section 402 of the Federal Seed Act, as amended (7 U.S.C. 1551 et seq.) and the administrative procedure provisions of 5 U.S.C. section 553, there was published in the FEDERAL REGISTER (37 FR 10572) on May 25, 1972, a notice of rulemaking and hearing with respect to proposed amendments to the regulations (7 CFR, Part 201, as amended) relating to standards and procedures to assure genetic purity and identity of certified seed under the Act.

Interested persons were given an opportunity to present views orally at a hearing and to submit written comments regarding the proposals. Over 3,000 copies of the proposals were distributed to trade and Government organizations. Oral comments were made by 10 persons and written comments were submitted by 6 persons, groups, or organizations.

On the basis of comments received, the hearing record and all other information available to the Department, it is concluded that, with the changes noted below, the amendments to the regulations as proposed on May 25, 1972, are in the public interest and should be implemented.

A. *Definition of "off-type".* Improved wording was suggested for describing an "off-type" plant or seed. The suggestion is adopted.

B. *Definition of "inbred line."* A written comment proposed a delay in decision pending further comment. Further comments were not received. The proposal is adopted as originally worded.

C. *Rights of State agencies to refuse to certify seed.* One party recommended that wording be included to require State agencies to certify seed upon application by a grower. The Act does not provide for such authority. Further, the recommendation involves a substantive change that was not included in the proposal. The recommendation is not adopted.

D. *Eligibility requirements.* The proposal provides that certain information on new varieties be furnished to the Secretary. The concensus of the comments is that the information should go to the agency (or agencies) being requested to certify the new variety. The wording is so amended.

The proposal also contains the wording "Evidence of the performance of the variety * * *." Suggestions were made to change this provision, to read "Evidence supporting the identity of the variety * * *" so that relative performance of the variety is not a requirement for approval of the variety for certification. The suggestion is adopted.

E. *Limitation of generations.* Suggestions were made to delete the wording regarding scientific data and legal requirement. This suggestion is adopted.

F. *Production.* One source suggested "field" be changed to "area." The word "field," as defined in a standard dictionary, appears to be adequate. The suggestion is not adopted.

G. *Addition of a kind to the table of standards.* During the oral hearing it was proposed that the kind "milkvetch" and standards therefor be added to the table of standards. Nineteen hundred and seventy-two was the first year that this kind was certified and standards had only recently been developed. There was no objection. There is no known reason why anyone would be adversely affected by the inclusion of these standards at this time. The proposal is therefore adopted.

H. *Footnote Number 38.* New wording was suggested to clarify the isolation requirement for the production of hybrid seed from male sterile parents. The suggestion is adopted.

I. *Length of stand requirement for alfalfa.* A provision whereby the originating plant breeder could specify the length of stand was not shown in the proposal. The provision is added.

J. *Editorial changes.* Editorial changes have been made for purposes of clarity.

In accordance with the administrative procedure provisions of 5 U.S.C. 553, it is found upon good cause that further public rulemaking proceedings on the matter are unpractical and unnecessary.

Accordingly, the amendments are promulgated as follows:

(Sec. 402, 53 Stat. 1285 (7 U.S.C. 1592), 37 FR 28464, 28476.)

1. Section 201.2: The following definitions are added to § 201.2:

§ 201.2 Terms defined.

* * * * *

(bb) *Breeder seed.* Breeder seed is a class of certified seed directly controlled by the originating or sponsoring plant breeding institution, or person, or designee thereof, and is the source for the production of seed of the other classes of certified seed.

(cc) *Foundation seed.* Foundation seed is a class of certified seed which is the progeny of Breeder or Foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing the Foundation class of seed, for the purpose of maintaining genetic purity and identity.

(dd) *Registered seed.* Registered seed is a class of certified seed which is the progeny of Breeder or Foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing the Registered class of seed, for the purpose of maintaining genetic purity and identity.

(ee) *Certified seed.* Certified seed is a class of certified seed which is the progeny of Breeder, Foundation, or Registered seed, except as provided in § 201.70 and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing the Certified class of seed, for the purpose of maintaining genetic purity and identity.

(ff) *Off-type.* The term "off-type" means a plant or seed which deviates in one or more characteristics from that which has been described in accordance with § 201.68(c) as being usual for the strain or variety.

(gg) *Inbred line.* The term "inbred line" means a relatively true-breeding strain resulting from at least five successive generations of controlled self-fertilization or of backcrossing to a recurrent parent with selection, or its equivalent, for specific characteristics.

(hh) *Single cross.* The term "single cross" means the first generation hybrid between two inbred lines.

(ii) *Foundation single cross.* The term "foundation single cross" means a single cross used in the production of a double cross, a three-way, inbred lines.

(jj) *Double cross.* The term "double cross" means the first generation hybrid between two single crosses.

(kk) *Top cross.* The term "top cross" means the first generation hybrid of a cross between an inbred line and an open-pollinated variety or the first-generation hybrid between a single cross and an open-pollinated variety.

(ll) *Three-way cross.* The term "three-way cross" means a first generation hybrid between a single cross and an inbred line.

(mm) *Open-pollination.* The term "open-pollination" means pollination that occurs naturally as opposed to controlled pollination, such as by detasselling, cytoplasmic male sterility, self-incompatibility or similar processes.

2. The following §§ 201.67–201.78 are added to read as follows:

CERTIFIED SEED

§ 201.67 Seed certifying agency standards and procedures.

In order to qualify as a seed certifying agency for purposes of section 101(a)(25) of the Federal Seed Act (7 U.S.C. 1551(a)(25)) an agency must enforce standards and procedures, as conditions for its certification of seed, that meet or exceed the standards and procedures specified in §§ 201.68 through 201.78.

§ 201.68 Eligibility requirements for certification of varieties.

The certifying agency shall require the originator, developer, or owner of the variety, or agent thereof, to make the following available when eligibility for certification is requested:

(a) The name of the variety.

(b) A statement concerning the variety's origin and the breeding procedure used in its development.

(c) A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.

(d) Evidence supporting the identity of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.

(e) A statement delineating the geographic area or areas of adaptation of the variety.

(f) A statement on the plans and procedures for the maintenance of seed classes, including the number of generations through which the variety may be multiplied.

(g) A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.

(h) Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand or other factors affecting genetic purity.

(i) A sample of seed representative of the variety as marketed.

§ 201.69 Classes of certified seed.

(a) Classes of certified seed are as follows:

(1) Breeder.
(2) Foundation.
(3) Registered.
(4) Certified.

§ 201.70 Limitations of generations for certified seed.

The number of generations through which a variety may be multiplied shall be limited to that specified by the originating breeder or owner and shall not exceed two generations beyond the Foundation seed class with the following exceptions which may be made with the permission of the originating or sponsoring plant breeder, institution, or his designee:

(a) Recertification of the Certified class may be permitted when no Foundation seed is being maintained.

(b) The production of an additional generation of the Certified class may be permitted on a 1-year basis only, when an emergency is declared prior to the planting season by any official seed certifying agency stating that the Foundation and Registered seed supplies are not adequate to plant the needed Certified acreage of the variety. The additional generation of Certified seed to meet the emergency need is ineligible for recertification.

§ 201.71 Establishing the source of all classes of certified seed.

The certifying agency shall have evidence of the class and source of seed used to plant each crop being considered for certification.

§ 201.72 Production of all classes of certified seed.

(a) Each certifying agency shall determine that genetic purity and identity are maintained at all stages of certification including seeding, harvesting, processing, and labeling of the seed.

(b) The unit of certification shall be a clearly defined field or fields.

(c) One or more field inspections shall be made (1) previous to the time a seed crop of any class of certified seed is to be harvested, and (2) when genetic purity and identity can best be determined. The field shall be in suitable condition to permit an adequate inspection to determine genetic purity and identity.

(d) A certification sample shall be drawn in a manner approved by the certifying agency from each cleaned lot of seed eligible for certification. Evidence that any lot of seed has not been protected from contamination which might affect genetic purity, or is not properly identified, shall be cause for possible rejection of certification.

§ 201.73 Processors and processing of all classes of certified seed.

The following requirements must be met by processors of all classes of certified seed:

(a) Facilities shall be available to perform processing without introducing admixtures.

(b) Identity of the seed must be maintained at all times.

(c) Records of all operations relating to certification shall be complete and adequate to account for all incoming seed and final disposition of seed.

(d) Processors shall permit inspection by the certifying agency of all records pertaining to all classes of certified seed.

(e) Processors shall designate an individual who shall be responsible to the certifying agency for performing such duties as may be required by the certifying agency.

(f) Seed lots of the same variety and class may be blended and the class retained. If lots of different classes are blended, the lowest class shall be applied to the resultant blend. Such blending can only be done when authorized by the certifying agency.

§ 201.74 Labeling of all classes of certified seed.

(a) All classes of certified seed when offered for sale shall have an official certification label affixed to each container clearly identifying the certifying agency, the reference number, the variety name (if certified as to variety) and the kind and class of seed.

(b) In the case of seed sold in bulk, the invoice or accompanying document shall identify the certifying agency, the crop kind, variety (if certified as to variety), class of seed, and the identifying number.

(c) The official certification label may be printed directly on the container when an accounting of the containers is required by the certifying agency.

(d) Labels other than those printed on the containers shall be attached to containers in a manner that prevents removal and reattachment without tampering being obvious.

§ 201.75 Interagency certification.

Interagency certification may be accomplished by participation of more than one official certifying agency in performing the services required to certify a lot of seed.

(a) The certifying agency issuing labels for all classes certified seed shall require the seed on which the labels are used to meet standards at least equal to the minimum genetic standards for the seed in question as specified in table 5 of this part.

(b) Seed to be recognized for interagency certification must be received in containers carrying official certification labels, or if shipped for processing, evidence of its eligibility from another official certifying agency, together with the following information:

(1) Variety (if certified as to variety) and kind;

(2) Quantity of seed (pounds or bushels);

(3) Class of certified seed;

(4) Inspection or lot number traceable to the previous certifying agency's records.

(c) Each label used in interagency certification shall be serially numbered or carry the certification identity number and clearly identify the certifying agencies involved, and the variety (if certified as to variety), kind and class of certified seed.

§ 201.76 Minimum Land, isolation, field and seed standards.

In the following table the columns of figures mean for "Land" the number of years that must elapse between the destruction of a stand of a kind and establishment of a stand of a specified class of a variety of the same kind. "Isolation" means distance in feet from any contaminating source. "Field" means minimum number of plants or heads in which one plant or head of another variety is permitted. "Seed" means the maximum percentage of seed of other varieties or off-types permitted in the cleaned seed.

TABLE 5

Crop kind	Foundation				Registered				Certified			
	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed	Land	Isolation	Field	Seed
Alfalfa	[1] 4	[4] [5] 660	1,000	0.1	[1] 3	[4] [5] 300	400	0.25	[1] 1	[4] 165	100	1.0
Barley	[7] 1	[23] 0	3,000	0.05	[7] 1	[23] 0	2,000	0.1	[7] 1	[23] 0	1,000	0.2
Hybrid	[20] 1	[21] [22] 660	3,000	0.05	[20] 1	[21] [22] 660	2,000	0.1	[20] 1	[21] [24] 330	1,000	0.2
Birdsfoot Trefoil	[1] 5	[4] 600	1,000	0.1	[1] 3	[4] 300	400	0.25	[1] 2	[4] [5] 165	100	1.0
Clover (all kinds)	[1] [6] 5	[4] [5] [13] 600	1,000	0.1	[1] [6] 3	[4] [5] [14] 300	400	0.25	[1] [6] 2	[4] [13] 165	100	1.0
Corn:												
Inbred lines	0	[10] [11] 660	[12] 1,000	[12] 0.1								
Foundation, single cross	0	[10] [11] 660	[12] 1,000	[12] 0.1								
Hybrid									0	[11] [13] 660		0.5
Open-pollinated									0	[11] [12] 660	200	0.5
Sweet									0	[12] [14] 660		0.5
Cotton	0	[19] 0	0	0	0	[19] 0	35,000	0.1	0	[19] 0	7,000	0.1
Cowpea	[7] 1	10	1,000	0.1	[7] 1	10	500	0.2	[7] 1	10	200	0.5
Crambe	[8] 1	660	2,000	0.05	[8] 1	660	1,000	0.1	[8] 1	660	500	0.25
Crownvetch	[1] 5	[4] [5] 600	1,000	0.1	[1] 3	[4] [5] 300	400	0.25	[1] 2	[4] [5] 165	100	1.0
Field and garden beans	[8] 1	[23] 0	2,000	0.05	[8] 1	[23] 0	1,000	0.10	[8] 1	[23] 0	500	0.20
Field pea	[7] 1	[23] 0	1,000	0.1	[7] 1	[23] 0	500	0.2	[7] 1	[23] 0	200	0.5
Flax	[7] 1	[23] 0	5,000	0.05	[7] 1	[23] 0	2,000	0.1	[7] 1	[23] 0	1,000	0.2
Grasses—Cross pollinated	5	[4] [15] [16] 900	1,000	0.1	[8] 1	[4] [14] [16] 300	100	1.0	[8] 1	[4] [15] [16] 165	50	2.0
Strains at least 80 percent apomictic and highly self-fertile species	5	[4] [15] [16] 60	1,000	0.1	[8] 1	[4] [15] [16] 30	100	1.0	[8] 1	[4] [15] [16] 15	50	[17] 2.0
Lespedeza	[1] 5	[4] 10	1,000	0.1	[1] 3	[4] 10	400	0.25	[1] 2	[4] 10	100	1.0
Millet	[8] 1	1,320	[27] 20,000	0.005	[8] 1	1,320	[27] 10,000	0.01	[8] 1	660	[27] 5,000	0.02
Mung bean	[7] 1	[23] 0	1,000	0.1	[7] 1	[23] 0	500	0.2	[7] 1	[23] 0	200	0.5
Mustard	4	165	2,000	0.05	2	[24] 165	1,000	0.1	2	[24] 165	500	0.25
Oat	[7] 1	[23] 0	3,000	0.2	[7] 1	[23] 0	2,000	0.3	[7] 1	[23] 0	1,000	0.5
Okra	[8] 1	1,320	[27] 0	0.0	[8] 1	1,320	[27] 2,500	0.5	[8] 1	825	[27] 1,250	1.0
Onion	[8] 1	5,280	[23] 200	0.0	[8] 1	2,640	[23] 200	[23] 0.5	[8] 1	1,320	[23] 200	[23] 1.0
Peanut	[7] 1	[23] 0	1,000	0.1	[7] 1	[23] 0	500	0.2	[7] 1	[23] 0	200	0.5
Pepper	[8] 1	[23] 200	0	0.0	[8] 1	[23] 100	300	0.5	[8] 1	[23] 30	150	1.0
Rapeseed	4	165	2,000	0.05	2	[24] 165	1,000	0.1	2	[24] 165	500	0.25
Rice	[8] 1	[25] 10	10,000	0.05	[8] 1	[25] 10	5,000	0.1	[8] 1	[25] 10	1,000	0.2
Rye	[7] 1	[18] 660	3,000	0.05	[7] 1	[18] 660	2,000	0.1	[7] 1	[18] 660	1,000	0.2
Safflower	[1] 5	[4] [5] 600	1,000	0.1	[1] 3	[4] 300	400	0.25	[1] 2	[4] [5] 165	100	1.0
Sorghum	[8] 1	990	[27] 50,000	0.005	[8] 1	990	[27] 35,000	0.01	[8] 1	[26] 660	[27] 20,000	0.05
Hybrid seedstock	[8] 1	990	[27] 50,000	0.005								
Commercial hybrid									[8] 1	[26] [28] [31] 660	[27] 20,000	0.1
Soybeans	[32] 1	[23] 0	1,000	0.1	[32] 1	[23] 0	500	0.2	[32] 1	[23] 0	200	0.5
Sunflower	1	2,640	200	0.02	1	2,640	200	0.02	1	2,640	200	[34] 0.1
Hybrid	1	2,640	[33] 250	0.02					1	2,640	[33] 250	[34] 0.1
Tomato	[8] 1	[23] 200	0	0.0	[8] 1	[23] 100	300	0.5	[8] 1	[23] 30	150	1.0
Tobacco	[35] 1	[37] 150	0	0.01	[35] 1	[37] 150	0	0.01	[35] 1	[37] 150	0	0.01
Hybrid									[35] 0	[36] 150	0	0.01
Triticale	[7] 1	[23] 0	3,000	0.05	[7] 1	[23] 0	2,000	0.1	[7] 1	[23] 0	1,000	0.2
Vetch	[1] [6] 5	[4] [37] 10	1,000	0.1	[1] [6] 3	[4] [37] 10	400	0.25	[1] [6] 2	[4] [37] 10	100	1.0
Watermelon	[8] 1	[38] 2,640	[23] 0	0.0	[8] 1	[38] 2,640	[23] 0	0.5	[8] 1	[38] 1,320	[23] 500	1.0
Wheat	[7] 1	[23] 0	3,000	0.05	[7] 1	[23] 0	2,000	0.1	[7] 1	[23] 0	1,000	0.2
Hybrid	[20] 1	[21] [22] 660	3,000	0.05	[20] 1	[21] [22] 660	2,000	0.1	[20] 1	[21] [22] 330	1,000	0.2

[1] The land must be free of volunteer plants of the crop kind during the year immediately prior to establishment and no manure or other contaminating material shall be applied the year previous to seeding or during the establishment and productive life of the stand.

[2] At least 2 years must elapse between destruction of indistinguishable varieties or varieties of dissimilar adaptation and establishment of the stand for the production of the Certified class of seed.

[3] Isolation distance for certified seed production shall be at least 900 feet from varieties of dissimilar adaptation.

[4] Isolation between classes of the same variety may be reduced to 25 percent of the distance otherwise required.

[5] This distance applies when fields are 5 acres or larger in area. For smaller fields, the distances are 900 feet and 450 feet for the Foundation and Registered classes, respectively.

[6] Fields of less than 5 acres require 330 feet.

[7] Requirement is waived if the previous crop was grown from certified seed of the same variety.

[8] Requirement is waived if the previous crop was of the same variety and of a certified class equal or superior to that of the crop seeded.

[9] Reseeding varieties of crimson clover may be allowed to volunteer back year after year on the same ground. If a new variety is being planted where another variety once grew, the field history requirements apply.

[10] No isolation is required for the production of hand-pollinated seed.

[11] When the contaminant is of the same color and texture, the isolation distance may be modified by (1) adequate natural barriers, or (2) differential maturity dates, provided there are no receptive silks in the seed parent at the time the contaminant is shedding pollen. In the case of inbred lines and foundation single crosses, these modifications may apply only for fertile seed production.

[12] Where the contaminating source is corn of the same color and texture as that of the field inspected, the isolation distance is 410 feet and may be modified by the planting of pollen parent border rows according to the following table:

MINIMUM NUMBERS OF BORDER ROWS REQUIRED

Minimum distance from contaminant	Field size, up to 20 acres	Field size, 20 acres or more
410	0	0
370	2	1
330	4	2
290	6	3
245	8	4
205	10	5
165	12	6
125	14	7
85	16	8
0	(Not permitted)	10

[13] Refers to off-type plants in the pollen parent that have shed pollen or to the off-type plants in the seed parent at the time of the last inspection.

[14] The required minimum isolation distance for sweet corn is 660 feet from the contaminating source, plus four border rows when the field to be inspected is 10 acres or less in size. This distance may be decreased by 15 feet for each increment of 4 acres in the size of the field to a maximum of 40 acres, and further decreased 40 feet for each additional border row to a maximum of 16 rows. These border rows are for pollen-shedding purposes only.

[15] Refers to off-type ears. Ears with off-colored kernels are limited to 0.2 percent.

[16] The Merion variety of Kentucky bluegrass is allowed 3 percent.

[17] All cross-pollinating varieties must be 400 feet from any contaminating source.

[15] Isolation between diploids and tetraploids shall be at least 15 feet.
[17] Minimum isolation shall be at least 100 feet if the cotton plants in the contaminating source differ by easily observable morphological characteristics from the field to be inspected. Isolation distance between upland and Egyptian types shall be at least 1,320, 1,320, and 660 feet for Foundation, Registered, and Certified classes, respectively.
[20] These distances apply when there is no border removal. Removal of a 9-foot border (after flowering) decreases the required distance for Foundation, Registered, and Certified seed to 600, 225, and 100 feet, respectively, for cross-pollinated species, and to 30, 15, and 15 feet, respectively, for apomictic and self-pollinated species. Removal of a 15-foot border allows a further decrease to 450, 150, and 75 feet, respectively, for cross-pollinated species.
[21] Isolation distances between two fields of the same kind may be reduced to a distance adequate to prevent mechanical mixture, if the sum of percentages of plants in bloom in both fields does not exceed 5 percent at a time when more than 1 percent of the plants in either field are in bloom.
[23] Refers to bulbs.
[25] Distance adequate to prevent mechanical mixture is necessary.
[26] Required isolation between classes of the same variety is 10 feet.
[28] The minimum distance may be reduced by 50 percent if different classes of the same variety are involved.
[29] The minimum distance may be reduced by 50 percent if the field is adequately protected by natural or artificial barriers.
[37] These ratios are for definite other varieties. The ratios for doubtful other varieties are:

	Foundation	Registered	Certified
Millet	1:10,000	1:5,000	1:2,500
Sorghum	1:20,000	1:10,000	1:1,000
Hybrid sorghum	1:20,000	(Not applicable)	1:1,000
Okra	None	1:750	1:500

[38] White heart fruits may not exceed 1 per 100, 40, and 20 redfruits for Foundation, Registered, and Certified classes, respectively. Citron or hard rind is not permitted in Foundation or Registered classes and may not exceed 1 per 1,000 fruits in the Certified class.
[39] This distance applies if the contaminating source does not (genetically differ in height from the pollinator parent or has a different chromosome number. If the contaminating source does (genetically) differ and has the same chromosome number, the distance shall be 990 feet. The minimum isolation from grass sorghum or broomcorn with the same chromosome number shall be 1,320 feet.
[40] Requirement is waived for the production of pollinator lines if the previous crop was grown from a certified class of seed of the same variety. Sterile lines and crossing blocks must be on land free of contaminating plants.
[41] If the contaminating source is similar to the hybrid in all important characteristics, the isolation may be reduced by 66 feet for each pair of border rows of the pollinator parent down to a minimum of 330 feet. These rows must be located directly opposite or diagonally to the contaminating source. The pollinator border rows must be shedding pollen during the entire time 5 percent or more of the seed parent flowers are receptive.
[42] An unplanted strip at least 2 feet in width shall separate male sterile plants and pollinator rows in inter-planted blocks.
[43] Unless the preceding soybean crop was planted with a class of certified seed of the same variety or unless the variety planted is of a contrasting pubescence or hilum color, in which case, no time need elapse.
[44] May include not more than 0.04 percent purple or white seeds.
[45] Standards apply equally to seed parents and pollen parents which may include up to 1:1,000 plants each of wild-type branching, purple or white-seeded plants.
[46] A new plant bed must be used each year unless the bed is properly treated with a soil sterilant prior to seeding.
[47] This distance is applied between varieties of the same type and may be waived if four border rows of each variety are allowed to bloom and set seed between the two varieties but are not harvested for seed. Isolation between varieties of different types shall be 1,320 feet except if protected by bagging or by topping all plants in the contaminating source before bloom.
[48] When male sterile and male fertile plants of the same type are planted adjacent in a field, this requirement may be waived; provided, four border rows of male sterile plants are allowed to bloom and set seeds. The seed from these border rows shall not be harvested as part of the certified lot of seed produced by the male sterile plants. When plants are of different types, the distance shall be 1,320 feet except if protected by bagging or by topping all plants in the contaminating source before bloom.
[49] Not used.
[40] Isolation between varieties shall be 100 feet.
[41] Isolation between millets of different genera shall be 6 feet.

ADDITIONAL REQUIREMENTS FOR THE CERTIFICATION OF PLANT MATERIALS OF CERTAIN CROPS

§ 201.77 Length of stand requirements.

(a) *Alfalfa.* Limitations on the age of stand and certified seed classes through which a given variety may be multiplied both inside and outside its region of adaptation shall be specified by the originator or his designee. Certified seed production outside the region of adaptation shall not exceed 6 years if not otherwise specified by the originator, or his designee.

(b) *Red clover.* Only two seed crops are permitted of all certified seed classes.

(c) *White and alsike clover.* Only two successive seed crops are permitted following the year of establishment for Foundation and Registered classes, but 2 additional years are permitted if the field is reclassified to the next lower class. Four successive seed crops following seeding are permitted if the first and succeeding crops are of the Certified class, provided the stand of perennial plants is maintained.

(d) *Sainfoin.* All certified seed classes are eligible to produce five successive seed crops following seeding.

§ 201.78 Pollen control for hybrids.

(a) *Wheat and barley.* Shedders in the seed parent, at any one inspection, are limited to 1:200 heads for Foundation A Line and 1:100 heads for Registered A Line, except that when the A Line is increased outside the area of the anticipated A x R production in order to utilize self-fertility produced by environmental effects, only isolation and genetic purity standards will be in effect. (An A Line is a cytoplasmic male sterile female line used to produce hybrid seed. An R Line is a pollinator line used to pollinate an A Line and to restore fertility in the resulting hybrid seed.)

(b) *Corn.* When 5 percent or more of the seed parent plants have receptive silks, shedding tassels in the seed parent plants shall be limited to 1 percent at any one inspection, or a total of 2 percent at any three inspections on different dates. Shedding tassels are those which have 2 inches or more of the central stem or branches, or any combination thereof, shedding pollen.

(c) *Sorghum.* Shedders in the seed parent, at any one inspection, are limited to 1:3,000 plants for Foundation class and 1:1,500 plants for Certified class.

(d) *Sunflowers.* Seed parents flowering and shedding pollen before the male parents are shedding pollen must be removed. At least 50 percent of the male plants must be producing pollen when the seed parent is in full bloom.

Effective date.—These amendments shall become effective November 1, 1973.

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

JOHN C. BLUM,
Deputy Administrator,
Regulatory Programs.

[FR Doc.73-19355 Filed 9-13-73;8:45 am]

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

PART 301—DOMESTIC QUARANTINE NOTICES

Subpart—Cereal Leaf Beetle

TERMINATION OF QUARANTINE AND REGULATIONS

On July 2, 1973, a notice of public hearing and proposed rulemaking to determine whether to terminate the Cereal Leaf Beetle Quarantine and regulations (7 CFR 301.84, 301.84–1 et seq.) was published in the FEDERAL REGISTER (38 FR 17501) under the administrative procedure provisions of 5 U.S.C. 553, and sections 8 and 9 of the Plant Quarantine Act of 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee). After public hearing and due consideration of all relevant matter presented, it has been determined in the best interest of the public to terminate the Cereal Leaf Beetle Quarantine and regulations thereunder.

Therefore, the Cereal Leaf Beetle Quarantine and regulations, 7 CFR 301.84, 301.84–1 through 301.84–10, are hereby terminated effective October 1, 1973. However, such provisions shall be deemed to continue in full force and effect for the purpose of sustaining any action or other proceeding with respect to any right that accrued, liability that was incurred, or violation that occurred prior to said date.

The Cereal Leaf Beetle Quarantine was established to prevent the artificial spread of the beetle to noninfested areas. Therefore, the movement of certain articles which presented a hazard of spread was regulated. The beetle has now reached the Mississippi River, and eventual natural spread to the major grain-growing areas of the Midwest seems inevitable. The extensive natural rate of spread has to a great degree negated the effectiveness of the Quarantine in preventing the artificial spread of the cereal leaf beetle. Also, it has now been determined that there is minimal threat of long-distance spread through movement of the regulated articles since the general trend of marketing practices is movement of these articles to the east and south. There is limited movement of the regulated articles to the grain-growing areas of the Midwest.

The lessening of the quarantine effort is not meant to imply that this is not an

important insect capable of causing serious damage to small grains. Therefore, the Department of Agriculture will continue to cooperate with the States and farmers in a pest management program including control measures such as the use of insecticides by individual farmers, the use of parasites, development of resistant varieties of small grains, and development of certain cultural practices to reduce overwinter survival of adult beetles.

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

(Secs. 8 and 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33 (7 U.S.C. 161, 162, 150ee), 37 FR 28464, 28477.)

Effective date.—The termination of the Cereal Leaf Beetle Quarantine and regulations thereunder shall become effective October 1, 1973.

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

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

[FR Doc.73-19496 Filed 9-13-73;8:45 am]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER C—SPECIAL PROGRAMS

[Amdt. 2]

PART 777—PROCESSOR WHEAT MARKETING CERTIFICATE REGULATIONS

Termination of the Program; Correction

FR Doc. 73-17968, published at page 22766 in the issued dated Friday, August 24, 1973, is corrected by changing the reference (b)(2) to read (b)(1)(ii) where it appears in paragraphs (c)(1) and (c)(2) of § 777.21 and in Appendix III(5).

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

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

[FR Doc.73-19558 Filed 9-13-73;8:45 am]

[Orange Reg. 72; Grapefruit Reg. 74; Tangerine Reg. 45; Tangelo Reg. 45; Export Reg. 23]

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

Grade and Size Regulations

These regulations specify minimum grade and size requirements for the period September 17, 1973, through October 14, 1973, applicable to the handling of oranges, grapefruit, tangerines, and tangelos grown in the production area in Florida. These regulatory requirements are designed to promote orderly marketing and provide consumers with an ample supply of acceptable quality fruit.

Findings.—(1) Pursuant to the marketing agreement, as amended, and Order No. 905, as amended (7 CFR, Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, including Navel, Temple, and Murcott Honey oranges, grapefruit, tangerines, and tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The minimum grade and size requirements specified herein reflect the Department's appraisal of the need for regulation of shipments of the specified varieties of oranges, grapefruit, tangerines, and tangelos during the period September 17, through October 14, 1973, based on the available supply and current and prospective market demand conditions. Available data indicate that during the 1973-74 season fresh market outlets will take about 19,500 carlots of round oranges, 4,250 carlots of Temple oranges, 3,000 carlots of tangelos, 4,200 carlots of tangerines, 1,250 carlots of murcotts, 150 carlots of seeded grapefruit, and 32,500 carlots of seedless grapefruit. The minimum grade and size requirements specified for Early and Midseason type oranges are prescribed during the present stage of maturity and development of such oranges to guard against the shipment of lower quality and smaller size fruit which tends to demoralize the market for later shipments of such fruit. The U.S. No. 1 Golden grade requirement specified herein for Navel oranges is consistent with the fact that when the Navel orange attains maturity the fruit often does not possess the color required for the U.S. No. 1 grade.

The specified grade and size limitations for shipments of seeded and seedless grapefruit are necessary to provide consumers with grapefruit of desirable grades and sizes consistent with the overall quality and size composition of the crops.

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

The specified grade and size requirements for export shipments of the named varieties of oranges, grapefruit, tangerines, and tangelos are necessary to assure the exportation of good quality fruit and thereby aid the expansion of export markets.

These regulations are therefore designed to permit shipment of ample supplies of fruit of the more desirable grades and sizes in the interest of consumers and producers, guard against the shipment of undersiable grades and sizes of such fruit, and provide orderly marketing conditions, consistent with objectives of the act.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of these regulations until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which these regulations are based became available and the time when these regulations must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, grapefruit, tangerines, and tangelos, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after an open meeting of the Growers Administrative Committee on September 6, 1973, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of these regulations, including the effective time hereof, are identical with the aforesaid recommendations of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such fruits; it is necessary to make these regulations effective on September 17, 1973, to preclude the shipment of lower quality oranges, grapefruit, tangerines, and tangelos, as hereinafter set forth, and to otherwise effectuate the declared policy of the act; and compliance with these regulations will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

§ 905.550 Orange Regulation 72.

Order.—(a) Orange Regulation 71 (37 FR 21799, 24432, 25036, 27619, 28606; 38 FR 3396, 4569, 7565, 8169, 9075, 10151, 18360) is hereby terminated on September 17, 1973.

(b) During the period September 17, 1973, through October 14, 1973, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(1) Any oranges, except Navel oranges, Temple oranges, Murcott Honey oranges and Valencia, Lue Gim Cong, and similar late maturing oranges of the Valencia type, grown in the production

area, which do not grade at least U.S. No. 1;

(2) Any oranges, except Navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong and similar late maturing oranges of the Valencia type, grown in the production area, which are of a size smaller than 2⅝ inches in diameter, except that a tolerance for undersize oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos: *Provided*, That in determining the percentage of oranges in any lot which are smaller than 2⅝ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size 2 1/16 inches in diameter or smaller;

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

(4) Any Navel oranges, grown in the production area, which are of a size smaller than 2⅝ inches in diameter, except that a tolerance for undersize Navel oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos;

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

(6) Any Temple oranges, grown in the production area, which are of a size smaller than 2⅝ inches in diameter, except that a tolerance for undersize Temple oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos;

(7) Any Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 1 grade for murcotts;

(8) Any Murcott Honey oranges, grown in the production area, which are of a size smaller than 2 11/16 inches in diameter, except that a tolerance for undersize Murcott Honey oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos;

(9) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not grade at least U.S. No. 2; and

(10) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which are of a size smaller than 2⅝ inches in diameter, except that a tolerance for undersize oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos: *Provided*, That in determining the percentage of oranges in any lot which are smaller than 2⅝ inches in diameter, such percentage shall be based only on those oranges in such lot which are 2 1/16 inches in diameter or smaller.

(c) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; Florida No. 1 grade for murcotts shall have the same meaning as provided in sec. (1)(b) of Regulation 105–1.02, as amended, effective January 19, 1972, of the Regulations of the Florida Citrus Commission, and all other terms relating to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the revised United States Standards for Florida Oranges and Tangelos (7 CFR 51.1140–51.1180).

§ 905.551 Grapefruit Regulation 74.

Order.—(a) Grapefruit Regulation 73 (37 FR 21799, 24432, 27619; 38 FR 10151, 12201, 13547, 18026) is hereby terminated on September 17, 1973.

(b) During the period September 17, 1973, through October 14, 1973, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

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

(2) Any seeded grapefruit, grown in the production area, which are of a size smaller than 3 1/16 inches in diameter, except that a tolerance for undersize grapefruit shall be permitted as specified in § 51.761 of the United States Standards for Florida Grapefruit;

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

(4) Any seedless grapefruit, grown in the production area, which are of a size smaller than 3⅜ inches in diameter, except that a tolerance for undersize grapefruit shall be permitted as specified in § 51.761 of the United States Standards for Florida Grapefruit.

(c) Terms used in the amended marketing agreement and order, including Improved No. 2 grade, shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, except Improved No. 2 grade, and diameter, as used herein, shall have the same meaning as is given to the respective term in the revised United States Standards for Florida Grapefruit (7 CFR 51.750–51.784), except that the minimum diameter requirement specified in paragraph (b)(2) of this regulation shall correspond to size standards provided in sec. (1)(b)(3) of Regulation 105–1.03, as amended, effective September 1, 1973, of the Regulations of the Florida Citrus Commission.

§ 905.552 Tangerine Regulation 45.

Order.—(a) Tangerine Regulation 44 (37 FR 21799, 24432, 24189, 25914, 27619; 38 FR 8170) is hereby terminated on September 17, 1973.

(b) During the period September 17, 1973, through October 14, 1973, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

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

(2) Any tangerines, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance for undersize tangerines shall be permitted as specified in § 51.1818 of the United States Standards for Florida Tangerines.

(c) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended markting agreement and order; and terms relating to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (7 CFR 51.1810–51.1835).

§ 905.553 Tangelo Regulation 45.

Order.—(a) Tangelo Regulation 44 (37 FR 21799, 24432, 27619; 38 FR 10152) is hereby terminated on September 17, 1973.

(b) During the period September 17, 1973, through October 14, 1973, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

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

(2) Any tangelos, grown in the production area, which are of a size smaller than 2⅝ inches in diameter, except that a tolerance for undersize tangelos shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos.

(c) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade and diameter, as used herein, shall have the same meaning as is given to the respective term in the revised United States Standards for Florida Oranges and Tangelos (7 CFR 51.1140–51.1180).

§ 905.554 Export Regulation 23.

Order.—(a) Export Regulation 22 (37 FR 20036; 38 FR 1354, 18360) is hereby terminated on September 17, 1973.

(b) During the period September 17, 1973, through October 14, 1973, no handler shall ship to any destination outside the continental United States other than to Canada or Mexico:

(1) Any oranges, except Navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong and similar late maturing oranges of the Valencia type, grown in the production area, which do not grade at least U.S. No. 1;

(2) Any oranges, except Navel oranges, Temple oranges, Murcott Honey oranges, and Valencia, Lue Gim Gong and similar late maturing oranges of the Valencia type, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance for

undersize oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos;

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

(4) Any Navel oranges, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance for undersize Navel oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos;

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

(6) Any Temple oranges, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance for undersize Temple oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos;

(7) Any Murcott Honey oranges, grown in the production area, which do not grade at least Florida No. 1 grade for murcotts;

(8) Any Murcott Honey oranges, grown in the production area, which are of a size smaller than 2 5/16 inches in diameter, except that a tolerance for undersize Murcott Honey oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos;

(9) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which do not grade at least U.S. No. 2;

(10) Any Valencia, Lue Gim Gong, and similar late maturing oranges of the Valencia type, grown in the production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance for undersize oranges shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos;

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

(12) Any seeded grapefruit, grown in the production area, which are of a size smaller than 3 1/16 inches in diameter, except that a tolerance for undersize grapefruit shall be permitted as specified in § 51.761 of the United States Standards for Florida Grapefruit;

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

(14) Any seedless grapefruit, grown in the production area, which are smaller than 3 1/16 inches in diameter, except that a tolerance for undersize grapefruit shall be permitted as specified in § 51.761 of the United States Standards for Florida Grapefruit;

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

(16) Any tangerines, grown in the production area, which are of a size smaller than 2 7/16 inches in diameter, except that a tolerance for undersize tangerines shall be permitted as specified in § 51.1818 of the United States Standards for Florida Tangerines;

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

(18) Any tangelos, grown in production area, which are of a size smaller than 2 1/16 inches in diameter, except that a tolerance for undersize tangelos shall be permitted as specified in § 51.1152 of the United States Standards for Florida Oranges and Tangelos.

(c) Terms used in the amended marketing agreement and order, including Improved No. 2 grade, shall, when used herein, have the same meanings as are given to the respective terms in said amended marketing agreement and order; Florida No. 1 grade for murcotts shall have the same meaning as provided in sec. (1)(b) of Regulation 105–1.02, as amended, effective January 19, 1972, of the Regulations of the Florida Citrus Commission, and all other terms relating to grade, except Improved No. 2 grade, and diameter, as used herein shall have the same meanings as are given to the respective terms in the following United States Standards, as applicable: United States Standards for Florida Oranges and Tangelos (7 CFR 51.1140–51.1180), United States Standards for Florida Grapefruit (7 CFR 51.750–51.784), or the United States Standards for Florida Tangerines (7 CFR 51.1810–51.1835).

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

Dated September 12, 1973.

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

[FR Doc.73-19716 Filed 9-13-73;8:45 am]

PART 948—IRISH POTATOES GROWN IN COLORADO

Handling Regulation—Area No. 2

This regulation, designed to promote orderly marketing of Colorado Area No. 2 potatoes, imposes minimum quality standards and requires inspection of fresh shipments to keep undesirable low quality potatoes from being shipped to consumers.

Notice of rule making with respect to a proposed handling regulation to be made effective under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR, Part 948), regulating the handling of Irish potatoes grown in Colorado, Area No. 2, was published in the FEDERAL REGISTER August 28, 1973 (38 FR 22964). This program is issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et. seq.). Interested persons were afforded an opportunity to file written data, views, or arguments through September 4, 1973. None was filed. However, as a result of an early freeze the Colorado Area No. 2 Committee held a second public meeting September 6 and recommended that the size requirement for long varieties be relaxed to 1⅞ inches minimum diameter.

After consideration of all relevant matters presented, and other available information, it is hereby found that the following handling regulation will tend to effectuate the declared policy of the act.

The recommendations of the committee reflect its appraisal of the composition of the 1973 crop of Colorado potatoes and of the marketing prospects for this season. These grade, size, and maturity requirements are necessary to prevent potatoes of lesser maturities, low quality, or undesirable sizes from being distributed in fresh market channels. They will also provide consumers with good quality potatoes consistent with the overall quality of the crop.

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

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

It is hereby further found that good cause exists for not postponing the effective date of this regulation until 30 days after its publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of potatoes grown in the production area will begin on or about the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, (3) information regarding the provisions of this regulation, which are similar to those which were in effect during the previous marketing season, has been made available to producers and handlers in the production area, and (4) compliance with this regulation will not require any special preparation on the part of persons subject thereto which cannot be completed by such effective date.

§ 948.370 Handling regulation.

During the period September 17, 1973, through June 30, 1974, no person shall handle any lot of potatoes grown in Area No. 2 unless such potatoes meet the requirements of paragraphs (a), (b), and (c) of this section, or unless such potatoes are handled in a accordance with paragraphs (d), (e), or (f) of this

section. The maturity requirements specfiied in paragraph (b) shall terminate October 31, 1973, at 11:59 p.m. m.s.t.

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

(2) *Long varieties.*—U.S. No. 2, or better grade, 1⅞ inches minimum diameter.

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

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

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

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

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

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

(i) Livestock feed;

(ii) Relief or charity; or

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

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

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

(1) Prior to handling, apply for and obtain a Certificate of Privilege from the committee.

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

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

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

(g) *Definitions.*—The terms "U.S. No. 1," "U.S. No. 2," "slightly skinned," and "moderately skinned" shall have the same meaning as when used in the U.S. Standards for Potatoes (§§ 51.1540–1566 of this title, effective September 1, 1971, as amended), including the tolerances set forth therein. The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, or dicing, or the application of material to prevent oxidation does not constitute "other processing." Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 97, as amended, and this part.

(h) *Applicability to imports.*—Pursuant to section 8e of the act and § 980.1, *Import regulations* (7 CFR 980.1), Irish potatoes of the red skinned round type, except certified seed potatoes, imported into the United States during the period September 17, 1973, through June 30, 1974, shall meet the grade, size, and quality requirements specified in paragraph (a) of this section, and during the period September 17, 1973, through October 31, 1973, shall be not more than "moderately skinned."

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

Dated September 12, 1973, to become effective September 17, 1973.

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

[FR Doc.73–19715 Filed 9–13–73;8:45 am]

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

PART 981—ALMONDS GROWN IN CALIFORNIA

Expenses of Almond Control Board and Rate of Assessment for 1973–74 Crop Year

Notice of proposed expenses of the Almond Control Board, and rate of assessment, for the 1973–74 crop year was published in the August 28, 1973, issue of the FEDERAL REGISTER (38 FR 22965). This action is pursuant to §§ 981.80 and 981.81 of the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The amended marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal. None were received.

The proposal was based on a unanimous recommendation of the Almond Control Board. Expenses of the Board for the 1973–74 crop year were proposed at $1,945,481. The assessment rate was proposed at 1.250 cent per pound of almonds (kernel weight basis).

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Control Board, and other available information, it is found that the expenses of the Control Board and rate of assessment for the crop year beginning July 1, 1973, shall be as follows:

§ 981.323 Expenses of the Control Board and rate of assessment for the 1973–74 crop year.

(a) *Expenses.*—Expenses in the amount of $1,945,481 are reasonable and likely to be incurred by the Control Board during the crop year beginning July 1, 1973, for its maintenance and functioning and for such purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate.

(b) *Rate of assessment.*—The rate of assessment for said crop year, payable by each handler in accordance with § 981.81, less any amount credited pursuant to § 981.41 but not to exceed 1 cent per pound of almonds (kernel weight basis), is fixed at 1.250 cent per pound of almonds (kernel weight basis).

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) The relevant provisions of said marketing agreement and this part require that the rate of assessment fixed for a particular crop year shall be applicable to all almonds received by handlers for their own accounts during such crop year; and (2) the current crop year began July 1, 1973, and the rate of assessment herein fixed will automatically apply to all such almonds beginning with that date.

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

Dated September 10, 1973.

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

[FR Doc.73–19610 Filed 9–13–73;8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regs., 1973 Crop Rye Supplement, Amdt. 1]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

1973 Crop Rye Loan and Purchase Program

The regulations issued by Commodity Credit Corporation published in the FEDERAL REGISTER at 38 FR 19669 containing provisions for loans and purchases applicable to the 1973 crop of rye are amended as follows.

In § 1421.354 which relates to county loan and purchase rates for rye the following changes are made: (1) The rate for Polk County, Minnesota, should be 88 cents per bushel instead of 95 cents per bushel; (2) The rates for twenty-five South Dakota counties were incorrectly listed with the North Dakota counties. The corrections should read as follows:

§ 1421.354 Loan and purchase rates.

(a) *Basic loan and purchase rates.*

* * *

MINNESOTA

County	Rate per bushel	County	Rate per bushel
*	*	*	*

NORTH DAKOTA

Adams	0.75	McLean	0.74
Barnes	.84	Mercer	.75
Benson	.77	Morton	.77
Billings	.73	Mountrail	.71
Bottineau	.72	Nelson	.82
Bowman	.74	Oliver	.75
Burke	.71	Pembina	.83
Burleigh	.78	Pierce	.75
Cass	.87	Ramsey	.79
Cavalier	.78	Ransom	.87
Dickey	.85	Renville	.71
Divide	.69	Richland	.90
Dunn	.74	Rolette	.74
Eddy	.80	Sargent	.88
Emmons	.79	Sheridan	.76
Foster	.81	Sioux	.77
Golden Valley	.72	Slope	.75
Grand Forks	.85	Stark	.75
Grant	.76	Steele	.84
Griggs	.83	Stutsman	.82
Hettinger	.75	Towner	.75
Kidder	.79	Traill	.85
La Moure	.84	Walsh	.83
Logan	.81	Ward	.72
McHenry	.74	Wells	.79
McIntosh	.82	Williams	.69
McKenzie	.70		

* * * * *

SOUTH DAKOTA

County	Rate per bushel	County	Rate per bushel
Aurora	0.84	Jackson	0.80
Beadle	.86	Jerauld	.84
Bennett	.80	Jones	.83
Bon Homme	.87	Kingsbury	.88
Brookings	.90	Lake	.87
Brown	.86	Lawrence	.73
Brule	.84	Lincoln	.87
Buffalo	.84	Lyman	.84
Butte	.73	McCook	.85
Campbell	.81	McPherson	.83
Charles Mix	.85	Marshall	.88
Clark	.88	Meade	.74
Clay	.88	Mellette	.83
Codington	.89	Miner	.85
Corson	.77	Minnehaha	.87
Custer	.75	Moody	.89
Davison	.84	Pennington	.76
Day	.88	Perkins	.75
Deuel	.91	Potter	.84
Dewey	.77	Roberts	.90
Douglas	.85	Sanborn	.84
Edmunds	.84	Shannon	.76
Fall River	.75	Spink	.87
Faulk	.85	Stanley	.83
Grant	.91	Sully	.84
Gregory	.85	Todd	.83
Haakon	.80	Tripp	.84
Hamlin	.89	Turner	.86
Hand	.85	Union	.89
Hanson	.84	Walworth	.82
Harding	.73	Washbaugh	.80
Hughes	.84	Yankton	.87
Hutchinson	.86	Ziebach	.76
Hyde	.84		

* * * * *

Because these changes are merely corrections of previously approved loan rates, it is determined that compliance with the notice of proposed rulemaking procedure at this time is not necessary. Therefore, this amendment is being issued without following such proposed rulemaking procedure and shall be effective on September 14, 1973.

(Sec. 4, 62 Stat. 1070, as amended; (15 U.S.C. 714b). Interpret or apply sec. 5, 62 Stat. 1072, secs. 105, 401, 63 Stat. 1051, as amended; (15 U.S.C. 714c, 7 U.S.C. 1421, 1444l))

Effective date: September 14, 1973.

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

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

[FR Doc.73-19559 Filed 9-13-73;8:45 am]

Title 9—Animals and Animal Products

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

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

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

Prohibitions and Restrictions on Importation of Swine, Pork and Pork Products

Statement of consideration.—There was published in the FEDERAL REGISTER August 2, 1973 (38 FR 20610-20611) an amendment to the regulations in 9 CFR Part 94 which: (1) Designates countries of the world which are considered not to be infected with swine vesicular disease; (2) designates certain countries which are considered not to be infected with swine vesicular disease but which have a common land border with swine vesicular disease infected countries, or which carry out trade prices with swine vesicular disease infected countries which are less restrictive than are acceptable to the United States; (3) requires certification by officials of the country of origin of domestic swine that such country is free of swine vesicular disease, hog cholera and African swine fever; and (4) prohibits the importation of live domestic swine, and restricts the importation of fresh, chilled, frozen or processed pork and pork products and wild swine from countries not considered to be free of swine vesicular disease.

Among restrictions imposed on importation of pork or pork products from countries declared free of swine vesicular disease and specified in § 94.13 was an additional certificate relating to the origin, processing and handling of such products offered for importation into the United States from such countries.

Additional certifications required in § 94.13(b) should not be applicable to commercially canned sterile pork products or commercially canned perishable and cured and dried pork and pork products since the commercial processing of these types of products is adequate to prevent the introduction of animal diseases into the United States.

The additional certification required in § 94.13(b) for all pork and pork products is more restrictive than necessary for commercially canned sterile or commercially canned perishable and cured and dried pork and pork products when these products are in compliance with the provisions of § 94.12 of this part. Therefore, the regulation is hereby amended to delete the additional certification when these products are in compliance with the provisions of § 94.12 of this part.

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

In § 94.13(b), the first sentence is amended by adding the phrase ", unless they are in compliance with applicable provisions of § 94.12(b)," after the term "United States."

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

Effective date.—The foregoing amendment shall become effective September 14, 1973.

The amendment relieves certain restrictions presently imposed but no longer deemed necessary to prevent the introduction of disease, and must be made effective immediately to be of benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

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

Done at Washington, D.C., this 11th day of September 1973.

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

[FR Doc.73-19561 Filed 9-13-73;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 73-SW-60; Amdt. 39-1717]

PART 39—AIRWORTHINESS DIRECTIVES

Bell Model 47B, 47B-3, 47D, 47D-1, 47E, 47G, 47G-2 and 47H-1 Helicopters

There have been two reports of accidents in which fatigue failure of the Model 47G-2 tail rotor hub yoke, P/N 47-641-057-9, was noted. An inflight

failure of this yoke will result in loss of a tail rotor blade and could result in loss of directional control. This yoke is also eligible for installation on the Bell Models 47B, 47B-3, 47D, 47D-1, 47E, 47G and 47H-1 helicopters.

Since this condition is likely to occur on other helicopters of the Model 47 series type design equipped with certain serial numbered tail rotor hub yokes, an airworthiness directive is being issued to reduce the service life of certain serial numbered tail rotor yokes, P/N 47-641-057-9, from 2500 to 400 hours.

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 Models 47B, 47B-3, 47D, 47D-1, 47E, 47G, 47G-2 and 47H-1 helicopters certificated in all categories.

Compliance required as indicated.

To prevent possible fatigue failure of the tail rotor yoke, P/N 47-641-057-9, remove and replace tail rotor yokes having S/N N29-1246 through N29-1266, N29-1298 through N29-1452, N29-10453 through N29-10488, and N29-10501 through N29-10525, as specified below.

(a) Replace those yokes with 390 or more hours total time in service on the effective date of this AD, within 10 hours time in service.

(b) Replace those yokes with less than 390 hours total time in service on the effective date of this AD, prior to accumulating 400 hours total time in service.

The requirements of this AD do not affect other Model 47 series helicopter tail rotor yokes.

(Bell Helicopter Co. Service Bulletin No. 47-05-73-1 dated August 22, 1973 pertains to this subject.)

This amendment becomes effective to owners and operators on receipt of the mailed amendment and becomes effective to all other persons on September 14, 1973.

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

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

HENRY L. NEWMAN,
Director,
Southwest Region.

[FR Doc.73-19578 Filed 9-13-73;8:45 am]

[Airworthiness Docket No. 73-SW-61; Amdt. 39-1718]

PART 39—AIRWORTHINESS DIRECTIVES

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

There have been several cases of corrosion or cracks occurring in the upper and lower ends of the main rotor pitch link tubes, P/N 206-010-330, adjacent to the locks or nut of the pitch link assembly that could result in possible failure of the tube and loss of control of one main rotor blade on the Bell Model 206A and 206B helicopters. Since this condition is likely to exist or develop in other helicopters of the same type design and in other Model 206A-1 and 206B-1 helicopters an airworthiness directive is being issued to require a repetitive inspection for corrosion and cracks in the main roto blade pitch link tube ends and application of corrosion preventative compound, as necessary, to the top surface of the nuts and exposed clevis threads on Bell Model 206A, 206B, 206A-1, and 206B-1 helicopters. Since a situation exists that requires an immediate adoption of this regulation, it is found that 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 Model 206A, 206B, 206A-1 and 206B-1 helicopters equipped with main rotor blade pitch link assemblies, P/N 206-010-330 and 206-010-342, as applicable, certificated in all categories.

Compliance required within 25 hours time in service after the effective date of this A.D., unless previously accomplished and thereafter at intervals not to exceed 50 hours time in service from the last inspection.

To detect and prevent possible corrosion and cracks in the main rotor blade pitch link tubes, P/N 206-010-330, all dash numbers, accomplish the following:

(a) Inspect the ends and outside diameter surface of each tube for corrosion and cracking, using a 3 power or higher magnifying glass.

(b) Replace corroded or cracked tubes prior to next flight except a helicopter with corroded tubes may be flown in accordance with FAR 21.197 to a base where replacement may be accomplished.

(c) If tubes are replaced or adjusted, track the main rotor blades in accordance with the appropriate model maintenance and overhaul information manual.

(d) Apply corrosion preventive compound, MIL-C-16173, Grade 2, or equivalent, to the exposed threads of the upper and lower clevises, the ends of each tube, the mating faces of the locks and nuts and the top surfaces of the nuts after the nuts are properly torqued on each pitch link assembly.

(e) Upon request of the operator, an FAA maintenance inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA, Southwest Region, may adjust the repetitive inspection interval specified in this A.D. to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

(Bell Helicopter Company Service Bulletin No. 206-04-2-73-1 dated May 7, 1973 pertains to this subject.)

This amendment becomes effective September 17, 1973.

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

Issued in Fort Worth, Texas, on September 4, 1973.

HENRY L. NEWMAN,
Director,
Southwest Region.

[FR Doc.73-19579 Filed 9-13-73;8:45 am]

[Docket No. 73-EA-74; Amdt. 39-1719]

PART 39—AIRWORTHINESS DIRECTIVE

Grumman Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Grumman G-164 type airplanes.

There have been reports of corroded and loose bolts which attach the elevator control horn to the elevators. This condition, if permitted to continue, could result in failure of the control system. Since this deficiency can exist or develop in other aircraft of similar type design, an airworthiness directive is being issued which will require a periodic inspection and replacement, where necessary, of the subject bolts.

As the foregoing deficiency affects air safety, expeditious adoption of this amendment is required. Thus, notice and public procedure hereon are impractical, and good cause exists for making the amendment effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 [31 FR 13697] § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new Airworthiness Directive:

GRUMMAN AIRCRAFT: Applies to all G-164 type aircraft in all certificated categories.

Compliance required as indicated.

1. Within the next 25 hours in service or two weeks, whichever occurs first, inspect the AN4-12A bolts attaching the Elevator Control Horn, P/N A1841-3, to the left and right side elevator, P/N A1201-5A and A1201-4A respectively, for a standard torque rating of 50-70 in.-lb. and for corrosion and thereafter at intervals not to exceed 100 hours in service or 60 days, whichever occurs first.

2. If any looseness is detected, the bolts must be removed and inspected for wear.

3. Replace any worn or corroded bolts with bolts of the same part number or an equivalent as approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, except that the aircraft may be flown in accordance with FAR 21.197.

4. The subject bolts AN4-12A (2), must be replaced at intervals not exceeding 1000 hours in service or one year, whichever ocurs first.

5. Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, may adjust the inspection intervals specified in this AD. (Grumman American Aviation Corporation AgCat Service Bulletin No. 51 pertains to this subject.)

This amendment is effective September 21, 1973.

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

Issued in Jamaica, N.Y., on September 7, 1973.

ROBERT H. STANTON,
Director,
Eastern Region.

[FR Doc.73-19580 Filed 9-13-73;8:45 am]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 45—MARGARINE, OLEOMARGARINE

Order Amending Margarine Standard and Revoking Standard for Liquid Margarine

In the FEDERAL REGISTER of May 3, 1973 (38 FR 10952) the Commissioner of Food and Drugs, in accordance with the procedure established in § 10.8 (FEDERAL REGISTER, May 11, 1973, 38 FR 12396), published a proposed revision of the margarine standard, taking into consideration the recommended international standard for margarine prepared by the Codex Alimentarius Commission. The proposed revision of the margarine standard included a proposal to revoke the existing standard for the liquid form of margarine § 45.2 (21 CFR 45.2), and to incorporate that portion of the standard into a broader definition and standard covering all margarine.

Eleven comments were received from trade associations, industry representatives, a consumer group, a Federal agency, and a State regulatory agency. Each of the suggested modifications and requests for clarification has been reviewed, and the Commissioner's conclusions concerning the proposal are as follows:

1. Two comments objected to the Commissioner's proposed exclusion of fats and oils of marine origin from margarine. However, no additional toxicological data have been submitted in support of the use of marine oils in the concentrated amounts which would be added to make margarine. Consequently, the Commissioner has determined that at this time the provisions for the optional fat ingredients in § 45.1(a)(1) (21 CFR 45.1) will remain as proposed, and, thus, marine oils will not be permitted. This determination will not prejudice the evaluation of subsequent data which may be submitted, as facts are compiled concerning the safety of marine oils. If at a later date, sufficient data are submitted, the Commissioner will reconsider this issue.

2. One comment thought the animal fats and oils permitted in § 45.1(a)(1) should be subject to appropriate tests for sanitation and safety before being allowed in margarine. The comment added that esters which could be used in the interesterification of the fat and oil ingredients should either be specified or be subject to toxicological evaluation. Because sections 402 and 409 of the Federal Food, Drug, and Cosmetic Act regulate the safety of ingredients used in standardized foods, no change is warranted.

3. One comment asked if the term "milk products" in § 45.1(a)(2)(i) included butter in unlimited amounts, as long as the 80 percent fat content minimum was observed. The Commissioner agrees that butter may be added without limit as a milk and/or milk product ingredient, providing that some other fat or oil ingredient under § 45.1(a)(1) is also used as part of the 80 percent fat minimum.

4. One comment requested clarification of the form of whey and whey-modified products permitted as optional aqueous phase ingredients. The Commissioner intended to provide for all forms of whey and/or whey-modified products in margarine and § 45.1(a)(2)(ii) has been revised to reflect this clarification.

5. One comment disagreed with the requirement in § 45.1(a)(2)(iv) for the mandatory pasteurization of the milk ingredients permitted. The respondent stated that unpasteurized ingredients should be permissible, providing they are of satisfactory bacteriological quality. The Commissioner is of the opinion that the pasteurization of milk ingredients is necessary as a public health measure and to insure bacteriological quality. These ingredients do not receive a heat treatment in the processing of margarine which is comparable to pasteurization times and temperatures. Therefore, no change is justified in this requirement.

6. One comment objected to the mandatory addition of vitamin A to margarine and suggested instead that it be provided as an optional ingredient. The comment stated that for years the industry has volunteered to add vitamin A to margarine, making the proposed mandatory use unnecessary. The comment further stated that in commercial use, the amount of margarine added to food products is not of sufficient significance to require mandatory vitamin A fortification. The Commissioner has concluded that since margarine is used as a substitute for butter in the home for table spread, cooking, and baking, and in commercial usage as a sauce and seasoning ingredient for processed foods, it should be substantially equivalent to butter in its nutrient value. The Commissioner therefore is making no change in the requirement for mandatory addition of vitamin A to margarine.

7. Two comments requested the addition of vitamin E as an optional ingredient. One comment urged its optional fortification at a level not to exceed the Recommended Daily Allowance (RDA) per quarter pound for those margarines which are made primarily with polyunsaturated oils. The other comment recommended the addition of 60 international units of the stable acetate form of vitamin E per pound of margarine. The Commissioner is of the opinion that the reasons presented in the respondents' requests are insufficient for him to conclude that vitamin E should be permitted as an optional ingredient in the margarine standard. No clear evidence exists that the proposed fortification will be of significant health benefit.

8. One comment bpposed as unnecessary the addition of nutritive sweeteners to margarine. Some countries desire nutritive sweeteners in margarine, particularly where margarine is used as an ingredient in other foods. This fact was recognized in providing for nutritive sweeteners in the proposed Codex standard. In accordance with the desire to accept Codex standards as completely as possible, and in consideration of the requirement that all ingredients in margarine be listed on the label, the Commissioner is making no change.

9. One comment requested that § 45.1(b)(5) refer to BHT and BHA as the common or usual names for the optional antioxidant ingredients, butylated hydroxytoluene and butylated hydroxyanisole, with the chemical names placed in parentheses. The Food and Drug Administration agrees that after a number of years of using the chemical names butylated hydroxytoluene and butylated hydroxyanisole and placing their abbreviated forms in parentheses, the initials BHA and BHT may be considered the common or usual names. A review of the literature and chemical dictionaries indicates that BHA and BHT are now accepted as the common or usual names for these antioxidants. A similar situation exists for calcium disodium EDTA (ethylenediaminetetraacetate). The Commissioner has revised the proposed standard to reflect these changes.

10. One comment requested that the tolerance for the combination of the preservatives benzoic acid or its salts with sorbic acid or its salts be increased to a maximum of 0.2 percent in order to bring the proposed standard into conformity with the provision in the existing regulation. The Commissioner concurs with this request and has revised § 45.1(b)(5) accordingly.

11. One comment requested that the antioxidants permitted be limited to citric acid, that color be limited to beta-carotene, and that flavoring be limited to natural flavors, rather than permitting any such ingredients which are "safe and suitable" as was proposed.

In the FEDERAL REGISTER of April 26, 1973 (38 FR 10274), the Commissioner proposed to amend § 10.1 (21 CFR 10.1) to define "safe and suitable" as that phrase applies to ingredients of all standardized foods. The Commissioner concludes that there is no valid reason for not permitting the use of any preservative, color or flavor which has been shown to be safe and suitable as an ingredient of margarine.

12. One comment requested that the principal display panel of the label include a declaration of the nutritive sweeteners, salt, the percentage of polyunsaturated fats, and the milk source for milk other than cow's milk used. The

Commissioner has promulgated regulations for the optional declaration of the fat and cholesterol contents of foods in §§ 1.17 and 1.18 (21 CFR 1.17 and 1.18). Nutritive sweeteners, salt, and milk sources other than cow's milk are to be declared in the ingredient statement. The Commissioner does not believe that the declaration of these ingredients on the principal display panel is necessary, as long as they appear in the ingredient statement as provided in § 1.8d (21 CFR 1.8d).

13. One comment requested that every ingredient used be declared by its specific or common name on the label. The Commissioner is of the opinion that all optional ingredients used, except for spices, flavorings, and colorings, as provided by section 403(g) of the act, are to be declared by tehir specific or common name. Since there are no mandatory ingredients, all ingredients will be labeled.

14. One comment requested that the descriptive term "liquid" be omitted from the food name "liquid margarine" for the fluid form of margarine. The comment, in view of the Commissioner's proposed deletion of § 45.2 for liquid margarine, thought undue attention was given to the fluid form. The comment cited examples of other forms which do not include a descriptive prefix in the food name. The Commissioner is of the opinion that such a request is reasonable, and accordingly, has revised § 45.1(c).

15. Nonfat dry milk and skim milk are presently optional ingredients in the standard of identity and are widely used. The Commissioner has been advised that there is a significant shortage of nonfat dry milk and skim milk at this time and that the shortage and resulting high price have created problems in the domestic margarine industry. The Codex provision for suitable edible protein has been incorporated into the revised U.S. standard. This provision to permit use of additional ingredients similar in function (i.e., body) to nonfat dry milk and skim milk should reduce some of the problems resulting from the shortage. The Commissioner has been advised that the shortage may soon reach critical proportions and that any amendment of the United States food standard to provide for the use of these ingredients should go into effect as soon as practicable.

In consideration of the reports of a shortage and that it is reasonable to eliminate, to the extent practicable, factors that may contribute to inflation, the Commissioner has concluded that compliance with this order may begin on or before October 15, 1973, unless stayed by the filing of a proper objection and that the order will become fully effective regarding all labeling ordered after December 31, 1973 and all labeling used for products shipped in interstate commerce after December 31, 1974.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 401, 701(e), 52 Stat. 1046, 1055, as amended by 70 Stat. 919 (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 2.120), Part 45 is amended by revising the part heading, by revising § 45.1, and by revoking § 45.2 as follows:

1. The heading of Part 45 is revised to read as set forth above.

2. Section 45.1 is revised to read as follows:

§ 45.1 Margarine, oleomargarine; identity; label statement of optional ingredients.

(a) Margarine (or oleomargarine) is the food in plastic form or liquid emulsion, containing not less than 80 percent fat determined by the method prescribed under section 16.163 of the "Indirect Method," in "Official Methods of Analysis of the Association of Official Analytical Chemists," 11th edition 1970.[1] Margarine contains only safe and suitable ingredients. It is produced from one or more of the optional ingredients in subpargraph (1) of this paragraph, and one or more of the optional ingredients in subparagraph (2) of this paragraph, to which may be added one or more of the optional ingredients in paragraph (b) of this section. Margarine contains vitamin A as provided for in subparagraph (3) of this paragraph.

(1) Edible fats and/or oils, or mixtures of these, whose origin is vegetable or rendered animal carcass fats, any or all of which may have been subjected to an accepted process of physico-chemical modification. They may contain small amounts of other lipids such as phosphatides, or unsaponifiable constituents and of free fatty acids naturally present in the fat or oil.

(2) One or more of the following aqueous phase ingredients:

(i) Water and/or milk and/or milk products.

(ii) Suitable edible protein including, but not limited to the liquid, condensed, or dry form of whey, whey modified by the reduction of lactose and/or minerals, nonlactose containing whey components, albumin, casein, caseinate, vegtable proteins, or soy protein isolate, in amounts not greater than reasonably required to accomplish the desired effect.

(iii) Any mixture of two or more of the articles named under subdivisions (i) and (ii) of this subparagraph.

(iv) The ingredients in subdivisions (i), (ii), (iii) of this subparagraph shall be pasteurized and then may be subjected to the action of harmless bacterial starters. One or more of the articles designated in subdivisions (i), (ii), (iii) of this subparagraph is intimately mixed with the edible fat and/or oil ingredients to form a solidified or liquid emulsion.

(3) Vitamin A in such quantity that the finished margarine contains not less than 15,000 international units per pound.

(b) Optional ingredients: (1) Vitamin D in such quantity that the finished oleomargarine contains not less than 1,500 international units of vitamin D per pound.

(2) Salt (sodium chloride); potassium chloride for dietary margarine or oleomargarine.

(3) Nutritive sweeteners.

(4) Any safe and suitable emulsifiers including but not limited to the following

(b) Optional ingredients: (1) Vitamin D in such quantity that the finished oleomargarine contains not less than 1,500 international units of vitamin D per pound.

(2) Salt (sodium chloride); potassium chloride for dietary margarine or oleomargarine.

(3) Nutritive carbohydrate sweeteners.

(4) Emulsifiers including but not limited to the following within these maximum amounts in percent by weight of the finished food: Mono- and diglycerides of fatty acids esterified with the following acids; acetic, acetyltartaric, citric, lactic, tartaric, and their sodium and calcium salts, 0.5 percent; such mono- and diglycerides in combination with the sodium sulfo-acetate derivatives thereof, 0.5 percent; polyglycerol esters of fatty acids, 0.5 percent; 1,2-propylene glycol esters of fatty acids; 2 percent: lecithin, 0.5 percent.

(5) Preservatives including, but not limited to the following within these maximum amounts in percent by weight of the finished food: Sorbic acid, benzoic acid and their sodium, potassium, and calcium salts, individually, 0.1 percent, or in combination, 0.2 percent, expressed as the acids; calcium disodium EDTA, 0.0075 percent; propyl, acetyl, and dodecyl gallates, BHT, BHA, ascorbyl palmitate, ascorbyl stearate, all individually or in combination, 0.02 percent: stearyl citrate, 0.15 percent; isopropyl citrate mixture, 0.02 percent.

(6) Color additives. For the purpose of this subparagraph, provitamin A (beta-carotene) shall be deemed to be a color additive.

(7) Flavoring substances. If the flavoring ingredients impart to the food a flavor other than in semblance of butter, the characterizing flavor shall be declared as part of the name of the food in accordance with § 1.12 of this chapter.

(8) Acidulants.

(9) Alkalizers.

(c) The name of the food for which a definition and standard of identity are prescribed in this section is "margarine" or "oleomargarine".

(d) Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 1 of this chapter.

For the purposes of this section the use of the term milk unqualified means milk from cows. If any milk other than cow's milk is used in whole or in part, the animal source shall be identified in conjunction with the word milk in the ingredient statement. Colored margarine shall be subject to the provisions of section 407 of the Federal Food, Drug and Cosmetic Act as amended.

[1] Copies may be obtained from: Association of Official Analytical Chemists, P.O. Box 540, Benajamin Franklin Station, Washington, D.C. 20044.

§ 45.2 [Revoked]

3. In Part 45, existing § 45.2 is hereby revoked.

Any person who will be adversely affected by the foregoing order may at any time on or before October 15, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Objections may be accompanied by a memorandum or brief in support thereof. Six copies of all documents shall be filed. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date.—Unless stayed by the filing of proper objections, compliance with this order, which shall include any labeling changes required, may begin on or before October 15, 1973, and all labeling ordered after December 31, 1973, and all labeling used for products shipped in interstate commerce after December 31, 1974, shall comply with these regulations.

(Secs. 401, 701, 52 Stat. 1046, 1055, as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371).)

Dated September 7, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-19568 Filed 9-13-73;8:45 am]

SUBCHAPTER C—DRUGS

PART 135b—NEW ANIMAL DRUGS FOR IMPLANTATION OR INJECTION

Sulfadimethoxine

The Commissioner of Food and Drugs has evaluated a supplemental new animal drug application (41-245V) filed by Hoffmann-La Roche, Inc., Nutley, NJ 07110, proposing safe and effective use of sulfadimethoxine injection for the treatment of cattle. The supplemental application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 2.120), § 135b.15 is amended by adding new paragraphs (a)(3)(iii) and (d) to read as follows:

§ 135b.15 Sulfadimethoxine injection.

(a) * * *

(3) * * *

(iii) It is used or intended for use in cattle as follows:

(a) For the treatment of shipping fever complex, bacterial pneumonia, calf diphtheria, and foot rot.

(b) It is administered by intravenous injection at an initial dose of 25 milligrams per pound of body weight followed by 12.5 milligrams per pound of body weight every 24 hours until the animal is asymptomatic for 48 hours.

(c) Milk taken from animals during treatment and for 60 hours (5 milkings) after the latest treatment must not be used for food. Do not administer within 5 days of slaughter.

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

* * * * *

(d) *Related tolerances.*—See § 135g.57 of this chapter.

Effective date.—This order shall become effective September 14, 1973.

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

Dated September 7, 1973.

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

[FR Doc.73-19569 Filed 9-13-73;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Pyrantel Tartrate

The Commissioner of Food and Drugs has evaluated a new animal drug application (92-150V) filed by Ralston-Purina Co., Checkerboard Square, St. Louis, MO 63199, proposing the safe and effective use of pyrantel tartrate pellets for oral dosage administration to colts and horses. The application is approved.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 2.120), § 135c.59 is amended by revising the section heading and paragraphs (a) and (b) and adding a new paragraph (d)(3) to read as follows:

§ 135c.59 Pyrantel tartrate powder; pyrantel tartrate pellets.

(a) *Specifications.*—(1) Pyrantel tartrate powder horse wormer contains 11.3 percent and swine wormer 10.6 percent pyrantel tartrate.

(2) Pyrantel tartrate pellets colt and horse wormer contains 1.25 percent pyrantel tartrate.

(b) *Sponsor.*—(1) See code No. 030 in § 135.501(c) of this chapter, for conditions of use provided for in paragraph (d)(1) and (2) of this section.

(2) See code No. 047 in § 135.501(c) of this chapter, for conditions of use provided for in paragraph (d)(3) of this section.

* * * * *

(d) * * *

(3) Horses and colts:

(i) For the removal and control of infections from the following mature parasites: Large strongyles (*Strongylus vulgaris, Strongylus edentatus, Strongylus equinus*), *small strongyles* (*Trichonema spp., Triodontophorus*), pinworms (*Oxyuris*), and large roundworms (*Parascaris*).

(ii) It is administered as a single dose at 12.5 milligrams of pyrantel tartrate per 2.2 pounds of body weight mixed with the usual grain ration.

(iii) It is recommended that severely debilitated animals not be treated with this drug.

(iv) Warning: Do not use in horses or colts intended for food.

Effective date.—This order shall become effective September 14, 1973.

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

Dated September 7, 1973.

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

[FR Doc.73-19570 Filed 9-13-73;8:45 am]

PART 135c—NEW ANIMAL DRUGS IN ORAL DOSAGE FORMS

Diethylcarbamazine Citrate Syrup

A new animal drug regulation (21 CFR 135c.52) providing for use of diethylcarbamazine citrate syrup for treatment of dogs was published in the FEDERAL REGISTER of October 7, 1971 (36 FR 19497). Following publication of this regulation a supplemental new animal drug application (46-147V) was filed by Babineaux Veterinary Products, Inc., and a new animal drug application (91-628V) was filed by American Cyanamid Co. Amendments to the regulation were published in the FEDERAL REGISTER of April 24, 1973 (38 FR 10079), and June 27, 1973 (38 FR 16859). Because these two amendments were published out of sequence, paragraph redesignations and amendments to the original regulation were incorrectly reflected.

Accordingly, to reflect the changes in the original regulation intended by the above-cited amendments, 21 CFR 135c.52 is published in its entirety as set forth below.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 2.120), § 135c.52 is revised to read as follows:

§ 135c.52 Diethylcarbamazine citrate syrup.

(a)(1) *Specifications.*—Each milliliter of syrup contains 60 milligrams of diethylcarbamazine citrate.

(2) *Sponsor.*—See code No. 061 in § 135.501(c) of this chapter.

(3) *Conditions of use.*—(i) The drug is indicated for use in dogs for the prevention of infection with *Dirofilaria immitis* and *T. canis* and *T. leonina*. It is also indicated for treatment of ascarid infections of *T. canis* and *T. leonina* in dogs and *T. cati* in cats.

(ii) For prevention of heartworm and ascarid infections in dogs, the drug may be added to the daily diet at a dosage rate of 3.0 milligrams per pound of body weight per day or given directly by mouth at the same dosage rate. For

treatment of ascarid infections in dogs and cats, the drug is administered at a dosage level of 25 to 50 milligrams per pound of body weight preferably administered immediately after feeding.

(iii) Older dogs should be proven negative for the presence of *Dirofilaria immitis* infection before administration of the drug. Those with proven infection of *Dirofilaria immitis* should be rendered negative using adulticidal and microfilaricidal durgs before administration of this drug.

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

(b) (1) *Specifications.*—Each milliliter of syrup contains 60 milligrams of diethylcarbamazine citrate.

(2) *Sponsor.*—See code No. 004 in § 135.501(c) of this chapter.

(3) *Conditions of use.*—(i) It is used for the prevention of infection with *Dirofilaria immitis* in dogs.

(ii) The drug may be added to the daily ration at a dosage rate of 3.0 milligrams per pound of body weight or given directly by mouth at the same dosage rate.

(iii) Older dogs should be proven negative for the presence of *Dirofilaria immitis* infection before administration of the drug. Those with proven infection of *Dirofilaria immitis* should be rendered negative using adulticidal and microfilaricidal drugs before administering this drug.

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

Effective date.—This order shall be effective September 14, 1973.

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

Dated September 7, 1973.

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

[FR Doc.73-19585 Filed 9-13-73;8:45 am]

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Clopidol and Roxarsone

New animal drug application No. 91-815V filed by Central Soya Co., McMillan Feed Division, Fort Wayne, IN 46805, was approved and, subsequently, an order published in the FEDERAL REGISTER of April 4, 1973 (38 FR 8597), for a premix containing 0.0345 percent clopidol for use in formulating complete feed for chickens. Approval of new animal drug application No. 43-430V filed by Central Soya Co. was given, and an order published in the FEDERAL REGISTER of April 5, 1973 (38 FR 8653), provided for use of a premix containing 0.0345 percent clopidol and 0.0138 percent roxarsone in formulating complete feed for broiler chickens. These orders amending 21 CFR 135e.46 (b) were published out of sequence, and the Commissioner of Food and Drugs has concluded that paragraph (b) should be published in its entirety to reflect the intent of both orders.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner (21 CFR 2.120), § 135e.46(b), is revised to read as follows:

§ 135e.46 Clopidol.

* * * * *

(b) *Approvals.*—(1) Premix level 25 percent granted to firm No. 012 as identified in § 135.501(c) of this chapter.

(2) Premix level 0.0345 percent clopidol with or without 0.0138 percent roxarsone granted to firm No. 006 as identified in § 135.501(c) of this chapter.

* * * * *

Effective date.—This order shall be effective September 14, 1973.

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

Dated September 7, 1973.

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

[FR Doc.73-19586 Filed 9-13-73;8:45 am]

PART 141—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Subpart C—Microbiological Assay Methods

CARBENICILLIN; UPDATING THE TEST ORGANISM USED IN POTENCY ASSAY METHOD

The Commissioner of Food and Drugs concludes that the antibiotic drug regulations (21 CFR Part 141) should be amended as set forth below to update the test organism used in the potency assay of carbenicillin.

The organism listed in § 141.104 as "Test organism W—*Pseudomonas pyocyanea* (ATCC 23389)" is no longer available from the American Type Culture Collection. It was replaced by a different strain of the same organism, *Pseudomonas aeruginosa* (ATCC 25619),[1] which gives satisfactory results in the assay of carbenicillin.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 2.120), § 141.104 *Test organisms* is amended in the table in paragraph (a) by changing the item "Test organism W—*Pseudomonas pyocyanea* (ATCC 23389)" to read "Test organism W—*Pseudomonas aeruginosa* (ATCC 25619)."

Since this order merely updates the regulations to reflect a change of test organism used in the potency assay of carbenicillin, I find that notice and public procedure and delayed effective date are not necessary prerequisites to its promulgation.

Effective date.—This order shall become effective September 24, 1973.

[1] Test organism available from: American Type Culture Collection, 12301 Parklawn Drive, Rockville, MD 20852.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357).)

Dated September 7, 1973.

MARY A. MCENIRY,
Assistant to the Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.73-19588 Filed 9-13-73;8:45 am]

PART 146—ANTIBIOTIC DRUGS; PROCEDURAL AND INTERPRETATIVE REGULATIONS

PART 149b—AMPICILLIN

Ampicillin Trihydrate-Probenecid for Oral Suspension

The Commissioner of Food and Drugs has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act, with respect to approval of the antibiotic drug ampicillin trihydrate-probenecid for oral suspension.

The Commissioner has concluded that data supplied by the manufacturer concerning the subject antibiotic drug is adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended to provide for the certification of this drug.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 2.120), Parts 146 and 149b (21 CFR Parts 146 and 149b) are amended as follows:

1. Part 146 is amended in § 146.8(b)(1) by alphabetically inserting a new item in the fee schedule, as follows:

§ 146.8 Fees.

* * * * *

(b) * * *

(1) * * *

	Chargeable fee per test
* * * * *	
Probenecid content	34
* * * * *	

2. Part 149b is amended by adding the following new section:

§ 149b.25 Ampicillin trihydrate-probenecid for oral suspension.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.*—Ampicillin trihydrate and probenecid for oral suspension is a dry mixture of ampicillin trihydrate and probenecid with suitable flavorings, lubricants, colorings, and suspending agents packaged in a single dose container. When reconstituted as directed in the labeling, each single dose will contain ampicillin trihydrate equivalent to 3.5 grams of ampicillin and 1.0 gram of

probenecid. Its ampicillin content is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of grams of ampicillin that it is represented to contain. Its probenecid content is satisfactory if it is not less than 90 percent and not more than 110 percent of the number of grams of probenecid that it is represented to contain. Its moisture content is not more than 5.0 percent. When reconstituted as directed in the labeling, its pH is not less than 5.0 and not more than 7.5. The ampicillin trihydrate used conforms to the standards prescribed by § 146a.6(a) of this chapter. The probenecid used conforms to the standards prescribed by the USP XVIII.

(2) *Labeling.*—In addition to the labeling requirements prescribed by § 148.3 of this chapter, this drug shall be labeled "ampicillin-probenecid for oral suspension".

(3) *Requests for certification; samples.*—In addition to complying with the requirements for § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The ampicillin trihydrate used in making the batch for potency, safety, loss on drying, pH, ampicillin content, and identity.

(*b*) The probenecid used in making the batch for all USP XVIII specifications.

(*c*) The batch for ampicillin content, probenecid content, moisture, and pH.

(ii) Samples required:

(*a*) The ampicillin trihydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 10 immediate containers.

(b) *Tests and methods of assay*—(1) *Ampicillin content*—(i) *Sample preparation.*—Reconstitute as directed in the labeling and mix well. Drain the suspension from the bottle for 30 seconds into a high-speed glass blender jar containing sufficient sterile distilled water to obtain a total volume of 500 milliliters. Blend for 10 minutes.

(ii) *Assay procedures.*—Use any of the following methods; however, the results obtained from the microbiological agar diffusion assay shall be conclusive.

(*a*) *Microbiological agar diffusion assay.*—Proceed as directed in § 141.110 of this chapter, diluting an aliquot of the aqueous solution with 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), to the reference concentration of 0.1 microgram of ampicillin per milliliter (estimated).

(*b*) *Iodometric assay.*—Proceed as directed in § 141.506 of this chapter, diluting an aliquot of the aqueous solution to the prescribed concentration.

(2) *Probenecid content*—(i) *Preparation of standard solution.*—Transfer approximately 25 milligrams of U.S.P. probenecid reference standard, accurately weighed, to a 25-milliliter volumetric flask. Disolve and dilute to volume with 1 percent aqueous sodium carbonate solution.

(ii) *Preparation of sample solution.*—Reconstitute the sample as directed in the labeling and mix well. Drain the suspension from the bottle for 30 seconds into a 1,000-milliliter volumetric flask. Dilute to volume with 1 percent aqueous sodium carbonate solution, shake well, and filter through Whatman No. 6 filter paper. Discard the first 10-milliliter portion.

(iii) *Procedure.*—Transfer 2.0 milliliters of the clear filtrate to a 125-milliliter separatory funnel and add 8.0 milliliters of 1.0*N* hydrochloric acid. Extract the solution with four 20-milliliter portions of chloroform, filtering each extract through a glass wool pledget into a 100-milliliter volumetric flask. Wash the pledget with chloroform, dilute to volume with chloroform and mix. Treat 2.0 milliliters of the standard solution in the same manner. Using a suitable spectrophotometer equipped with a 1-centimeter cell and chloroform washed with 1 percent aqueous sodium carbonate solution as a blank, determine the absorbance of the sample and standard solutions at the peak near 257 nanometers.

(iv) *Calculations.*—Calculate the probenecid content as follows:

$$\text{Grams probenecid per container} = \frac{\text{Absorbance of sample} \times \text{weight of standard in milligrams} \times \text{percent purity of standard}}{\text{Absorbance of standard} \times 25 \times 100}$$

(3) *Moisture.*—Proceed as directed in § 141.502 of this chapter.

(4) *pH.*—Proceed as directed in § 141.503 of this chapter, using the drug reconstituted as directed in the labeling.

As the conditions prerequisite to providing for certification of subject antibiotic have been complied with, and as the matter is noncontroversial, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date.—This order shall become effective September 14, 1973.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357).)

Dated: September 7, 1973.

MARY A. MCENIRY,
Assistant to the Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.73-19587 Filed 9-13-73;8:45 am]

PART 149d—NAFCILLIN

Nafcillin Sodium Monohydrate Tablets

The Commissioner of Food and Drugs has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act, as amended, with respect to approval of the antibiotic drug nafcillin sodium monohydrate tablets.

The Commissioner concludes that data supplied by the manufacturer concerning the subject antibiotic drug is adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended to provide for the certification of this drug.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 2.120), Part 149d is amended to provide for the certification of the antibiotic nafcillin sodium monohydrate tablets by adding the following new section:

§ 149d.14 Nafcillin sodium monohydrate tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.*—Nafcillin sodium monohydrate tablets are composed of nafcillin sodium monohydrate with one or more suitable buffers, binders, disintegrants, diluents, and lubricants. Each tablet contains nafcillin sodium monohydrate equivalent to 500 milligrams of nafcillin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of nafcillin that it is represented to contain. Its moisture content is not more than 5 percent. It shall disintegrate within 20 minutes. The nafcillin sodium monohydrate used conforms to the standards prescribed by § 149d.1(a)(1).

(2) *Labeling.*—In addition to the labeling requirements prescribed by § 148.3 of this chapter, this drug shall be labeled "nafcillin sodium tablets".

(3) *Requests for certification; samples.*—In addition to complying with the requirements of § 146.2 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The nafcillin sodium monohydrate used in making the batch for potency, safety, moisture, pH, crystallinity, nafcillin sodium monohydrate content, and identity.

(*b*) The batch for potency, moisture, and disintegration time.

(ii) Samples required:

(*a*) The nafcillin sodium monohydrate used in making the batch: 10 packages, each containing approximately 300 milligrams.

(*b*) The batch: A minimum of 36 tablets.

(b) *Tests and methods of assay*—(1) *Potency*—(i) *Sample preparation.*—Place a representative number of tablets into a high-speed glass blender jar containing sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Blend for 3 to 5 minutes.

(ii) *Assay procedures.*—Assay for potency by any of the following methods; however, the results obtained from the microbiological agar diffusion assay shall be conclusive.

(*a*) *Microbiological agar diffusion assay.*—Proceed as directed in § 141.110 of this chapter, diluting an aliquot of the stock solution with solution 1 to the reference concentration of 2.0 micrograms of nafcillin per milliliter (estimated).

(*b*) *Iodometric assay.*—Proceed as directed in § 141.506 of this chapter, diluting an aliquot of the stock solution with solution 1 to the prescribed concentration.

(c) *Hydroxylamine colorimetric assay.*—Proceed as directed in § 141.507 of this chapter.

(2) *Moisture.*—Proceed as directed in § 141.502 of this chapter.

(3) *Disintegration time.*—Proceed as directed in § 141.540 of this chapter, using the method described in paragraph (e)(1) of that section, except use distilled water in lieu of simulated gastric fluid as the immersion fluid.

As the conditions prerequisite to providing for certification of subject antibiotic have been complied with and since the matter is noncontroversial in nature, notice and public procedure and delayed effective date are not prerequisites to this promulgation.

Effective date.—This order shall be effective September 14, 1973.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357).)

Dated: September 7, 1973.

MARY A. MCENIRY,
Assistant to the Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.73-19589 Filed 9-13-73;8:45 am]

PART 135e—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Approval of Monensin and Lincomycin Applications

Correction

In FR Doc. 73-16656 appearing on page 21921 in the issue of Tuesday, August 14, 1973, in the second column of the table, "Gms. per Ton", the figure "100" should read "110".

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING PRODUCTION AND MORTGAGE CREDIT—FEDERAL HOUSING COMMISSIONER [FEDERAL HOUSING ADMINISTRATION], DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—MORTGAGE AND LOAN INSURANCE PROGRAMS UNDER NATIONAL HOUSING ACT

[Docket No. R-73-195]

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Manufacturer's Warranty

On October 31, 1972, a notice of proposed rulemaking was published in the FEDERAL REGISTER (37 FR 23190) proposing amendment of the property improvement and mobile home loan regulations to require that a manufacturer's warranty be furnished to a buyer of a mobile home that is purchased with a loan made under this part.

One comment questioned the provision requiring that a copy of the warranty instrument be retained in the loan file by the insured lending institution. The warranty form is proposed to be in a carbon snap-out form and a carbon can easily be placed in the loan file without significant expense to insured lenders.

Other comments suggested that the warranty cover only substantial defects in given instances of nonconformity to construction standards. The addition of the words "substantial" and "proven" to the warranty would not make the warranty any clearer and could needlessly complicate resolution of legitimate complaints by consumers.

It was also suggested that the warranty should commence to run from the date of delivery of the mobile home to the purchaser rather than the date of purchase. This change has been made.

Objection was made to the requirement that notification to the manufacturer of a defect be in writing. While this requirement could cause difficulty for some unwary consumers, that disadvantage is outweighed by the evidentiary problems it will create by permitting oral notice.

It was also suggested that the warranty provide that the notice could be given to either the manufacturer or the dealer. Since it is the manufacturer's warranty the manufacturer should not be required to rely upon dealers to relay complaints to the manufacturer since in some instances this might not occur, and the manufacturer would not receive notice that a complaint has been registered but would be charged with that notice.

Suggestion was also made with regard to a provision requiring corrective action within a certain period of time. The difficulty in establishing required time periods is that in some instances the period would be too short, in others it might be too long. Therefore, no time period has been provided, but the warranty has been amended to require corrective action within a reasonable period of time.

Suggestion was also made that the warranty extend to furnishings included in the mobile home. There are no HUD standards for construction of furniture, and furniture was therefore not included in the scope of the express warranty covered in this regulation. Furniture sold would, of course, be covered under the implied warranties of the Uniform Commercial Code.

It was also suggested that the warranty provide for repairs to be made at the site of the mobile home or in the event the mobile home was required to be returned to the factory that the manufacturer would assume the financial cost of the transportation. Provision under the warranty requires the manufacturer to take appropriate corrective action. The warranty provides no authority for the manufacturer to assess charges against the mobile home purchaser for warranty repairs or transportation.

It was also suggested that incidental and consequential damages be paid by the manufacturer. Coverage for such damages would depend upon state law.

It was also suggested that the requirement that the warranty be delivered to the purchaser be amended to specify that the warranty be mailed to the purchaser. Delivery, of course, implies receipt and we see no useful purpose to be served in restricting the mode of delivery of the warranty to the purchaser to mailing which might give rise to a presumption of delivery which did not actually occur. We anticipate that in many instances the warranty would be delivered by the seller acting as the manufacturer's agent for this purpose to the consumer. Physical delivery would be the most effective method of insuring that the consumer actually receives the document, although of course the warranty could also be mailed. It should be noted, however, that the warranty form calls for the signature of the purchaser.

It was also suggested that some form of arbitration be provided for in the warranty in the event of a dispute between the manufacturer and the purchaser. Such a proposal is now under consideration. However, an initial difficulty in requiring compulsory arbitration would be the possible necessity for payment of the arbitrator's fee. See comments in this regard on a similar proposal made by the Federal Trade Commission in connection with door-to-door sales (37 FR 22956). If it is decided that an arbitration clause is appropriate, the regulation will be subsequently amended.

Objection was made to the statement that the warranty is offered as an inducement to the buyer or to the purchaser of a home. Deletion of this provision might remove the element of consideration necessary to make the warranty a binding legal contract. We believe it self-evident that such a warranty would be an inducement to a consumer who purchases a home covered by its provisions.

A professional testing organization recommended that the warranty indicate that a statement in the warranty by the manufacturer that construction of the mobile home conforms with the standards prescribed by the Secretary include a provision that the mobile home has been inspected by an independent third party testing organization. Such a requirement is being considered by the Department, but there would be no need to refer in the warranty to the mechanism utilized to determine whether the home had been constructed in accordance with HUD standards.

A trade organization suggested that the warranty should be executed jointly by the manufacturer and the selling dealer, pointing out that it is possible that some defects could arise by reason of default and negligence on the part of the dealer. This, of course, is a possibility but the determination of who is at fault as between the dealer and the manufacturer can best be resolved by agreement between the manufacturer and the dealer.

Accordingly, § 201.520(c) is redesignated as paragraph (d) and a new paragraph (c) is added to read:

§ 201.520 **Structural design and standards.**

* * * * *

(c) *Manufacturer's warranty.*—When a new mobile home purchased with financing insured under 12 U.S.C. 1703 is delivered to the purchaser, the manufacturer shall deliver to the purchaser a written warranty on a form prescribed by the Commissioner. Such warranty shall be in addition to, and not in derogation of, all other rights and privileges which the purchaser may have under any law or instrument and the warranty instrument shall so provide. A copy of the warranty instrument shall be retained in the loan file.

* * * * *

(Sec. 7(d), 79 Stat. 670 (42 U.S.C. 3535(d)) sec. 2, 48 Stat. 1246, (12 U.S.C. 1703).)

Effective date:—This amendment is effective November 15, 1973.

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

FH-14

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FEDERAL HOUSING ADMINISTRATION

MOBILE HOME WARRANTY

Mobile home description

Model

Number

Date of delivery to purchaser(s)

Name and address of dealer/seller

Purchaser(s)

For good and valuable consideration, and to induce purchase of the above identified mobile home by the above named Purchaser(s) and to further induce the Secretary of Housing and Urban Development to insure a loan to such Purchaser(s) under The National Housing Act, the undersigned manufacturer of the aforesaid mobile home does hereby warrant to the Purchaser(s) and to his (their) transferee(s), that:

The mobile home identified above complies with the mobile home standards prescribed by the Secretary of Housing and Urban Development that were in effect at the time the mobile home was manufactured and the mobile home is free from defects in material or workmanship. This warranty shall obligate the manufacturer to take appropriate corrective action within a reasonable period of time in instances of nonconformity to such standards and/or instances of defects in materials or workmanship which become evident within 1 year from the date of delivery of the mobile home and as to which the Purchaser(s) or his (their transferee(s)), give written notice to the manufacturer not later than 1 year and 10 days after the date of delivery set forth above. Such written notice shall be delivered to the manufacturer-warrantor at the address set forth herein. This warranty shall not obligate the manufacturer to correct defects or conditions in the mobile home that may occur as a result of abnormal usage or a lack of proper maintenance.

The term "mobile home" as used herein shall be deemed to include the mobile home structure including the plumbing, heating and electrical systems and all appliances and equipment installed or built-in by the manufacturer.

This warranty shall be in addition to, and not in derogation of, all other rights and privileges which such Purchaser(s) may have under any other law or instrument and the manufacturer agrees that the Purchaser(s) will not be required to execute a waiver of any warranty rights under the laws of the state of the purchaser's residence.

IN TESTIMONY WHEREOF, the manufacturer has signed and sealed this warranty this _____ day of _____, 19_____.

(Name and Address of Manufacturer/Warrantor)

By: _____

(Signature and Title of Authorized Official)

WARNING

Section 1010 of Title 18, U.S.C., "Department of Housing and Urban Development, Federal Housing Administration transactions," provides: "Whoever, for the purpose of—influencing in any way the action of such Administration—makes, passes, utters, or publishes any statement, knowing the same to be false—shall be fined not more than $5,000 or imprisoned not more than two years, or both."

Notice to Purchaser: Any notice of nonconformity must be delivered to the warrantor no later than one year and ten days from the date of delivery to you.

Receipt of this warranty is acknowledged this _____ day of _____, 19_____.

(Signature of Purchaser(s))

[Doc. 73-19459 Filed 9-13-73;8:45 am]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-205]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Section 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 **Status of participating communities.**

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
Illinois	Woodford	Unincorporated areas.				Sept. 7, 1973, Emergency.
Michigan	Emmet	Harbour Springs, city of.				Do.
Missouri	St. Louis	Brentwood, city of.				Do.
New York	Allegany	Alfred, village of				Do.
Do.	Broome	Binghamton, city				Do.
Ohio	Warren	Franklin, city of				Do.
Pennsylvania	Lycoming	McHenry, township of.				Do.
Texas	Hale	Plainview, city of				Do.
Wisconsin	Manitowoc	Cleveland, village of.				Do.
Do.	Sauk	Unincorporated areas.				Do.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Pub. L. 91-152, Dec. 24, 1969), (42 U.S.C. 4001-4127), and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued August 31, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-19360 Filed 9-13-73;8:45 am]

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-206]

PART 1914—AREAS ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

Sections 1914.4 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence a new entry to the table. In this entry, a complete chronology of effective dates appears for each listed community. Each date appearing in the last column of the table is followed by a designation which indicates whether the date signifies the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.4 **Status of participating communities.**

* * * * * * *

State	County	Location	Map No.	State map repository	Local map repository	Effective date of authorization of sale of flood insurance for area
*	*	*	*	*	*	*
Ohio	Cuyahoga	Hunting Valley, village of.	----------	----------	----------	Sept. 10, 1973.
Pennsylvania	Erie	Fairview, township of.	----------	----------	----------	Do. Emergency.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968), effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended (secs. 408-410, Pub. L. 91-152, Dec. 24, 1969) (42 U.S.C. 4001-4127) and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969.)

Issued: September 4, 1973.

GEORGE K. BERNSTEIN,
Federal Insurance Administrator.

[FR Doc.73-19481 Filed 9-13-73;8:45 am]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER A—ADMINISTRATION

PART 809—ISSUE AND CONTROL OF IDENTIFICATION (ID) CARDS

Miscellaneous Amendments; Correction

In FR Doc.73-18576, appearing at page 23945, in the issue of Wednesday, September 5, 1973, item 17 of § 809.7 should be corrected to read:

17. Medal of Honor Recipients No No (3) Yes Yes.
a. Lawful wife No No (3) Yes Yes.

By order of the Secretary of the Air Force.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.73-19550 Filed 9-13-73;8:45 am]

Title 38—Pensions, Bonuses, and Veterans' Relief

CHAPTER I—VETERANS ADMINISTRATION

PART 36—LOAN GUARANTY

Prepayment of Mortgage Loans Interest Charges

The Veterans Administration is amending § 36.4310, Title 38, Code of Federal Regulations to make clear that on full prepayment of guaranteed mortgage loans interest may be charged only to date of such payment. This amendment is issued pursuant to the authority of section 210, Title 38, United States Code.

Prepayment in full of mortgage loans must be accepted and credited to the loan account on the date received and no interest may be charged thereafter. This has been the policy and interpretation of this regulation for many years. This amendment is intended to clearly set forth this policy and regulation interpretation.

The last sentence of § 36.4310 is to be deleted as obsolete. The Administrator no longer has authority to make an initial 4 percent payment, and has not had such authority for many years.

Compliance with the provisions of § 1.12, Title 38, Code of Federal Regulations, as to notice of the proposed regulatory development, is not recommended. There is no change in the policy of this Administration nor in the interpretation of this regulation. The change in wording is merely to make clear this long established practice.

§ 36.4310 **Prepayment.**

The debtor shall have the right to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or $100, whichever is less. Any prepayment in full of the indebtedness shall be credited on the date received, and no interest may be charged thereafter. Any partial prepayment made on other than an installment due date need not be credited until the next following installment due date or 30 days after such prepayment, whichever is earlier. The holder and the debtor may agree at any time that any prepayment not previously applied in satisfaction of matured installments shall be reapplied for the purpose of curing or preventing any subsequent default.

Effective date.—This VA Regulation is effective September 10, 1973.

Approved September 10, 1973.

By direction of the Administrator.

[SEAL] RUFUS H. WILSON,
Associate Deputy Administrator.

[FR Doc.73-19571 Filed 9-13-73;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

Sulfur Oxides

On April 30, 1971 (36 FR 8186), the Administrator of the Environmental Protection Agency promulgated as 40 CFR Part 410, national primary and secondary ambient air quality standards under section 109 of the Clean Air Act, as amended. These regulations were republished November 25, 1971, as 40 CFR Part 50. This notice revokes the annual secondary sulfur dioxide standard, announces a revision to *Air Quality Criteria for Sulfur Oxides*, and announces the conclusions from a reevaluation of the basis for the secondary three-hour average sulfur dioxide standard.

REVOCATION OF THE ANNUAL SECONDARY SO_2 STANDARD

On May 7, 1973 (38 FR 11355), a notice of proposed rulemaking to revoke the annual secondary standard was published.

Public comments were invited. Comments have been received from 23 organizations or individuals, and have been reviewed and considered prior to this rulemaking. EPA's reasons for revoking the annual secondary standard were set forth in the notice of proposed rulemaking and are further discussed herein.

The amendments set forth herein will revise 40 CFR Part 50.5 by revoking the annual National Secondary Ambient Air Quality Standard for Sulfur Dioxide which is 60 microwaves per cubic meter (0.02 p.p.m.). In addition, the amendments will delete from § 50.5 the maximum 24-hour concentrations of 260 micrograms per cubic meter (0.1 p.p.m.) published as a guide to be used in assessing implementation plans to achieve the annual standard. The secondary 3-hour standard, a maximum concentration of 1,300 micrograms per cubic meter (0.5 p.p.m.) not to be exceeded more than once per year, remains in effect.

Section 109 of the Clean Air Act requires the Administrator to establish national primary ambient air quality standards "to protect the public health" and national secondary ambient air quality standards "to protect the public welfare from any known or anticipated adverse effects." Section 302(h) defines effects as including, but not limited to, "effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being." Such national standards must be based on air quality criteria which, under section 108, must "reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health and welfare which may be expected from the presence [of air pollutants] in the ambient air, in varying quantities." Thus, secondary national standards are necessarily limited to demonstrable or predictable adverse effects which can be quantitatively related to pollutant concentrations in the ambient air. Currently, injury to vegetation is the only type of welfare effect of sulfur dioxide that can be quantitatively related to ambient concentrations of this pollutant.

EPA is aware that sulfur dioxide has or may have effects on other sectors of the public welfare, such as materials, visibility, soils, and water. To some extent, the primary standards for sulfur dioxide and the remaining secondary standard mitigate such effects. Sufficient data are not now available, however, to establish a quantitative relationship between specific sulfur dioxide concentrations and such effects. Furthermore, it is not clear that any such effects, to the extent that they may occur at concentrations below the current national standards, are adverse to the public welfare.

As stated in the notice of proposed rulemaking, the annual secondary standard was based on a study by Linzon, which is discussed in Air Quality Criteria for Sulfur Oxides. A reanalysis of the data on which the annual standard was based indicated that it could not properly be concluded that the injury reported in Linzon's study resulted from the average sulfur dioxide concentration over a full year or even the six-month growing season, as distinguished from short-term peak concentrations.

After a review of the public comments that were received as part of this rulemaking, the Administrator has concluded that there still is not adequate information on which to base any long-term secondary standard for sulfur dioxide. The comments that were received in opposition to this rulemaking did not identify a specific annual average level of sulfur dioxide that could be directly related to an adverse effect on the public welfare.

Twenty-three letters of public comment were received. Eleven indicated support of EPA's action; nine indicated opposition. The remaining three stated no preference.

Opposition to revoking the annual standard was based, in part, on the contention that it should be retained to protect against corrosion of materials, visibility reduction, and occurrence of acid rain. A response to these particular comments follows:

1. Although EPA is aware that high long-term average concentrations of sulfur dioxide, accompanied by high levels of particulate matter, will increase the corrosion rate of some materials, there are not adequate data relating such corrosion to long-term sulfur dioxide levels below those now prescribed by the primary standards.

2. The quantitative relationship between sulfur dioxide and reduction in visibility is not presently known. There is evidence that particulate sulfate and sulfuric acid mist may act with other particulate matter to reduce visibility. Insufficient knowledge of factors such as humidity, and of the indirect role that sulfur dioxide itself plays in reducing visibility, makes the formulation of a sulfur dioxide standard based on visibility impracticable.

3. The mechanism of the formation of acid rain; the long-term effect of acidic moisture on plants, materials, and soils; and the concentrations of sulfur dioxide that can result in the formation of rain of sufficient acidity to be a danger to the environment currently are being investigated throughout the world. The data needed for standard-setting are not now available. Furthermore, it is not clear that acid rain would be a problem following attainment of the national primary standards for sulfur dioxide.

EPA will be pleased to receive, at any time, data which relate specific ambient air concentrations of sulfur dioxide to quantified effects such as the formation of acid rain, corrosion of materials, reduction in visibility, damage to vegetation, or any adverse change to the ecosystem. The relationships between the specific ambient air concentrations of sulfur dioxide, either alone or in combination with other environmental factors, and the adverse effects caused by those concentrations must be demonstrable or predictable prior to establishing any national secondary ambient air quality standard.

Two organizations, the Native American Rights Fund and the Natural Resources Defense Council, Inc., submitted particularly detailed comments in opposition to the proposed revocation. Their comments cited a number of studies of sulfur dioxide effects on vegetation, all well known to EPA. Neither the studies cited nor the comments made by the Natural Resources Defense Council and the Native American Rights Fund identified, nor provided a basis for identifying, ' long-term concentrations of sulfur dioxide, the attainment of which is necessary to protect against adverse effects. In addition, neither the studies nor the comments indicated that vegetation damage during the course of a year was the result of an annual average level rather than high short-term peak exposures to sulfur dioxide.

A number of the comments in opposition to revoking the annual secondary standard suggested revision of the primary standards to more stringent levels than are now prescribed. EPA is aware of the results of the studies which were cited in support of these comments. At the present time, however, it is unclear to what extent sulfur dioxide acts as a precursor to health effects more adverse than those now noted in the Air Quality Criteria for Sulfur Oxides.

This revocation does not affect the acceptability and enforceability of currently approved implementation plans. These plans are considered adequate and necessary to attain and maintain the remaining sulfur dioxide standards.

Revisions to Sulfur Oxides Criteria Document

Section 108(c) of the Clean Air Act as amended in 1970 provides that the Administrator will "from time to time review, and as appropriate, modify any criteria * * *." In keeping with this section of the Act, notice is given in this issue of the Federal Register of the publication of a revision to Chapter 5, "Effects of Sulfur Oxide in the Atmosphere on Vegetation," of Air Quality Criteria for Sulfur Oxides. This revision includes the results of a number of studies completed since initial publication of the Criteria Document in 1969, and also includes reanalysis of older data in the light of new information.

The revision has been reviewed by the National Air Quality Criteria Advisory Committee, composed of representatives from industry, universities, conservation groups, and all levels of government; by individuals specially selected for their competence, expertise, or special interest in the effects of air pollutants on vegetation; and by a Federal consultation committee, comprised of members from appropriate Federal departments and agencies.

At the present time, the Administrator judges that the revised vegetational portion of the Air Quality Criteria for Sulfur Oxides provides the only adequate basis for the secondary National Ambient Air Quality Standards for Sulfur Dioxide. More than 700 published scientific papers concerning vegetational response to exposure to sulfur dioxide were reviewed by the Environmental Protection Agency. From these papers, 141 were selected by EPA as presenting the most significant criteria information. These papers are referenced and cited in the revised criteria document.

The Administrator realizes there are limitations in the scientific knowledge of vegetational effects resulting from exposure to sulfur dioxide in combination with other ambient air pollutants. As an example, it is known that sulfur dioxide combined with other pollutants may cause visible injury on vegetation to occur at lower levels than if vegetation were exposed to sulfur dioxide alone. A few studies in the revised criteria document consider the combined effects, but most studies deal with single pollutant effects. Only interactions between sulfur dioxide and ozone, and sulfur dioxide and oxides of nitrogen, have been cited in the revised criteria document. The information on combined effects presented in the criteria document is not based on extensive studies. The results are from preliminary laboratory studies which point out some conflicting results requiring in-depth review. There are some cases where plants are apparently undamaged by pollutant mixtures although the sulfur dioxide level by itself would lead one to believe that damage would occur. The potential for damage at low concentrations of pollutant mixtures clearly exist; however, there is not at this time, in the judgment of the Administrator, adequate data on which to base a standard solely on the combined effects.

The revised vegetational criteria cite environmental factors which in some way influence the susceptibility of vegetation injury as the result of sulfur dioxide exposure. For example, vegetation is most easily injured when: (1) Adequate soil moisture for growth is present, (2) humidity is high, (3) temperatures are above 40° F., (4) the vegetation is actively growing, and (5) sunlight is present. Environmental factors such as these are interrelated and no study has been located to date which succeeds in adequately isolating the relative importance of each.

Those studies which exist in the revised criteria document concerning vegetational harm in the entire growing season do not adequately indicate whether the observed injury was caused by a long-term exposure to low levels of sulfur dioxide or by high exposures of sulfur dioxide which occurred during shorter time periods. In the absence of such information, the Administrator has determined that proposing a standard based on growing season exposures to sulfur dioxide is not warranted at this time.

Laboratory, field-chamber, and ambient air studies are cited in the revised criteria. Laboratory and field chamber studies tend to be artificial by design and never completely simulate ambient air conditions. The intent of most laboratory and field chamber studies is to discover the effects resulting from direct exposure to the pollutants without the interference of numerous environmental parameters including other pollutants. As a result, laboratory and field chamber studies tend to either overrestrict a number of environmental conditions which might make vegetation more sensitive, or condition the vegetation to be much more sensitive than would be found under natural conditions. For example, natural environmental conditions such as excess moisture and sunlight, which influence the sensitivity of plants, together with the random interactions with other pollutants, may cause injury to occur at lower ambient air concentrations of sulfur dioxide than those reported in laboratory or chamber studies where such conditions are absent. In ambient air studies, a single pollutant and its effects are difficult to isolate from similar effects caused by sensitive environmental conditions or other pollutants. However, if ambient air studies are complemented by laboratory and field chamber studies, effects can be better related to the pollutant.

The Environmental Protection Agency is well aware that sulfur dioxide has effects on non-vegetational sectors of the public welfare such as materials, visibility, odor, taste, and the acidification of rain. However, the current National Secondary Ambient Air Quality Standard is not intended to protect these sectors of the public welfare from long-term effects of SO_2 because either protection is afforded by the existing National Annual Primary Ambient Air Quality Standard (80 micrograms per cubic meter) or sufficient data are not presently available to develop criteria for standards based on these effects.

The Environmental Protection Agency is continuing to conduct research on the long-term effects of sulfur dioxide exposure. During the period of prolonged research, however, the Administrator invites any relevant comment on the existence of scientifically recognized sulfur dioxide effects information which provides a quantitative basis for a long-term National Secondary Ambient Air Quality Standard. Data are especially desired which can relate specific ambient air concentrations of sulfur dioxide to quantified effects in such areas as the formation of acid rain, corrosion of materials, reduction in visibility, or any adverse change to the ecosystem.

As an example of nonvegetation effects, it is known that high annual concentrations of sulfur dioxide accompanied by high particulate levels will increase the corrosion rate of some materials. The Environmental Protection Agency has inadequate data with which to relate the effects of corrosion to long-term ambient air sulfur dioxide levels which are below those now prescribed by the primary standards.

The direct quantitative relationship between sulfur dioxide and reduction in visibility is not presently known. There is evidence that particulate sulfate and sulfuric acid mist may act with other particulate matter to reduce visibility; however, insufficient knowledge of the effects of environmental factors such as humidity, and of the indirect role that sulfur dioxide itself plays in reducing visibility, make a standard based on visibility impossible to propose at this time.

In the case of acidification of rain, the mechanism of the acid rain formation; the long-term effects of acidic moisture on plants, materials, and soils; and the concentrations of sulfur dioxide which can result in the formation of rain of sufficient acidity to be an danger to the environment are not fully understood by the Environmental Protection Agency at this time. The Administrator solicits any additional information concerning these, or any other currently unquantified, effects of sulfur oxides in the ambient air.

Reevaluation of the Three-Hour SO_2 Standard

In the May 7, 1973 proposal to revoke the annual secondary standard, it was stated that "there is some question as to whether * * * injury to vegetation may result from short-term exposure to SO_2 concentrations which do not exceed the three-hour standard * * *." The Environmental Protection Agency has evaluated the additional data as presented in the revised criteria document, and has determined that this data does not provide an adequate and appropriate basis for revision of the existing three-hour standard.

The revised criteria document presents the results of studies which indicate that visible injury to some types of vegetation (minor leaf spotting) can result from short-term concentrations of SO_2 which do not exceed the current standards. Evidence of this visible injury has occurred on generally sensitive vegetation grown under environmental conditions which tend to favor maximum sensitivity. However, the Clean Air Act requires that secondary standards be established to protect the public welfare from adverse effects. The Administrator has given careful consideration to the question of whether this degree of injury can be responsibly defined as an adverse effect within the meaning of the Clean Air Act. After consultation with other agencies and individuals, including the United States Department of Agriculture, the Administrator has determined that, in his judgment, standards developed solely to protect against minor visible injury are not necessarily requisite to protect the public welfare from adverse effects.

The data presented in the revised criteria document also provide additional information regarding the levels of SO_2

concentration which can cause growth retardation or yield reduction of vegetation. These data provide adequate evidence that the current secondary standard (1,300 ug/m³ maximum three-hour concentration) is adequate and necessary to protect the public welfare from these adverse effects.

The Administrator recognizes, and has considered, the opinion that national standards should be established to protect against all effects of air pollutants, rather than only adverse effects. However, this opinion is inconsistent with the language of the Clean Air Act which requires protection against adverse effects, and also fails to accommodate the fact that, for some pollutants, the concentration levels which result in perceptible effects may be dependent upon available measurement and observation techniques, i.e., as research techniques improve, the level at which "effects" become perceptible becomes progressively lower, even though the level at which these effects become adverse remains relatively constant.

Several States have been granted an extension of time pursuant to section 110 (b) for submittal of State plans for implementation of the secondary sulfur dioxide standards, and in some cases submittal of these plans has been delayed pending results of EPA's reevaluation of the standards. That reevaluation is now complete, with results as reported herein and in the revised criteria document. The Administrator therefore expects that all State plans for implementation of the sulfur dioxide standards will be submitted within four months from date of this notice.

This notice of rulemaking is issued under authority of sections 109 and 301 of the Clean Air Act (42 U.S.C. 1857c-4 and 1857g).

Dated September 6, 1973.

JOHN R. QUARLES, Jr.,
Acting Administrator,
Environmental Protection Agency.

Part 50, Title 40, Code of Federal Regulations is amended by revising § 50.5 as follows:

§ 50.5 National Secondary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide).

The National Secondary Ambient Air Quality Standard for sulfur oxide measured as sulfur dioxide by the reference method described in Appendix A to this part, or by any equivalent method is 1,300 micrograms per cubic meter (0.5 p.p.m.) maximum 3-hour concentration not to be exceeded more than once per year.

[FR Doc.73-19295 Filed 9-13-73;8:45 am]

PART 126—AREAWIDE WASTE TREATMENT MANAGEMENT PLANNING AREAS AND RESPONSIBLE PLANNING AGENCIES

On May 30, 1973, notice was published in the FEDERAL REGISTER, 38 FR 14230, that the Environmental Protection Agency was proposing policies and procedures for the designation of areawide waste treatment management pursuant to section 208(a) of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816 (33 U.S.C. 1251, 1288 (a)(1))).

The regulations are designed to serve as guides for the Governors of the States and chief elected officials of general purpose local government in identifying areas which, as a result of urban-industrial concentrations or other factors, have substantial water quality control problems which require an areawide approach in planning for and implementing corrective action, and in designating agencies capable of developing waste treatment management plans for such areas.

In view of the intent of the legislation, the Environmental Protection Agency believes that an areawide water quality management program should be carried out to gain the following objectives:

Provide cost effective, point source treatment and control for areas of urban-industrial concentrations having substantial water quality control problems.

Provide for control of nonpoint sources in urban-industrial and other areas where such controls are required including prevention of water quality problems in the future.

Provide for coordinated waste treatment management in such areas.

Written comments on the proposed rulemaking were invited and received from interested parties. A number of verbal comments also were received. The Environmental Protection Agency has carefully considered all submitted comments. All written comments are on file with the Agency. Certain of these comments have been adopted or substantially satisfied by editorial change, deletions from, or additions to the regulations. These changes are discussed below.

(a) A substantial water quality control problem was further defined to indicate that the problem exists where water quality has been degraded to the extent that desired uses are impaired or precluded. The identification of water quality segments under 40 CFR Part 130 or groundwater pollution problems are measures of the extent of the problem.

(b) The definition of local units of government that may respond to indicate intent to join together in the planning process now includes both general purpose and other appropriate units of local government. (See § 126.10(c).)

(c) The criteria for designation of a planning agency now includes the consideration of an existing agency's capability for implementing the plan or having the plan implemented. (See § 126-11(b).).

(d) The requirements for the submission of information on 208 planning areas and agencies have been revised to require a statement relating the boundaries of the area to the SMSA but not to require conformance to SMSA boundaries. (See § 126.15.)

(e) The Governor's right to nondesignate in intrastate areas only is clarified. (See § 126.16.)

(f) Where 208 planning area and agency designations are made by local public officials, the Governor's views on these designations may be made to the Administrator.

(g) The Administrator's approval or disapproval actions of areas and agencies will be published in the FEDERAL REGISTER. (See § 126.17.)

(h) The requirements for public participation as set forth in 40 CFR, Part 105 shall be followed.

Effective date.—September 14, 1973.

Because of the importance of promptly making known to States, local units of government and other interests the contents of these regulations in order that area and agency designations may be made under section 208(a) of the Act, the Administrator finds good cause to declare the regulations effective on September 14, 1973.

Dated September 4, 1973.

JOHN QUARLES,
Acting Administrator.

Subpart A—Scope and Purpose; Definitions

Sec.

126.1 Scope and Purpose.
126.2 Definitions.

Subpart B—Procedures for Designation of 208 Planning Areas and Agencies Responsible for Planning

126.10 Criteria for determination of 208 planning areas.
126.11 Criteria for designation of agencies responsible for planning.
126.12 Procedure for designation of intrastate 208 planning areas and agencies responsible for planning.
126.13 Procedure for designation of interstate 208 planning areas and agencies responsible for planning.
126.14 Nondesignation of 208 planning areas and/or agencies by Governor(s).
126.15 Submissions of 208 planning areas and agencies responsible for planning.
126.16 Procedure for designation of 208 planning areas and agencies responsible for planning by the chief elected officials of general purpose local government.
126.17 Review of submissions.
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Subpart C—State Planning in Nondesignated Areas

126.20 Determination of planning agencies in nondesignated areas.

Subpart D—Public Participation

126.30 Public participation requirements in designation of 208 planning areas and designation of agencies responsible for planning.

Subpart E—Assistance to Designated Agencies

126.40 Determination of eligibility.

AUTHORITY.—Sec. 208 and 501, 86 Stat., 816, (33 U.S.C. 1251, 1288(a)(1)).

Subpart A—Scope and Purpose; Definitions

§ 126.1 Scope and purpose.

This part establishes regulations specifying procedural and other elements and criteria for the use of State Governors and chief elected officials of general purpose local government in the designation of the areas, including their

boundaries, requiring areawide planning for waste treatment management pursuant to section 208 of the Act and designation of agencies responsible for such planning. This part provides that each State should comply with the requirements of this Part not later than 180 days after the date of publication of this part.

§ 126.2 Definitions.

As used in this part, the following terms shall have the meanings set forth below:

(a) The term "Act" means the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816 (33 U.S.C. 1251, 1288(a)(1)).

(b) The term "EPA" means the U.S. Environmental Protection Agency.

(c) The term "Administrator" means the Administrator of the U.S. Environmental Protection Agency.

(d) The term "208 planning areas" means the area designated under section 208(a) (2), (3), or (4) of the Act.

Subpart B—Procedures for Designation of 208 Planning Areas and Agencies Responsible for Planning

§ 126.10 Criteria for determination of 208 planning areas.

The following criteria will be utilized in designation of 208 planning areas.

(a) A Preference will be given by the Administrator, in approving designation, to areas of urban-industrial concentrations, because of the Act's legislative history and in view of the institutional nature of urban-industrial concentrations. For this purpose an urban-industrial concentration is that portion of a standard metropolitan statistical area (SMSA—as defined by the Office of Management and Budget), or those portions of SMSA's, having substantial concentrations of population and manufacturing production or other factors which result in substantial water quality control problems. The entire SMSA(s) may be designated as the planning area. Such areas may be increased to include areas outside the SMSA(s) which have substantial water quality control problems resu''ng from concentrations of population and manufacturing activity or other factors and which are contiguous to the SMSA(s);

(b) The area must have a substantial water quality control problem. A substantial water quality control problem shall be considered to exist only where the complexity and nature of the water quality control problem requires an areawide waste treatment management plan, and where water quality has been degraded to the extent that desired uses are impaired or precluded. A measure of the extent of the problem includes those areas where:

(1) A substantial portion of the major receiving waters available for waste discharge from the area has been classified by the State as a water quality segment, after adequate analysis demonstrating this classification, under the requirements of Part 130 of this chapter, or;

(2) A substantial and extensive groundwater pollution problem exists; or where the dependence of an area on groundwater makes it essential that its ground water resource be given the necessary protection from pollution it requires.

(c) The affected general purpose or other appropriate units of local government within the boundaries of the 208 planning area must:

(1) Have in operation a coordinated waste treatment management system, or

(2) Show their intent, through formally adopted resolutions, to join together to develop and implement a plan which will result in a coordinated waste treatment management system for the area.

(d) Affected units of local government must have legal authority to enter into agreements for coordinated wastewater management in compliance with section 208 of the Act.

§ 126.11 Criteria for designation of agencies responsible for planning.

(a) The agency shall be a representative organization whose membership shall include but need not be limited to elected officials of local governments, or their designees, having jurisdiction in the designated planning area. The agency shall establish procedures for plan adoption and resolution of major issues. The agency shall have waste treatment planning jurisdiction in the entire designated area. Existing, capable regional agencies may be designated consistent with the policies in Title IV of the Intergovernmental Cooperation Act of 1968, as implemented by Part IV of OMB Circular A-95. A single qualified agency may be designated as being responsible for planning in more than one planning area.

(b) In the selection of the areawide planning agency, the Governor(s) must consider that such agency, pursuant to section 208(b)(1) of the Act, shall have the water quality management planning process fully underway no later than 1 year after its designation. Further, the agency must have the capability to complete, and shall complete, the initial water quality management plan no later than 2 years after the planning process is in operation or such earlier date as the State may require for incorporation into State plans required under section 303 (e) of the Act. The Governor or, in interstate cases, the Governors, shall in the designation process, consider:

(1) The general and specific legal authorities and prohibitions applicable to the agency with regard to water quality management planning, including but not limited to coordination with or participation in comprehensive planning, land use planning, water sewer planning, coastal zone planning, and other related planning and development activities and controls.

(2) The relationship of the agency (both formal and informal) with planning agencies of different levels of government including but not limited to Federal, State, interstate and Federal-State agencies as well as local government agencies.

(3) The relationship of the agency (both formal and informal) with management and regulatory agencies such as those that possess zoning and subdivision controls, and those that construct and operate wastewater facilities.

(4) Where an existing agency is designated:

(i) The agency's past record in water quality management planning with special regard to plan quality, technical, fiscal, political, and economic feasibility, and environmental soundness.

(ii) The agency's expertise, either in-house or readily available, with particular regard to water quality and comprehensive planning.

(iii) The agency's fiscal, manpower, data, and other resources in light of existing and proposed commitments in other areas.

(iv) The agency's capability for having the plan implemented, or of implementing all or portions of the plan itself.

§ 126.12 Procedure for designation of intrastate 208 planning areas and agencies responsible for planning.

The Governor of the State shall, after proper consultation with appropriate elected and other officials of local governments having jurisdiction in such area, and such State agencies as he may desire, and having complied with the requirements for public participation as set forth in § 126.30 of this regulation, designate the 208 planning area, including its boundaries, and a single representative agency to be responsible for the planning. In designating such planning areas and agencies, the Governor shall consider the criteria set forth in §§ 126.10 and 126.11.

§ 126.13 Procedure for designation of interstate 208 planning areas and agencies responsible for planning.

The Governors of the States shall, in interstate areas, after consultation with appropriate elected and other officials of all local governments having jurisdiction and with such State and interstate agencies as they may desire, or may be required by State legislation, and having complied with the requirements for public participation as set forth in § 126.30, mutually designate each 208 planning area including its boundaries, and for each area a single representative agency to be responsible for the planning. In designating such planning areas and agencies, the Governors shall consider the criteria set forth in §§ 126.10 and 126.11.

§ 126.14 Nondesignation of 208 planning areas and/or agencies by Governor(s).

In certain intrastate areas the Governor may determine not to designate a 208 planning area even though the criteria set forth in §§ 126.10 and 126.11 may be met. Specific nondesignation of a 208 planning area does not preclude later designation by the Governor.

NOTE.—Attention is called to the fact that the Governor has three specific choices of action. He may designate, remain silent, or may nondesignate specific areas. If the Governor remains silent, the chief elected officials of general purpose local government in the area may make such designations if they so choose. Upon approval by the Administrator, designation by local elected officials is binding upon the Governor.

§ 126.15 Submissions of 208 planning areas and agencies responsible for planning.

Within 180 days after issuance of this Part the Governor shall notify the Administrator of his actions regarding designation of 208 planning areas and agencies responsible for the planning. This notification shall be in writing and shall include:

(a) Identification of each area within the State determined to be eligible by the Governor under § 126.10.

(b) A list of all areas among those eligible which the Governor wishes to nondesignate at this time.

(c) A list of all areas among those eligible which the Governor wishes to designate at this time. For each area designated the following information shall be provided:

(1) An exact description of the boundaries of each area including a statement relating to boundaries of any area to the boundaries of the SMSA(s) contained within or contiguous to the area, or in those areas not within a SMSA a statement relating the boundaries of the area to the nearest SMSA, and a statement indicating:

(i) Population of the area,

(ii) Nature of the concentration and distribution of industrial activity in the area,

(iii) Degree to which it is anticipated that the area could improve its ability to control water quality problems were it designated as a planning 208 area, and

(iv) Factors responsible for designation.

(2) Identification and supporting analysis of each water quality segment included in each area, as developed in accordance with Part 130 of this chapter.

(3) For each area a copy of the charter of existing regional waste treatment management agencies or formally adopted resolutions which demonstrate that the general purpose units of local government involved will join together in the planning process to develop and implement a plan which will result in a coordinated waste treatment management system for the area. The resolutions shall also state that all proposals for grants for construction of a publicly owned treatment works will be consistent with the approved plan and will be made only by the designated management agency.

(4) For each area the name, address, and official contact for the agency designated to carry out the planning.

(5) A statement on the factors considered in agency designation as described in § 126.11.

(6) A summary of public participation in accordance with the requirements set forth in § 126.30.

§ 126.16 Procedure for designation of 208 planning areas and agencies responsible for planning by the chief elected officials of general purpose local government.

(a) In the case of any intrastate area, if the Governor of an affected area does not act to designate or nondesignate it as a 208 planning area, or in an interstate area if the Governors of an affected area do not act to designate it as a 208 planning area, the chief elected officials of general purpose local governments having jurisdiction in the area, after meeting the requirements for public participation as set forth in § 126.30, may designate such planning area, and a single representative agency responsible for the planning, which shall be based upon the criteria set forth in §§ 126.10 and 126.11.

(b) After making such designation, the chief local officials shall: (1) Notify the Governor(s) of the State(s) affected by their action, and (2) submit their designation to the Administrator in accordance with the requirements set forth in § 126.15. When the Governor receives notification he may submit his views regarding the designation to the Administrator.

§ 126.17 Review of submissions.

(a) The Administrator shall review each submission of designated 208 planning areas and agencies to determine compliance with the criteria set forth in this Part.

(b) Upon completion of his review, the Administrator shall publish notice in the FEDERAL REGISTER and shall notify in writing the appropriate Governor(s) or local officials making such designations of his approval or disapproval of each designation. In the event that the Administrator disapproves any of the designations, he shall specify his reasons with his notice of disapproval.

§ 126.18 Revisions.

(a) The appropriate Governor(s) or local officials (where the original designation was not made by the Governor(s) may from time to time propose in writing a revision of the boundaries of any 208 planning area previously approved. The Administrator shall approve or disapprove such proposed revision pursuant to § 126.17. The effective date of designation is the date of the Administrator's approval.

(b) The Governor(s) may also designate from time to time previously nondesignated planning areas and agencies. In such cases the designation, submission, and approval shall follow the requirements set forth in this Part.

Subpart C—State Planning in Nondesignated Areas

§ 126.20 Determination of planning agencies in nondesignated areas.

(a) The State shall act as the planning agency for all areas not designated under §§ 126.12, 126.13, or 126.16. Where the Governor determines, pursuant to section 208(b)(4) of the Act, that the requirements of section 208(b)(2) (F through K) should be applied on a statewide basis, the State may apply the planning process established pursuant to section 303 of the Act as the process for carrying out the requirements of the sections. Funds which may be available under section 106 of the Act may be utilized to conduct planning pursuant to this section.

(b) Assumption by the State of the planning responsibilities in these areas does not foreclose the establishment of other planning processes at the substate level.

Subpart D—Public Participation

§ 126.30 Public participation requirements in designation of 208 planning areas and designation of agencies responsible for planning.

(a) The guidelines for public participation as set forth in Part 105 of this chapter implementing section 101(e) of the Act shall be followed.

(b) The Governor(s) shall consult with appropriate elected and other local officials prior to designating planning areas and agencies. The Governor(s), or in the case of designation by chief elected officials of general purpose local government, those officials shall, after adequate public notice, hold one or more public hearings or meetings within the proposed 208 planning area for the purpose of gaining public advice on the designation of the planning area and agency. All units of local government wishing to be heard and the general public shall be included.

(c) Record of such public meetings or hearings including notice of same shall be kept and made available to the Administrator upon request. A summary of comments and meeting notes shall be submitted to the Administrator with each designation.

Subpart E—Assistance to Designated Agencies

§ 126.40 Determination of eligibility.

Assistance under section 208 (f)(1), (g), and (h) of the Act shall be provided only to those agencies designated under § 126.12, 126.13, or 126.16.

[FR Doc.73-19294 Filed 9-13-74;8:45 am]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 21—COMMISSIONED OFFICERS

Involuntary Retirement of Officers

The present regulation permits the involuntary retirement of an officer only for cause. A reduction in strength of the Reserve Corps could become necessary during periods of program contraction. The amendment will permit the involuntary retirement of officers with 20 or more years of service during periods of

program contraction and strength reduction. Public participation in this change was not solicited since the change involves only internal administration of the Commissioned Corps personnel system.

1. Section 21.165 of Part 21, Title 42, Code of Regulations is amended to read as follows:

§ 21.165 Involuntary retirement of officers with 20 years of service.

The Assistant Secretary for Health may recommend to the Secretary the retirement of any officer who has completed 20 or more years of active service as defined in section 211(d) of the Act if the Assistant Secretary for Health after consideration of the recommendation of a board pursuant to § 21.168, determines that the retirement of an officer would be in the best interests of the Service for one or more of the following reasons:

(a) An officer's performance of duty is at a level below that expected of an officer of his grade in his category;

(b) An officer is not suited for continued service for one or more of the following similar causes:

(1) Conduct contrary to laws, regulations, or administrative directives applicable to commissioned officers.

(2) Intentional omission or misrepresentation of facts in official statements, either oral or written,

(3) Act of intemperance and/or personal misconduct to the discredit of the Service.

(c) A reduction in the strength of the Reserve Corps is necessary by reasons of program contraction or numbers limitation. The services of a board of officers, as otherwise required by this subpart, may be dispensed with.

Effective date.—These amendments shall be effective September 14, 1973.

Approved: September 10, 1973.

CASPAR W. WEINBERGER,
Secretary.

[FR Doc.73-19600 Filed 9-13-73;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5383]

[Oregon 8646]

OREGON

Partial Revocation of Reclamation Project Withdrawal

Correction

In FR Doc. 73-17788 appearing at page 22551 in the issue of Wednesday, August 22, 1973, in paragraph 2, the 10th line reading "requirements received on or before 10", should read "requirements of applicable law. All valid applications received on or before 10".

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 13—COMMERCIAL RADIO OPERATORS

Operating Authority

In the matter of amendment of Part 13 of the rules to conform the language of § 13.61 to that of §§ 83.159 and 81.152 (d), with respect to transmitter power limitations imposed upon radiotelephone operators.

1. Section 83.159 of the rules, which lists operator requirements for noncompulsory stations, indicates that the holder of a radiotelephone third-class operator permit is authorized to operate a public or limited ship telephone of not more than 250 watts carrier power or 1,000 watts peak envelope power. Section 13.61(g)(6), which sets forth one of several enumerated limitations on the scope of operating authority enjoyed by a radiotelephone third-class operator, also refers to the express transmitter power limitations under which the third-class operator must operate. However, rather than paralleling the language of § 83.159 with respect to power limitations, § 13.61 (g)(6) expresses such limitation merely in terms of antenna power of the unmodulated carrier wave, without any reference to alternative limitation on peak envelope power.

2. Although the actual power limitations referred to both in § 83.159 and in § 13.61(g)(6) are the same, there is a need, to avoid confusion, to make the language essentially identical in both sections and to simplify the phraseology of § 13.61(g)(6). The proposed rule changes in the attached Appendix will accomplish this by amending § 13.61(g)(6) so that it will not be inconsistent with the text of § 83.159, and so that its meaning will be clear.

3. Similarly, there is a need to amend § 13.61, subsections (g)(4), (g)(5), and (h)(7), in order to make the language of these sections correspond to the limitations on power imposed by and expressed in § 81.152(d), which sets forth operator requirements for shore stations. Although the actual power limitations referred to in § 81.151(d) on the one hand, and in §§ 13.61(g)(4), 13.61(g)(5), and 13.61(h)(7), on the other hand, are the same, the power limitations in § 81.152(d) are expressed in terms of carrier power and peak envelope power, whereas the power limitations in § 13.61 are expressed in terms of carrier power only. The proposed amendments to subsections (g)(4), (g)(5), and (h)(7) of § 13.61 would have the effect of making the language of these sections conform to the language utilized in § 81.152(d).

4. The amendments adopted herein are editorial in nature, and hence the prior notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply. Authority for the promulgation of the amendments is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules.

5. Accordingly, Part 13 of the Commission's rules is amended as shown below, effective September 21, 1973.

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

Adopted September 5, 1973.

Released September 6, 1973.

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

Part 13 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 13.61(g)(4) (5) & (6) and paragraph (h)(7) are amended to read as follows:

§ 13.61 Operating authority.

* * * * *

(g) * * *

(4) Class I-B coast stations at which the power is authorized to exceed 250 watts carrier power or 1,000 watts peak envelope power, or

(5) Class II-B or Class III-B coast stations, other than those in Alaska, at which the power is authorized to exceed 250 watts carrier power or 1,000 watts peak envelope power, or

(6) Ship stations or aircraft stations at which the installation is not used solely for telephony, or at which the power is more than 250 watts carrier power or 1,000 watts peak envelope power:

* * * * *

(h) * * *

(7) Coast stations at which the power is authorized to exceed 250 watts carrier power or 1,000 watts peak envelope power;

* * * * *

[FR Doc.73-19594 Filed 9-13-73;8:45 am]

PART 87—AVIATION SERVICES

General Operator Requirements

In the matter of amendment of Part 87 of the rules to conform the language of § 87.133 to that of § 13.61(g)(6) with respect to transmitter power limitations imposed upon radiotelephone operators.

1. Section 13.61(g)(6) of the rules, which sets forth one of several enumerated limitations on the scope of operating authority enjoyed by a radiotelephone third-class operator, specifically prohibits a third-class radiotelephone permit holder from operating an aircraft station at which the installation is not used solely for telephony, or at which the power is more than 250 watts carrier power or 1,000 watts peak envelope power. Section 87.133 of the rules, which sets forth general operator requirements for

stations in the Aviation Services, provides for certain limitations on the use of third-class radiotelephone permits with respect to the operation of such stations. However, the limitations set forth in § 87.133 do not explicitly include any limitations on transmitter power, comparable to the ones explicitly enumerated in § 13.61(g)(6).

2. Although it is clear that the scope of operating authority enjoyed by a third-class operator is limited by the transmitter restrictions found in §13.61 (g)(6), there is a need, for the convenience of the public, to explicitly include these restrictions as part of the language of § 87.133. The attached Appendix amends Part 87 by including in § 87.133 the restrictions found in § 13.61(g)(6), and fulfills this need.

3. The amendment adopted herein is editorial in nature, and hence the prior notice, procedure, and effective date provisions of 5 U.S.C. 553 do not apply. Authority for the promulgation of the amendment is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and § 0.231(d) of the Commission's rules.

4. Accordingly, Part 87 of the Commission's rules is amended as below, effective September 21, 1973.

Adopted September 5, 1973.

Released September 6, 1973.

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

Part 87 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 87.133 is amended to read as follows:

§ 87.133 General operator requirements.

(a) Except as provided for in §§ 87.135, 87.139 or as limited on the face of the operator license or permit, all stations in the Aviation Services shall be operated by persons holding any class of commercial radio operator liecnse or permit issued by the Commission: *Provided*, That,

(1) Only a person holding a third-class or higher operator permit shall operate aircraft stations

(i) Utilizing frequencies below 30 MHz not exclusively allocated to the aeronautical mobile service, or

(ii) Utilizing frequencies above 30 MHz not allocated exclusively to aeronautical mobile serviecs and which are assigned for international use; and

(2) Only a person holding a second-class radiotelephone or higher operator permit shall operate an aircraft station at which the installation is not used solely for telephony, or at which the power is more than 250 watts carrier power or 1,000 watts peak envelope power.

(b) The licensed operator of a land or aeronautical public service station using telephony may permit other persons to transmit or to communicate under his direct supervision and responsibility over the facilities of the station in accordance with the terms of the station license.

[FR Doc.73-19592 Filed 9-13-73;8:45 am]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 73-9; Notice 2]

PART 570—VEHICLE IN USE INSPECTION STANDARD

Correction

In FR Doc. 73-18720, appearing at page 23949 in the issue for Wednesday, September 5, 1973, the paragraph that immediately follows § 570.5(c) should read as set forth below:

Inspection procedure.—Measure the distance (A) from the free pedal position to the floorboard or other object that restricts brake pedal travel. Depress the brake pedal, and with the force applied measure the distance (B) from the depressed pedal position to the floorboard or other object that restricts pedal travel.

Determine the percentage as $\frac{A-B}{A} \times 100$.

The engine must be operating when power-assisted brakes are checked. The pedal reserve check is not required for vehicles equipped with full power (central hydraulic) brake systems, or to vehicles with brake systems designed to operate with greater than 80 percent pedal travel.

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[S.O. 1150]

PART 1033—CAR SERVICE

Kansas City Southern Railway Co. et al.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 10th day of September 1973.

It appearing, that The Kansas City Southern Railway Company (KCS) is unable to operate over its Lake Charles, Louisiana, branch because of destruction by fire of its bridge over the Houston River; that shippers served by the KCS are thereby deprived of railroad service; that KCS service to Lake Charles can be acomplished by operation by the KCS over certain tracks of the Southern Pacific Transportation Company (SPT), the Sabine River & Northern Railroad Company (SRN), and the Missouri Pacific Railroad Company (MP); that the SPT, SRN, and MP have consented to use of said tracks by the KCS; that operation by the KCS over the aforementioned tracks of the SPT, SRN, and MP is necessary in the interest of the public and the commerce of the people; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1150 Service Order No. 1150.

(a) *The Kansas City Southern Railway Company authorized to operate over certain tracks of Southern Pacific Transportation Company, over certain tracks of Sabine River & Northern Railroad Company, and over certain joint tracks of Sabine River & Northern Railroad Company and Missouri Pacific Railroad Company.* The Kansas City Southern Railway Company (KCS) be, and it is hereby, authorized to operate over tracks of the Southern Pacific Transportation Company (SPT) between Lake Charles, Louisiana, and Echo, Texas, thence over tracks of the Sabine River & Northern Railroad Company (SRN) between Echo, Texas, and SRN milepost 12.8; thence over joint tracks of the SRN and the Missouri Pacific Railroad Company (MP) between SRN milepost 12.8 and Mauriceville, Louisiana.

(b) *Application.*—The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates applicable.*—Inasmuch as this operation by the KCS over tracks of the SPT, over tracks of the SRN, and over joint tracks of the SRN and the MP is deemed to be due to carriers' disability, the rates applicable to traffic moved by the KCS over these tracks of the SPT, SRN, and MP shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.*—This order shall become effective at 11:59 p.m., September 10, 1973.

(e) *Expiration date.*—The provisions of this order shall expire at 11:59 p.m., September 30, 1973, unless otherwise modified, changed, or suspended by order of this Commission.

(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 copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the 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 order shall 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.73-19620 Filed 9-13-73;8:45 am]

SUBCHAPTER B—PRACTICE AND PROCEDURE

[Ex Parte 279]

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

Public Offerings (Form of Offering Circular Required for Public Sales of Securities

Order. At a general session of the Interstate Commerce Commission, held at its office in Washington, D.C., on the 5th day of September 1973.

It appearing, that the Commission, on the date hereof, has made and set forth its report in this proceeding setting forth its conclusions and findings and its reasons therefor, which report is hereby referred to and made a part hereof;

It further appearing, that since the proposed amendments and additions to existing regulations relate to matters of practice and procedure resulting from the herein proceeding, further notice and public proceedings under 5 U.S.C. 533 are not necessary and good cause exists for making the amendments and additions effective on or before November 13, 1973.

It is ordered, That offering circulars, hereby required, issued in connection with public sales of securities under section 20a or 214 of the Interstate Commerce Act, shall henceforth be in the form prescribed by the Commission in this proceeding.

It is further ordered, That part 1115 of Subchapter B of Chapter X, Title 49 of the Code of Federal Regulations be, and it is hereby, amended by adding new material[1] to Form BF–6, referred to in § 1115.1;

It is further ordered, That this order shall become effective on or before November 13, 1973; and

It is further ordered, That notice of this order shall be given to the general public by depositing a copy of this notice in the Office of the Secretary of this Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73–19621 Filed 9–13–73;8:45 am]

[Ex Parte No. 275]

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

Expanded Definition of "Securities"

Correction

In FR Doc. 73–18749 appearing on page 23953 in the issue of Wednesday, September 5, 1973, make the following change: In the third paragraph from the end of the document, the effective date should read "November 5, 1973," instead of "October 23, 1973".

[1] Filed as part of the original document.

Title 50—Wildlife and Fisheries

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

PART 32—HUNTING

Kirwin National Wildlife Refuge, Kansas

The following regulation is issued and is effective September 14, 1973.

§ 32.1 Opening of wildlife refuge areas to hunting; addition to open area.

KANSAS

KIRWIN NATIONAL WILDLIFE REFUGE

The public hunting area on the Kirwin National Wildlife Refuge has been increased from 3,300 acres to 3,700 acres.

Properly described this addition includes all lands within the refuge and above the lake elevation, south along the section line common to sections 33 and 34, T 4S, R 17W, and sections 2 and 3, T 5S, R 17W, to the refuge boundary; thence east one mile to the section line common to sections 1 and 2, T 5S, R 17W; thence north to the lake shore; thence northwest following the water line to the beginning point.

This addition will be open for the hunting of all species previously authorized under §§ 32.11, 32.21, and 32.31 of this chapter.

KEITH S. HANSEN,
Refuge Manager, Kirwin National Wildlife Refuge, Kirwin, Kansas.

AUGUST 22, 1973.

[FR Doc.73–19547 Filed 9–13–73;8:45 am]

PART 32—HUNTING

Benton Lake National Wildlife Refuge, Montana

The following regulations are issued and are effective on September 14, 1973. These regulations apply to public hunting on portions of the Benton Lake National Wildlife Refuge.

Public hunting of geese, ducks, coots, mergansers and Wilson's snipe on the Benton Lake National Wildlife Refuge, Montana, is permitted only on areas designated by signs as open to public hunting. This open area is delineated on maps available at refuge headquarters.

Hunting shall be in accordance with all applicable state and federal regulations governing the hunting of the aforementioned species subject to the following special conditions:

1. Vehicle travel is restricted to existing gravel surface roads.

2. During the period October 6 through November 18, 1973, all hunters will be required to register at the designated check station prior to entering the hunting area.

3. During the period October 6 through November 18, 1973, all hunters will be required to check out by completing information forms concerning their hunt and by presenting their bag to refuge personnel for species identification.

4. On all even numbered days during the period October 6 through November 18, hunters may not possess or use shells other than 12 guage, iron shot, heavy loads, 1½ ounces of shot, No. 4 shot, which will be available for sale at the official check station. Specific days for use of iron shot are October 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, November 2, 4, 6, 8, 10, 12, 14, 16, 18, 1973.

5. On all odd numbered days during the period October 6 through November 18, hunters may not possess or use iron shot shotgun shells. Specific days for non-use of iron shot shells are October 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, November 1, 3, 5, 7, 9, 11, 13, 15, 17, 1973.

In order to avoid disruption of the Bureau's pilot iron shot program and continue the collection of important data and for the further reason that the waterfowl hunting season in this area opens on October 6, it is determined that this regulation shall take effect in less than 30 days from date of publication and that notice of public procedures thereof is impractical, unnecessary and contrary to public interest, thus falling within the exceptions of (5 U.S.C. 553(b)(3)(B)), and that these regulations shall be effective on October 6, 1973.

The provisions of this special regulation supplement to regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through January 6, 1974.

LYLE A. STEMMERMAN,
Refuge Manager, Benton Lake National Wildlife Refuge, Great Falls, Montana.

SEPTEMBER 7, 1973.

[FR Doc.73–19548 Filed 9–13–73;8:45 am]

Title 6—Economic Stabilization

CHAPTER I—COST OF LIVING COUNCIL

PART 150—COST OF LIVING COUNCIL PHASE IV PRICE REGULATIONS

Petroleum and Petroleum Products

Subpart L of Part 150 of Title 6 of the Code of Federal Regulations is amended in §§ 150.355(c), 150.356, 150.357, and 150.358(g).

Section 150.355(c) is amended to allow refiner-retailers to increase ceiling prices for retail sales of No. 2 heating oil on a monthly basis to reflect, on a dollar-for-dollar basis, increases in costs of imported No. 2 heating oil incurred in the preceding month. This provision corrects Subpart L as issued on August 17, 1973, which inadvertently omitted refiner-retailers in § 150.355. This amendment implements the Council's intention

to provide the same option for refiner-retailers as afforded retailers and reseller-retailers in § 150.355(d)(2) as originally published. As amended, therefore, Subpart L provides that refiner-retailers, reseller-retailers and retailers of No. 2 heating oil may adjust ceiling prices for No. 2 heating oil on the first day of each month to reflect increased costs of imports of No. 2 heating oil incurred during the preceding month, provided that a report, on forms prescribed by the Council, is made to the Internal Revenue Service by the 5th day of the month after any such price increase.

The new § 150.356 replaces existing §§ 150.356 and 150.357. It prescribes with greater specificity the requirements governing the inclusion of a refiner's increased costs of imports and domestic crude petroleum in the computation of its ceiling prices for retail sales of gasoline, No. 2–D diesel fuel and No. 2 heating oil and the base prices for covered products.

Section 150.356(b) adds a new subparagraph containing definitions used in the section. Attention is particularly directed to the definitions of "landed cost" in which the Council has set out more precise methods for determining both the costs of imported petroleum products and transportation costs for those products. In particular, this definition is intended to make clear the rules for calculating these costs in transactions between affiliated entities. Costs are established in certain cases of transactions among affiliated entities of the same firm by requiring use of accounting procedures generally accepted and consistently and historically applied by the firm rather than treating such transactions as "arms-length" transactions involving either posted prices or imputed world scale transportation rates. The Council intends to review the accounting procedures which firms subject to this section apply in making the necessary computations and reserves the right to require firms to modify their accounting procedures for purposes of this provision where the Council concludes that the accounting practices used by the firms are not a fair reflection of the actual costs incurred. Changes in business practices designed to frustrate the purposes of these rules may also be disallowed by the Council.

Another change from the regulations, as originally published on August 17, 1973, is substitution of a monthly cost period for each type of product to measure both base costs and current costs. The original provision established a single date (i.e., May 15, or July 31) on which to measure cost. This change eliminates the need for using imputed costs in many cases and will provide a more realistic and accurate basis for measurement of increased costs of imports and domestic crude petroleum.

Section 150.356 provides a more precise method for calculating the allocation of increased costs of imports and domestic crude petroleum to various products. The Council has furnished in this amendment, a mathematical formula which firms must use in calculating the dollar amount of the increased costs of imports and domestic crude petroleum. The formula is intended to further implement the Council's intention of allowing recovery of increased costs of imports and domestic crude on a dollar-for-dollar basis. The substance of the corresponding provisions in the regulations, as originally published on August 17, 1973, has been generally retained. Having been made aware of some uncertainty among firms as to precisely what form of computations should be employed, the Council developed this formula to provide explicit guidance and to avoid misunderstandings.

The Council believes that the clarifications embodied in these amendments provide assurance that increased costs of imports can be fully recovered on a dollar-for-dollar basis. This assurance should encourage the importation of the additional quantities of these products which will be required in the months immediately ahead.

Section 150.356 is further amended to make clear that increased costs of imports incurred in a particular month cannot be recouped in a period of time less than the next succeeding month, but that to the extent that recoupment does not occur in its entirety in the next succeeding month, the unrecouped portion may be recovered in a later month.

Because the purpose of these amendments is to provide immediate guidance and information with respect to the decisions of the Council, the Council finds that publication in accordance with normal rule making procedure is impracticable and that good cause exists for making these amendments effective in less than 30 days.

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

In consideration of the foregoing Chapter I of Title 6 of the Code of Federal Regulations is amended as follows, effective 11:59 p.m., e.s.t., August 19, 1973.

Issued in Washington, D.C., on Sepber 12, 1973.

JOHN T. DUNLOP,
Director,
Cost of Living Council.

1. Section 150.355(c) is amended to read as follows:

§ 150.355 Retail sales of gasoline, No. 2–D diesel fuel and No. 2 heating oil.

* * * * *

(c) *Ceiling prices: refiner-retailers.*—(1) The ceiling price for retail sales of gasoline of a particular octane number, No. 2–D diesel oil and No. 2 heating oil by a refiner-retailer at each outlet where the refiner-retailer sells such item is (i) the weighted average price at which each such item was lawfully priced in transactions on May 15, 1973, at each such outlet plus (ii) increased costs of imports incurred between May 15, 1973, and August 1, 1973 and calculated pursuant to § 150.356(d)(1). If the refiner-retailer first offered gasoline, No. 2–D diesel fuel or No. 2 heating oil at a particular outlet after May 15, 1973, the price at which each such item was priced in transactions on May 15, 1973, at the nearest comparable outlet shall be used in computing the ceiling price. In computing the ceiling price, a firm may not exclude any temporary special sale, deal or allowance in effect on May 15, 1973.

(2) Notwithstanding the provisions of paragraph (c)(1) of this section, monthly adjustments to the ceiling prices of No. 2 heating oil may be made on the first day of each month beginning with September 1973 when calculated pursuant to § 150.356(d)(2) to reflect increased costs of imported No. 2 heating oil. Any refiner-retailer which increases the ceiling price on No. 2 heating oil pursuant to this subparagraph must submit a report in accordance with the forms and instructions issued by the Cost of Living Council by the fifth day of the month in which the ceiling is increased.

2. Section 150.356 is amended to read as follows:

§ 150.356 Allocation of refiner's increased costs of imports and domestic crude petroleum.

(a) *Scope.*—This section prescribes the requirements governing (1) the inclusion of a refiner's increased costs of imports in the computation of its ceiling prices for retail sales of gasoline, No. 2–D diesel fuel, and No. 2 heating oil, and base prices for covered products; and (2) the inclusion of a refiner's increased costs of domestic crude petroleum and purchased domestic petroleum products commingled for accounting purposes in the computation of its base prices for covered products.

This section does not apply to increased costs of imports and increased costs of domestic crude petroleum for products a refiner resells as a refiner-reseller pursuant to § 150.359.

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

"Cost of domestic crude petroleum" means (1) for purposes of arms-length transactions the purchase price provided that it conforms with the requirements of § 150.354; (2) for purposes of a transaction between affiliated entities, the posted price for the new crude petroleum and the posted price or price determined pursuant to § 150.354(c)(3) for base production control level crude petroleum. If there is no posted price in a particular field, the related price for that grade of new domestic crude petroleum which is most similar in kind and quality at the nearest field for which the price is posted and the price determined pursuant to § 150.354(c)(3) for base production control level crude petroleum.

"Firm" means a parent and the consolidated and unconsolidated entities (if any) which it directly or indirectly controls.

"Increased costs of domestic crude petroleum" means the difference between the total cost of domestic crude petroleum during the month of measurement and the total cost of domestic crude petroleum during the month of May, 1973. Increased costs of domestic crude petroleum also means the difference between the total cost of a purchased domestic petroleum product commingled for accounting purposes during the month of measurement and the total cost of that product commingled for accounting purposes during the month of May, 1973.

"Increased costs of imports" means, for an imported product, the difference between the total landed cost for that product landed during the period of measurement and the total landed cost of that product landed during the month of May 1973.

"Landed cost" means: (1) For purposes of complete arms-length transactions, the purchase price at the point of origin plus the actual transportation cost. (2) For purposes of products purchased in arms-length transactions and shipped pursuant to a transaction between affiliated entities, the purchase price at the point of origin plus the transportation cost computed by use of the accounting procedures generally accepted and consistently and historically applied by the firm concerned. (3) For purposes of products purchased in a transaction between affiliated entities and shipped pursuant to an arms-length transaction, the cost of the product computed by use of the customary accounting procedures generally accepted and consistently and historically applied by the firm concerned plus the actual transportation cost. (4) For purposes of products purchased and shipped pursuant to a transaction between affiliated entities, the costs of the product and the transportation, both computed by use of the customary accounting procedures generally accepted and consistently and historically applied by the firm concerned.

"Special products" means gasoline, No. 2–D diesel fuel and No. 2 heating oil.

"Transactions between affiliated entities" means all transactions between entities which are part of the same firm and transactions with entities in which the firm has a beneficial interest to the extent of entitlement of covered product by reason of the beneficial interest.

(c) *Allocation of increased costs*—(1) *General rule.*—In computing its ceiling prices and base prices for covered products pursuant to §§ 150.355(c) and 150.–358(g), a refiner may increase its May 15, 1973, selling prices to each class of purchaser on the first day of each month beginning with September 1973 by an amount to reflect the increased costs of imports and increased costs of domestic crude petroleum allowable under paragraphs (d), (e), and (f) of this section, provided that the amount of increased costs used in computing a ceiling price or base price is calculated by use of the general formula set forth in paragraph (c)(2) of this section. If, in any month beginning with September 1973, a firm establishes a base price for any covered product or a ceiling price for No. 2 heating oil which does not include the entire amount of increased costs calculated pursuant to this formula and allowable under paragraphs (d), (e), and (f) of this section for a particular item, the unused portion may be added to the May 15, 1973, selling price to compute the respective base price or ceiling price for a subsequent month.

For purposes of this subpart, transactions between affiliated entities may be used to calculate increased costs. Whenever a firm uses a landed cost which is computed by use of its customary accounting procedures, the Council may allocate such costs between the affiliated entities if it determines that such allocation is necessary to reflect the actual costs of those entities or the Council may disallow any costs which it determines to be in excess of the proper measurement of costs. Costs incurred in transactions in which covered products are obtained which are resold without being refined by the firm or commingled for accounting purposes may not be included in the calculation of the general formula.

(2) *General formula.*

$$D_{ij}{}^{n}=\frac{\left[A\times\frac{S_i{}^{n}}{S^{n}}+B\right]\frac{S_{ij}{}^{n}}{S_i{}^{n}}}{q_{ij}{}^{n}}.$$

Where:

D = The dollar increase that can be applied to each May 15, 1973 selling price of the covered product concerned to each class of purchaser to compute either the ceiling price or base price to each class of purchaser.

p = The unit price of a covered product other than crude petroleum. For imported products, the landed cost.

q = The quantity or volume of a covered product other than crude petroleum.

C = The unit cost of crude petroleum.

Q = The quantity or volume of crude petroleum.

$S=\sum_{i=1}^{4}\sum_{j=1}^{3}[p_{ij}q_{ij}]$ which is the total sales of all covered products other than crude petroleum.

$S_i=\sum_{j=1}^{3}[p_{ij}q_{ij}]$ which is the total sales of a specific covered product or products other than crude petroleum.

$S_{ij}=p_{ij}q_{ij}$ which is the total sales of a specific covered product or products other than crude petroleum at a specific level of distribution. For ceiling prices, j = 1. For base prices, j = 2 or 3, as appropriate, for special products and j = 1, 2 or 3 for other covered products.

$$A=\sum_{k}[C_k{}^{t}Q_k{}^{t}-C_k{}^{o}Q_k{}^{o}-X^{o}(Q_k{}^{t}-Q_k{}^{o})]$$

Where:

$$X^{o}=\frac{\sum_{k=1}^{2}[C_k{}^{o}Q_k{}^{o}]}{\sum_{k=1}^{2}[Q_k{}^{o}]}$$

which is the average unit cost of crude petroleum. For ceiling price determinations, K = 2 except in computing X^{o}.

$$B=\sum_{k}[p_{ik}{}^{t}q_{ik}{}^{t}-p_{ik}{}^{o}q_{ik}{}^{o}-Y^{o}(q_{ik}{}^{t}-q_{ik}{}^{o})]$$

Where:

$$Y^{o}=\frac{\sum_{j=1}^{3}[p_{ij}{}^{o}q_{ij}{}^{o}]}{\sum_{j=1}^{3}[q_{ij}{}^{o}]}-\frac{\sum_{j=1}^{2}[p_{ij}{}^{o}q_{ij}{}^{o}(p_{ij}{}^{o}-p_{i2}{}^{o})]}{\sum_{j=1}^{2}[p_{ij}{}^{o}q_{ij}{}^{o}]}$$

The type of covered product is referenced by the subscript i:

i = 1 represents No. 2 heating oil.
i = 2 represents gasoline.
i = 3 represents No. 2–D diesel fuel.
i = 4 represents all covered products other than special products.

The category of purchaser or level of distribution is referenced by the subject j:

j = 1 represents sales to ultimate consumers.
j = 2 represents sales to retailers.
j = 3 represents sales to wholesalers.

The origin of a purchased covered product is referenced by the subscript k:

k = 1 represents domestic origin.
k = 2 represents foreign origin or import.

SUPERSCRIPTS

n = The fiscal quarter of the preceding year corresponding to the respective period of measurement.
o = The month of May 1973.
t = The period of measurement. For ceiling prices other than No. 2 heating oil, t = the month of July 1973. For ceiling prices of No. 2 heating oil, t = the month of July 1973 as to costs derived from imported crude petroleum and the month of measurement for imported No. 2 heating oil. For base prices, t = the month of measurement. (The month of measurement is the month preceding the current month).

u = The current month for base prices and the ceiling price of No. 2 heating oil and the month of July 1973 for the ceiling prices of gasoline and No. 2-D diesel fuel. Quantities calculated for the current month will be estimates which should be based on the best available data.

MATHEMATICAL TERM

$\sum$ Represents a calculation by summing with respect to the designated subscript all terms designated in the superscript.

(d) *Measurement of increased costs of imports for inclusion in computation of ceiling prices of special products*—(1) *Adjustment to May 15, 1973, selling price.*—In computing its ceiling prices for a special product, a refiner may increase its May 15, 1973, selling price to each class of purchaser by an amount to reflect the increased costs of imported crude petroleum and imported special product attributable to retail sales of that special product using the differential between the month of July 1973 and the month of May 1973.

(2) *Subsequent adjustments to the ceiling price of No. 2 heating oil.*—Notwithstanding the provisions of subparagraph (1), in computing the ceiling price for No. 2 heating oil, a refiner may, for any month subsequent to August 1973, increase its May 15 selling price to each class of purchaser by an amount to reflect the increased costs of imported crude petroleum using the differential between the month of July 1973 and the month of May 1973 and the increased costs of imported No. 2 heating oil using the differential between the preceding month and the month of May 1973, attributable to retail sales, provided that the refiner uses the amount derived from this computation in lieu of the amount calculated in paragraph (d)(1) of this section. In computations pursuant to this subparagraph, the term S_i^u/S^u should be computed as in paragraph (d)(1) of this section to correspond with the month of July while the term S_{ij}^u/S_i^u should be computed to correspond to the appropriate month of measurement used for determining the increased costs of imported No. 2 heating oil.

(e) *Measurement of increased costs of imports and domestic crude petroleum for inclusion in computation of base prices of covered products other than special products.*—In computing base prices for a covered product other than a special product, a refiner may, for any month subsequent to August 1973, increase its May 15 selling price to each class of purchaser to reflect the increased costs of imports and the increased costs of domestic crude petroleum attributable to sales of covered products using the differential between the month of measurement and the month of May 1973, provided that the amount of increased costs included in computing base prices of a particular covered product other than a special product must be equally applied to each class of purchaser. To the extent that a refiner does not allocate increased costs pursuant to this paragraph, it may include that part of its increased costs attributable to special products in computing its base prices for those products pursuant to paragraph (f) of this section except that if any base price of a special product is increased pursuant to paragraph (f) then the part of increased costs attributable to retail sales of special products after July 31, 1973, may not be included in the ceiling price of No. 2 heating oil or the base price of any covered product.

(f) *Measurement of increased costs of imports and domestic crude petroleum for inclusion in computation of base prices of special products.*—In computing base prices for a special product, a refiner may, for any month subsequent to August 1973, increase its May 15 selling price to each class of purchaser by an amount to reflect the increasd costs of imports and increased costs of domestic crude petroleum attributable to sales of that special product at other then retail using the differential between the month of measurement and the month of May 1973 provided that such increased costs have not been otherwise allocated pursuant to paragraph (e) of this section.

§ 150.357 [Revoked]

3. Section 150.357 is revoked.

4. Section 150.358(g) is amended to read as follows:

§ 150.358 Price rule: Refiners.

* * * * *

(g) *Base price.*—The base price for a particular month for sales of an item by a refiner is the weighted average price at which the item was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973, or if none occurred on that date, in the transaction next preceding May 15, 1973, plus increased costs of imports and domestic crude petroleum incurred between the month of measurement and May 15, 1973, and measured pursuant to the provisions of § 150.356. In computing the base price, a firm may not exclude any temporary special sale, deal, or allowance in effect on May 15, 1973.

[FR Doc.73-19728 Filed 9-12-73;4:38 pm]

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 AGRICULTURE

Office of the Secretary

[7 CFR Part 20]

EXPORTERS OF CERTAIN COMMODITIES

Proposed Reporting Requirements

Notice is hereby given that, purusant to section 812 of the Agriculture and Consumer Protection Act of 1973 (Pub. L. 93-86), it is proposed to issue regulations requiring exporters of certain commodities to report information regarding export sales contracts entered into with respect to such commodities. Section 812 provides that exporters shall make reports covering export sales of wheat, wheat flour, feed grains, oilseeds, cotton and products thereof, and any other commodities the Secretary may designate. The commodities and products thereof for which reports will be required will be set forth in Appendix 1, together with the marketing year and unit of measure to be used in making reports with respect to each commodity. Initially reports will be required with respect to export sales contracts for rice as well as the commodities specified in section 812. Appendix 2 [1] contains the proposed forms on which reports are to be submitted.

Section 812 provides a method to effectively monitor export commitments so that commodities in short supply can be detected, to monitor the foreign demand for certain commodities, and to provide the public with this information.

An open meeting will be held in room 218-A (Administration Building), U.S. Department of Agriculture, 14th and Independence Avenue Northwest, Washington, D.C., on September 19, 1973, at 1:30 p.m., to discuss the proposed regulation with interested persons.

Interested persons may also submit data, views, and comments in connection with the proposal in duplicate to the Estimates Division, Statistical Reporting Service, U.S. Department of Agriculture, Washington, D.C. 20250. In order to be assured of consideration, submissions must be received on or before September 21, 1973. All written submissions made pursuant to this notice will be made available for public inspection in the Office of the Director at the above address during regular business hours (7 CFR 1.27(b)).

The proposed regulations are as follows:

Sec.
20.1 General.
20.2 Administration.
20.3 Delegation of authority.
20.4 Definitions.
20.5 Announcements of commodities subject to reports.
20.6 Submission of reports.
20.7 Confidentiality of reports.
20.8 Failure to report.
20.9 Records.
20.10 Place of submission of reports.
20.11 Additional reports.

AUTHORITY: Sec. 812 of the Agriculture and Consumer Protection Act of 1973, Pub. L. 93-86.

§ 20.1 General.

The regulations of this Part 20 are issued to implement the export sales reporting requirements of section 812 of the Agriculture and Consumer Protection Act of 1973. The Act provides as follows:

All exporters of wheat and wheat flour, feed grains, oilseeds, cotton and products thereof, and other commodities the Secretary may designate produced in the United States shall report to the Secretary of Agriculture, on a weekly basis, the following information regarding any contract for export sales entered into or subsequently modified in any manner during the reporting period: (a) Type, class, and quantity of the commodity sought to be exported, (b) the marketing year of shipment, (c) destination, if known. Individual reports shall remain confidential but shall be compiled by the Secretary and published in compilation form each week following the week of reporting. All exporters of agricultural commodities produced in the United States shall upon request of the Secretary of Agriculture immediately report to the Secretary any information with respect to export sales of agricultural commodities and at such times as he may request. Any person (or corporation) who knowingly fails to report export sales pursuant to the requirements of this section shall be fined not more than $25,000 or imprisoned not more than one year, or both. The Secretary may, with respect to any commodity or type or class thereof during any period in which he determines that there is a domestic supply of such commodity substantially in excess of the quantity needed to meet domestic requirements, and that total supplies of such commodity in the exporting countries are estimated to be in surplus, and that anticipated exports will not result in excessive drain on domestic supplies, and that to require the reports to be made will unduly hamper export sales, provide for such reports by exporters and publishing of such data to be on a monthly basis rather than on a weekly basis.

§ 20.2 Administration.

The regulations of this part will be administered by the Statistical Reporting Service (SRS) under the general supervision of the Administrator, SRS. Information pertaining to these regulations may be obtained from the office specified in § 20.10.

§ 20.3 Delegation of authority.

Authority is hereby delegated to the Administrator to promulgate amendments and revisions to the regulations in this part.

§ 20.4 Definitions.

As used in these regulations and in all instructions, forms, and documents pertaining hereto, the words and phrases defined in this section shall have the meaning assigned to them as follows:

(a) *Administrator.*—The Administrator, Statistical Reporting Service, U.S. Department of Agriculture.

(b) *Buy-back contract.*—A transaction under which a reporting exporter having sold a commodity for export to a foreign buyer liquidates the export sale contract by making an off-setting purchase of the same kind of commodity from the same foreign buyer.

(c) *Commodity.*—Wheat and wheat flour, feed grains, oil seeds, cotton, and products thereof and any other agricultural commodity the Secretary may designate. "Commodity" shall also mean a commodity having an identifying characteristic as described in any announcement issued pursuant to § 20.5 such as class(es) of wheat, or staple length(s) of cotton. "Commodity" shall refer only to a commodity produced in the United States or a product processed in the United States from a commodity produced in the United States.

(d) *Country of destination.*—(1) Any country outside the United States or, (2) any territory or possession of the United States. Country of destination shall be designated "unknown" if such information is not available at time of compiling a report.

(e) *Export.*—A shipment of a commodity from the United States destined to a country specified in paragraph (d) of this section. The commodity shall be deemed to have been exported on the date of the applicable export carrier on-board bill of lading or the date the commodity is received for shipment as specified on the bill of lading in the case of a commodity received for shipment in a lash barge or containerized van if a through on-board bill of lading is issued for shipment to a country specified in paragraph (d) of this section.

(f) *Export carrier.*—The vessel on which a commodity is exported from the United States to a country specified in paragraph (d) of this section, or if export is by railcar, truck, or airplane, "export carrier" means such railcar, truck, or airplane.

(g) *Exports for exporter's own account.*—Shipments made by the reporting exporter which are unsold at the

[1] Filed as part of the original document.

time of export, shipments on consignment to selling agents of the reporting exporter for subsequent sale for the account of the reporting exporter, shipments by a reporting exporter to a country outside the United States for his own account, shipments by the reporting exporter that have not been allocated to any outstanding export sale, and shipments from the United States to Canada in bond for subsequent shipment to a third country.

(h) *Export sale.*—A transaction entered into between a reporting exporter and a foreign buyer whose place of business with respect to the transaction is outside the United States. The transaction must represent a written agreement under which (1) the exporter agrees to export the commodity, (2) the foreign buyer agrees to receive the commodity, (3) there is a firm dollar and cent price or an agreed formula for determining a price based on a premium or discount to a price in a designated future delivery month at a recognized contract market, and (4) payment will be made to the reporting exporter by the foreign buyer for delivery of the commodity. If the transaction is concluded with an agent (other than an employee) of the foreign buyer and the agent's place of business is in the United States, the resulting contract shall be construed to be between the reporting exporter and the foreign buyer. The quantity of "outstanding export sale" means the quantity not yet exported under an export sale. Export sale shall not include a transaction which is conditioned upon the imposition or non-imposition of export controls and such a transaction shall not be reported under these regulations.

(i) *Foreign buyer and foreign seller.*—A person whose place of doing business with respect to the transaction is outside the United States.

(j) *Marketing year.*—The reporting period specified for a commodity in Appendix 1.

(k) *Optional origin contracts.*—An export sale contract between a reporting exporter and a foreign buyer under which the reporting exporter has the option of exporting the commodity from the United States or from one or more other exporting countries or an export sale contract under which no origin is specified.

(l) *Person.*—An individual, partnership, corporation, association or other legal entity.

(m) Purchases from foreign sellers. The purchase of a commodity from a seller whose place of business with respect to the transaction is outside the United States when the terms of the contract provide that the commodity to be delivered under the contract will be exported from the United States or where the seller has the option of exporting the commodity from the United States or from one or more other exporting countries.

(n) *Quantity.*—The actual contract quantity (exclusive of any upward or downward tolerance) specified in the agreement between the reporting exporter and foreign buyer or seller.

(o) *Reporting exporter.*—A person who is engaged in the United States in the business of selling for export any commodity subject to these regulations, who maintains a bona fide business office for such purpose in the United States, who has an agent in the United States upon whom service of judicial process may be made, and who sells a commodity to a foreign buyer irrespective of whether or not such person may appear as the shipper on the export documentation or whether or not such person is required to file a Shipper's Export Declaration. A reporting exporter shall not include agents of either the reporting exporter or foreign buyer, brokers, or freight forwarders unless such agents, brokers or freight forwarders are acting in the capacity of a principal.

(p) *United States.*—All of the 50 States, the District of Columbia and Puerto Rico.

§ 20.5 Announcement of commodities subject to reports.

Commodities for which reports are required under these regulations are set forth in Appendix 1 below. Any change therein will be made by publication in the FEDERAL REGISTER of an amendment thereto, and, in addition, announcement of such change will be made through the press and ticker service. The unit of measure to be used in reporting the commodity, the beginning and ending dates of the marketing year for each commodity, and any other information deemed necessary to be included in the report will be specified in Appendix 1 below and amendments thereto and in the announcements through press and ticker service.

§ 20.6 Submission of reports.

(a) *Weekly reports.*—For each commodity for which reports are required under these regulations, the reporting exporter shall file weekly with the office specified in § 20.10 and not later than the time specified in paragraph (m) of this section, a report by marketing year on C.E. 06–0095 "Report of Export Sales and Exports," and on C.E. 06–0096, "Report of Optional Origin Sales," setting forth the information required by this section and by the instructions to the forms as set forth in Appendix 2 below. Each report shall contain the full business name, address and telephone number of the reporting exporter, the name and signature of the person submitting the report on behalf of the reporting exporter and, in addition to the following, any other information required by Appendix 1 and Appendix 2 below:

(1) *United States origin sales only.*—(i) *Initial report.*—Total quantity of outstanding export sales by country of destination and exports for the exporter's own account that have not been applied to an export sale.

(ii) *Second and subsequent reports.*—(a) Total quantity of outstanding export sales from the previous report by country of destination.

(b) Quantity of export sales made during the week expressed in the specified unit of measure (do not include any tolerance). Include the quantity of any optional origin export sale for which an option was exercised during the week to export the commodity from the United States.

(c) Quantity of any purchases of the same kind of commodity made from foreign sellers during the week.

(d) Quantity of export sales canceled and quantity of buy-back contracts made during the week.

(e) Changes in destination during the week for sales and exports previously reported.

(f) Changes in the marketing year during the week for sales previously reported.

(g) Exports made against sales during the week.

(h) Total outstanding balance of export sales at the close of business for the current report.

(i) Total outstanding exports made for the reporting exporter's own account. Include shipments from the United States to Canada where the commodity will be in bond until exported from Canada to a third country.

(2) *Optional original sales (United States and other countries).*—(i) *Initial report.*—Total quantity of outstanding export sales by country of destination.

(ii) *Second and subsequent reports.* (a) Total quantity of outstanding export sales from the previous report by country of destination.

(b) Quantity of export sales made during the week expressed in the specified unit of measure (do not include any tolerance) by country of destination.

(c) Quantity of export sales for which an option was exercised during the week which would determine the origin of the commodity to be exported with the origin indicated on C.E. 06–0096 as the United States or other than the United States.

(d) Quantity of optional export sales canceled and the quantity of optional buy-back contracts made during the week.

(e) Changes in destination during the week for sales previously reported.

(f) Changes in the marketing year during the week for sales previously reported.

(g) Total outstanding balance of optional export sales for which an option has not been exercised at the time of compiling the report.

(b) *Exporters who are required to report.*—The reporting exporter has the sole responsibility of reporting any and all information required by these regulations. The following are examples of who shall be considered the reporting exporter for the purpose of these regulations. (Firm A in each example is a firm whose place of doing business with respect to the transaction is in the United States, and the commodity to be delivered under the purchase contract

is subject to these regulations. See § 20.4 (i) for definition of a foreign buyer and foreign seller).

(1) Firm A makes an export sale to Firm B whose place of doing business with respect to the transaction is also in the United States. Firm B has made or will make an export sale to a foreign buyer. In this case Firm A cannot report the sale to Firm B since Firm B's place of doing business with respect to the transaction is located in the United States. In this example, Firm B is required to report the sale to the foreign buyer.

(2) Firm A makes an export sale to a foreign buyer through the foreign buyer's agent (other than an employee of the foreign buyer) and the agent's place of doing business with respect to the transaction is in the United States. In this example Firm A is required to report the export sale since the resulting contract is between Firm A and the foreign buyer.

(3) Firm A consigns an export to his agent (other than an employee of Firm A). When the agent makes a sale to a foreign buyer, Firm A is required to report the sale. If the agent makes the sale to a firm whose place of doing business with respect to the transactions is in the United States, Firm A will not report the sale.

(4) Firm A makes a purchase from a foreign seller. In this example, Firm A is required to report the purchase.

(5) Firm A makes a purchase from an agent of a foreign seller and the agent's place of doing business with respect to the transaction is in the United States. In this example, Firm A is required to report the purchase. The agent cannot report the sale to Firm A since he is not a principal party in interest in the contract and the foreign seller is not required to make a report of the sale since he is not a reporting exporter.

(6) If a reporting exporter has a transaction not described in subparagraphs (1) through (5) of this paragraph and he is in doubt whether he should report the transaction, he should request a decision from the office specified in § 20.10.

(c) *Monthly reports.*—The information described in paragraph (a) of this section shall be reported monthly when specified by an announcement issued pursuant to § 20.5.

(d) *No change during reporting period.*—If the reporting exporter did not have any activity during a reporting period which would change his last report and his last report reflects his outstanding export sales and exports made for his own account, the reporting exporter is nevertheless required to file a new report showing the still outstanding export sales and exports made for his own account.

(e) *Contract terms.*—(1) The first report required by these regulations shall include a report showing certain contract terms of export sales and foreign purchases which are outstanding at the close of the reporting period. Subsequent reports of contract terms shall be filed when specified in an announcement issued pursuant to § 20.5. The report showing contract terms shall be filed on C.E. 06-0097, "Contract Terms Supporting Export Sales," and shall include the following:

(i) Reporting exporter's contract number.

(ii) Date of export sale.

(iii) Name of the foreign buyer and the country in which the buyer has his place of business with respect to the transaction.

(iv) Coast of export. For optional export origin sales also show the other countries covered by the export sales. If no other countries are specified in the export sale, so indicate.

(v) Delivery period specified in the export sale.

(vi) Delivery terms specified in the export sale (F.O.B., C.&F., etc.).

(vii) Actual quantity of the export sale.

(viii) Quantity not exported against the sale (do not include any tolerance).

(ix) On purchases from foreign sellers, show separately from export sales, the name of the foreign seller, the country in which the foreign seller has his place of business with respect to the transaction, and the terms of the purchase made from the foreign seller as described in subparagraph (1) (i), (ii) and (iv) through (viii) of this paragraph (e).

(f) *Unknown destinations at time of reporting.*—If a reporting exporter files a report showing unknown destinations, he shall be responsible for taking whatever action is necessary to determine the ultimate destination and to report the country of destination in his next report after the destination becomes known to him.

(g) *Export for exporter's own account.*—Exports for exporter's own account for which an export sale has not been made shall be reported separately from export sales. When an export sale is made for a commodity exported for the exporter's own account (excluding shipments to Canada in bond where an export sale has already been reported), the sale shall be reported as an export sale on the next report. A corresponding quantity shall be deducted from the quantity shown as exported for the exporter's own account on the previous report and a corresponding quantity shall be shown as an export against an export sale on the current report even though the export may not have been made during the current reporting period. For shipments to Canada in bond where the export sale has already been reported, deduct the quantity shipped from Canada from the quantity exported for the exporter's own account and include a corresponding quantity as an export against an export sale, even though the export mny not have been made during the reporting period.

(h) *Optional class or kind of commodity.*—If the export sale provides for an option as to the class or kind of commodity to be delivered under the export sale, the reporting exporter should report the particular class or kind of commodity expected to be exported.

(i) *Range in contract quantity.*—If the export sale provides for a range in quantity (e.g. 10,000 metric tons to 12,000 metric tons with or without a loading tolerance) with the reporting exporter or buyer having the option to declare a firm quantity at a later date, the reporting exporter shall report the maximum export sale quantity (exclusive of any loading tolerance). If a lesser quantity is exercised at a later date, the reporting exporter shall report the reduction as an amendment to an export sale previously reported by him.

(j) *Transfer of unexported balances from one marketing year to the next marketing year.*—If exports against an export sale are not complete by the end of the marketing year in which the commodity is being reported for export, the reporting exporter shall transfer the quantity not exported against the export sale to the next market ing year on the first report submitted after the beginning of the new marketing year.

(k) *Errors on previous reports.*—Whenever an exporter discovers an error or is advised by SRS of an error on a sale to the next marketing year on the prior report, he shall furnish a corrected report for that reporting period together with a complete explanation of such reporting error.

(l) *When reports are not required.*—(1) A reporting exporter shall submit reports only for those commodities for which he has outstanding export sales, has made exports for his own account for which an offsetting export sale has not been made and reported, or has made a purchase from a foreign seller.

(2) A reporting exporter may discontinue reporting for a commodity only when his actual exports and other required reporting of changes have reduced to zero all of his export sales, exports made for his own account, and purchases from foreign sellers. The reporting exporter shall report his zero balance prior to discontinuing reporting for the commodity involved.

(3) If a reporting exporter discontinues making reports because he has reached a zero balance for a particular commodity, he shall be responsible to commerce reporting again once he has made a new export sale or has made a new export for his own account or has made a new purchase from a foreign seller for that commodity.

(m) *Manner and time of reporting*—(1) *Manner.*—All reports must be filed in an original with the office specified in § 20.10. The original must be signed in an original signature by a person authorized to submit reports on behalf of the reporting exporter.

(2) *Time of filing reports*—(i) *Reports that are delivered in person.*—If the reports described in paragraph (a) of this section are delivered in person they must be received in the office specified in § 20.10 no later than 12:00 noon Washington time on each Thursday and

shall set forth the information described in paragraph (a) of this section as of the preceeding Sunday.

(ii) *Reports that are mailed.*—If the reports described in paragraph (a) of this section are mailed to the office specified in § 20.10, the envelope containing the reports must show that it was received by the U.S. Postal Service no later than 5:00 p.m. Monday (time zone at place of mailing) and shall set forth the information described in paragraph (a) of this section as of the preceeding Sunday. Do not use a meter to show the time or date mailed.

§ 20.7 Confidentiality of reports.

A reporting exporter's individual reports shall remain confidential and subject to examination only by designees of the Administrator of SRS. All reports filed by exporters will be compiled and published in compilation form each week following the week of reporting.

§ 20.8 Failure to report.

Any person who knowingly fails to report export sales pursuant to the requirements of these regulations shall be fined not more than $25,000 or imprisoned not more than one year, or both.

§ 20.9 Records.

Each reporting exporter shall establish and maintain accurate records as to all export sales of commodities subject to these regulations and to support the reports made under these regulations. Such records shall include, but shall not be limited to, export sales contracts or other agreements with the foreign buyer or foreign seller pursuant to which any export has or will be made; bills of lading or delivery documents evidencing all such exports and inspection and weight certificates relating thereto. Such records shall be available during regular business hours for inspection and audit by authorized employees of the United States Department of Agriculture and shall be preserved for three years after the date of export to which they relate.

§ 20.10 Place of submission of reports.

Reports required to be submitted under these regulations shall be addressed to or delivered to the following office:

Statistical Reporting Service, Export Sales Reports, U.S. Department of Agriculture, Room 0250, South Agriculture Building, 14th and Independence Avenue, Washington, D.C. 20250.

§ 20.11 Additional reports.

The reporting exporter shall file such additional reports as may be required from time to time with the office specified in § 20.10.

Signed at Washington, D.C., on September 11, 1973.

CARROLL G. BRUNTHAVER,
Acting Secretary.

APPENDIX 1—COMMODITIES SUBJECT TO REPORTS, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of Marketing year
Wheat—Hard red winter	Metric tons	July 1	June 30.
Wheat—Soft red winter	do	do	Do.
Wheat—Hard red spring	do	do	Do.
Wheat—Winter	do	do	Do.
Wheat—Durum	do	do	Do.
Wheat—Mixed	do	do	Do.
Wheat flour—72 percent type of extraction (including clears), bulgur, semolina, farina and malted wheat flour (All of these products of wheat to be reported as wheat flour).	do	do	Do.
Barley—Unmilled	do	do	Do.
Corn—Except seed, unmilled	do	Oct. 1	Sept. 30.
Rye—Unmilled	do	July 1	June 30.
Oats—Unmilled	do	do	Do.
Grain sorghums—Unmilled	do	Oct. 1	Sept. 30.
Soybeans	do	Sept. 1	Aug. 31.
Soybean oil cake and meal	do	Oct. 1	Sept. 30.
Soybean Oil including: Crude (including degummed), once refined, soybean salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	do	do	Do.
Flaxseed	do	July 1	June 30.
Linseed Oil—including raw, boiled, etc	do	do	Do.
Cottonseed	do	Aug. 1	July 31.
Cottonseed oil cake and meal	do	Oct. 1	Sept. 30.
Cottonseed Oil, including: crude, once refined, cottonseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	do	Oct. 1	Do.
Cotton—Raw, extra long staple	Running bales	Aug. 1	July 31.
Cotton—Raw, staple length 1 1/16 inches and over	do	do	Do.
Cotton—Raw, staple length 1 inch up to 1 1/16 inches	do	do	Do.
Cotton—Raw, staple length under 1 inch	do	do	Do.
Rice—Long grain, brown	Metric tons	do	Do.
Rice—Medium, short and mixed grain, brown	do	do	Do.
Rice—Long grain, milled	do	do	Do.
Rice—Medium, short and mixed grain, milled	do	do	Do.

[FR Doc.73-19611 Filed 9-13-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 32]

LEWIS AND CLARK NATIONAL WILDLIFE REFUGE, OREG.

Notice of Proposed Rulemaking

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222 (16 U.S.C. 715)), and the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927 as amended (16 U.S.C. 668dd)) as delegated to the Director, Bureau of Sport Fisheries and Wildlife by Chapter 2, Part 242 of the Departmental Manual, it is proposed to amend 50 CFR Part 32 by the addition of Lewis and Clark National Wildlife Refuge, Oregon to the list of areas open to hunting of migratory birds.

It has been determined that regulated hunting of migratory birds may be permitted as designated on the above refuge without detriment to the objectives for which the area was established.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections, with respect to the proposed amendment, to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, by September 30, 1973.

Accordingly, § 32.11, list of open areas, migratory game birds, amended by the following addition:

OREGON

LEWIS AND CLARK NATIONAL WILDLIFE REFUGE

CHARLES M. LOVELESS,
Acting Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 11, 1973.

[FR Doc.73-19576 Filed 9-13-73;8:45 am]

[50 CFR, Part 32]

COLUMBIAN WHITE-TAILED DEER NATIONAL WILDLIFE REFUGE

Notice of Proposed Rulemaking

Notice is hereby given that pursuant to the authority vested in the Secretary of the Interior by the Migratory Bird Conservation Act of February 18, 1929, as amended (45 Stat. 1222 (16 U.S.C. 715)), and the National Wildlife Refuge System Administration Act of 1966 (80 Stat. 927 as amended (16 U.S.C. 668d)), as delegated to the Director, Bureau of Sport Fisheries and Wildlife by Chapter 2, Part 242 of the Departmental Manual, it is proposed to amend 50 CFR, Part 32 by the addition of Columbian White-Tailed Deer National Wildlife Refuge, Washington, to the list of areas open to hunting of migratory birds.

It has been determined that regulated hunting of migratory birds may be permitted as designated on the above refuge

without detriment to the objectives for which the area was established.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportuntiy to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections, with respect to the proposed amendment, to the Director, Bureau of Sport Fisheries and Wildlife, Washington, D.C. 20240, by September 30, 1973.

Accordingly, § 32.11, list of open areas, migratory game birds, is amended by the following addition:

WASHINGTON

COLUMBIAN WHITE-TAILED DEER NATIONAL WILDLIFE REFUGE

CHARLES M. LOVELESS,
Acting Director, Bureau of Sport Fisheries and Wildlife.

SEPTEMBER 11, 1973.

[FR Doc.73-19577 Filed 9-13-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 121, 135]

RESTRICTION ON LEVEL OF COPPER IN ANIMAL FEED

Proposed Amendment to the List of Substances That Are Generally Recognized as Safe

A new animal drug application was filed with the Food and Drug Administration requesting approval of the addition of copper from copper sulfate or copper oxide to swine feed at levels up to 250 parts per million (ppm) as a growth promotant. Review of the application showed that copper was effective for improving rate of gain and feed efficiency when fed to swine at high levels (125–250 ppm). Questions arose, however, concerning animal safety, human safety, and the environmental impact of such a practice. Each of these problems was studied in depth to determine whether high-level use of copper in swine feed for the purposes of improving growth rate and feed efficiency could be approved.

The animal safety review determined that animal health would not be compromised provided that total dietary copper did not exceed 250 ppm. Toxicology data presented in the application showed that such a level did not present a hazard to swine. Other published data support this conclusion (R. Braude, *Copper as a Growth Stimulant in Pigs (cuprum pro pecunia), Symposium on Copper's Role in Plant and Animal Life*, pp. 55–66, Vienna, Austria, 1965).

Human safety questions were raised based on data in the application and data published in scientific literature showing that copper accumulates in the livers of swine fed high levels of the element. This was documented by H. D. Wallace, Professor, Department of Animal Science, University of Florida, in a comprehensive review of the use of copper in swine diets (*High Level Copper in Swine Feeding, A Review of Research in the United States*, 1967, sponsored by International Copper Research Association, Inc., 1271 Avenue of the Americas, New York, NY 10020). The following table, taken from Wallace's review, summarizes research findings on liver copper residues in swine resulting from various dietary copper treatments. These data show that while there is considerable variation in the degree to which copper feeding increases liver copper content, a trend nevertheless exists. Wallace attributes the variability to differences in diets, protein sources, copper sources, analytical methods, and interactions of copper with other minerals.

SWINE LIVER COPPER CONCENTRATIONS AS INFLUENCED BY DIETARY COPPER LEVEL [1]

Copper source	Dietary Copper level ppm	Total number of pigs involved	Number days on test	Liver copper, ppm (dry matter basis)	
				Control pigs	Copper pigs
$CuSO_4 \cdot 5H_2O$	125	18	105	19	70
CuO	150	12	85	13	32
CuO	150	12	85	14	30
CuO	150	12	85	15	49
CuO	150	12	85	17	30
CuO	150	12	85	17	31
$CuSO_4 \cdot 5H_2O$	[2] 150-0	40	98	30	25
$CuSO_4 \cdot 5H_2O$	[2] 150-75	40	98	20	29
$CuSO_4 \cdot 5H_2O$	150	40	98	20	62
$CuSO_4$	250	48	64	32	169
$CuSO_4$	250	48	78	33	200
$CuSO_4$	250	16	86	28	247
$CuSO_4$	[2] 250-0	16	86	28	44
$CuSO_4$	250	16	85	28	279
$CuSO_4$	[2] 250-0	16	86	28	51
$CuSO_4$	250	16	76	23	143
$CuSO_4$	[2] 250-0	16	79	23	25
$CuSO_4$	250	16	81	31	363
$CuSO_4$	[2] 250-0	16	82	31	33
$CuSO_4$	[2] 250-0	18	133	19	84
$CuSO_4$	[2] 250-0	18	127	19	84
$CuSO_4$	250	18	135	26	278
CuO	250	18	127	26	93
$CuSO_4 \cdot 5H_2O$	250	16	42	29	203
$CuSO_4$	250	32	42	22	218
CuO	250	32	42	22	32
CuO	375	32	42	22	89
$CuSO_4$	250	40	42	93	182
Cu-Methionine	250	40	42	93	156
$CuCO_3$	250	32	42	38	89
$CuCO_3$	500	32	42	38	996

[1] Horizontal lines throughout tabel separate experiments. (Data were taken from the following references:
Ritchie *et al.*, J. Nutr. 79:117. 1963.
Gipp *et al.*, Cornell Univ. Anim. Husb. Mimeo. 66-4. 1966.
Wallace *et al.*, Fla. Animal Sci. Mimeo. Series 63-17. 1963.
Wallace *et al.*, Fla. Animal Sci. Mimeo. Series AN67-1. 1966.
Wallace *et al.*, Fla. Agr. Exp. Sta. Experiment 145-F. 1966.
Bunch *et al.*, J. Animal Sci. 22:56. 1963.
Hawbaker *et al.*, J. Animal Sci. 20:163. 1961.
Bunch *et al.*, J. Animal Sci. 24:995. 1965.)

[2] Copper was either removed from diet or reduced in amount during the feeding as indicated.

These data also demonstrate that when copper supplementation is removed from the diet when the pig reaches about 125 pounds body weight, liver copper content returns to normal or near normal by slaughter weight (225 pounds). The fact that feeding high level copper to swine would elevate liver copper raises the concern that these liver residues would contribute additional copper to the diet of humans. Scheinberg (*Federation Proceedings*, Vol. 20, No. 3, Supplement 10, pp. 179–185, Sept. 1961) and Scheinberg and Sternlieb (*Pharmacol. Rev.* 12:355, 1960) consider that the likelihood of excess copper in human diets is much greater than that of a deficiency.

The problem of copper residue in edible tissues was further complicated by the fact that copper is an essential nutrient normally present in varying amounts in natural foodstuffs consumed by man and animals, and also normally present in varying amounts in organs and tissues of man and animals. It was determined that, in order not to increase the load of copper in the human diet, no increase in tissue copper level above that normally found in swine not fed high level copper could be permitted without basic toxicology data.

The environmental impact of high level copper feeding was also fully considered. The available literature shows that copper is very poorly absorbed in the intestine, and approximately 75 percent of the ingested copper is excreted in the feces when normal levels are fed. (Comer and Bronner, eds. *Mineral Metabolism*, Vol. 2, Part B, Chapter 32, *Copper*, Academic Press, New York, NY, 1962). A greater percentage is excreted when dietary copper level is elevated. Since copper is an element, and thus not subject to further chemical breakdown, it was determined that a study should be made of the environmental implications of the practice of adding copper to swine feeds at high levels in view of the fact that significant amounts of copper would be expected to be deposited in or on soils fertilized by manures derived from commercial swine production.

Accordingly, the Commissioner of Food and Drugs requested that an Ad Hoc Advisory Committee of scientists, expert

in the various fields and disciplines pertinent to the subject, review the matter and submit their recommendations. A copy of that Committee's report entitled "Report to the Commissioner Food and Drug Administration from the Ad Hoc Committee on High Level Copper Swine Feeding Program" is available for public review at the Hearing Clerk's office, Rm. 6-86, 5600 Fishers Lane, Rockville, MD 20852, and may be purchased from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22151.

The Ad Hoc Committee reported that the possible environmental effects resulting from the addition of high levels of copper to swine rations have not been adequately studied and recommended research on such possible effects and the associated waste disposal problems. The Ad Hoc Committee reported that copper levels which may be found in plants subjected to high level copper manure applied to soil will depend upon many factors, including the plant species, the stage of maturity, and the available copper in the soil. In addition, different parts of the plant will also vary greatly in copper content at any given copper level in the soil. Most plants will respond adversely in terms of yield when the plant copper content appreciably exceeds 20 ppm on a dry weight basis. The amount of manure which may be applied to a given acreage will depend on the soil type, soil pH, content of clay and organic matter, weather, drainage, and other treatments such as the application of lime. Long term continuous application of from 3 to 6 pounds of copper annually per acre, which would result from the use of high copper swine manure, may be expected to result in accumulation of copper in the soil. Whether or not this reaches hazardous levels will depend in large measure upon the soil type and other factors.

The Ad Hoc Committee further reported that (1) the toxicity of very low concentrations of copper to desirable phytoplankton and zooplankton is recognized, and on the basis of present information it is difficult to predict how serious the pollution of surface waters from high copper applications would be; and (2) available information does not permit a general statement regarding time required to build up copper to a hazardous level since soil composition will be critical. The Ad Hoc Committee therefore made the following recommendations:

1. That if high level (250 ppm) copper rations be permitted, then it should be stipulated:

a. That suitable precautions should be taken to include adequate levels of zinc and iron in the diets.

b. That precautions should be introduced to limit the distribution of manure from swine fed the high level copper diets to 20 tons per acre per year (3 to 6 lbs of copper).

c. That warnings shoud be issued regarding the possible hazard of grazing sheep on areas fertilized with manure from such a swine-feeding operation without adequate provision for molybdenum and sulfate in the sheep diet.

d. That depending upon the soil to which the manure is applied, suitable monitoring should be made of the buildup of available copper, preferably at not less than five-year intervals, on low exchange capacity soils.

e. That if lagooning of manure from such swine-feeding operations is practiced, procedures should be instituted to remove the copper prior to soil application of the solid residue.

f. That to prevent runoff into water supplies, care should be taken not to put manure on frozen land where runoff can be a problem.

2. Research should be instituted into the long-term effects of increases in copper intake in food and water in both animals and humans in order to estimate the maximum safe dose. Special attention should be given to possible teratological effects. These studies should address the life span effects and the relation to degenerative diseases.

3. The present monitoring-analysis techniques are in need of evaluation and additional research. Specificially, plant and soil copper values as indicators of copper buildup should be throughly evaluated. Present information does not permit a general statement regarding the time required to build up copper to a hazardous level since soil composition will be critical. It is for this reason that we recommend a monitoring program.

The relevant findings of the Ad Hoc Committee were reviewed by the U.S. Department of Agriculture and the Environmental Protection Agency. Both agencies agreed with the findings of the Ad Hoc Committee and that the potential for adverse environmental impact from the feeding of a high level of copper was significant.

Based upon the findings of the Ad Hoc Committee, comments from the U.S. Department of Agriculture and the Environmental Protection Agency, the fact that other growth-promoting drugs without adverse environmental impact were available for use in swine production, and other relevant information, the Commissioner of Food and Drugs concluded that the request for approval of the addition of high levels of copper to swine feed should be denied. The sponsor of the new animal drug application was so informed and withdrew the application.

The Ad Hoc Committee also reported that the use of high levels of copper in feed is currently being extensively practiced for both swine and poultry. The Commissioner has therefore concluded that there is a need to clarify the status of copper as a feed ingredient since various copper compounds are presently listed as generally recognized as safe (GRAS) as trace ingredients added to animal feeds under 21 CFR 121.101(f), which provides for the addition of copper to animal feed as a nutritional dietary supplement at levels consistent with good feeding practice.

Accordingly, the Commissioner has reviewed the current provisions of the regulations, literature on animal nutrition with respect to copper, and current manufacturing practice in the feed industry. While the quantitative requirements for copper are not known for all classes of swine and poultry, most nutritionists believe that 5–15 ppm copper in the diet is adequate. Nutrient Requirements of Domestic Animals (Pub. 1599, 1968, Swine; Pub. ISBM 0-309-01861-7, 1971, Poultry; National Academy of Sciences, 2101 Constitution Ave., Washington, DC 20418), list the copper requirement for baby pigs and turkey poults as 6 ppm and for chicks as 4 ppm. Nutritional need for copper may be somewhat increased by demands of gestation, lactation, or maximum growth, although no quantitative data are available.

It has become standard practice of mineral premix manufacturers routinely to include copper in the trace mineral supplements used for swine and poultry feeds. Almost all trace mineral premixes currently sold contain copper, more as insurance against deficiency rather than to alleviate a specific lack of copper in feed. The amount of copper added to a finished feed may vary for different brands of mineral supplements, but is usually about 5–15 ppm, which approximates the amount recommended by the National Academy of Sciences. The feed industry considers this level of copper supplementation to be good feeding practice since it is reasonably consistent with the amount regarded as required by animals.

The mean of the naturally occurring copper content of representative swine and poultry rations, including those containing ingredients naturally high in copper (e.g., soybean meal, milo, barley), is approximately 12 ppm with a standard deviation of about 4 ppm. Assuming a normal distribution of copper in feeds, 99.87 percent of all similar swine and poultry diets can statistically be expected to contain 24 ppm or less copper from naturally occurring copper sources (obtained by adding the mean and 3 times the standard deviation $(12+(3 \times 4))$.

Therefore, the addition of copper from trace mineral premixes to animal feeds at levels up to 15 ppm in the finished feed, even where such feeds contained copper at the high extreme of the population, would not be expected to result in finished feeds containing more than 40 ppm copper. Thus, finished swine and poultry feed will not contain over 40 ppm total copper if 15 ppm is permitted to be added to the feed. On the basis of the Ad Hoc Committee report and other available information, the Commissioner concludes that this level, taking into consideration natural background copper and up to 15 ppm of copper added for nutritional purposes, will not pose a hazard to swine or poultry, humans consuming animal products, or the environment. Accordingly, it is proposed that copper may be added to swine or poultry feed in accordance with good feeding practice at levels not to exceed 15 ppm.

Further, the Commissioner has carefully considered the environmental effects of this proposal pursuant to 21 CFR 6.1 and concludes for the above reasons that an environmental impact statement is not needed.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788, as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that Parts 121 and 135 be amended as follows:

1. In § 121.101(f) by revising the entry "Copper" to read as follows:

§ 121.101 Substances that are generally recognized as safe.

* * * * *

(f) * * *

Element	*Source compounds*
* * *	* *
Copper (may be added to swine or poultry feed in accordance with good feeding practice at a level not to exceed 15 parts per million)	Copper carbonate. Copper chloride. Copper gluconate. Copper hydroxide. Copper orthophosphate. Copper oxide. Copper pyrophosphate. Copper sulfate.
* * *	* *

2. In Part 135 by adding to Subpart B the following new section:

§ 135.____ Addition of copper to swine and poultry feed.

Copper salts may be added to swine and poultry feed for nutritional purposes in accordance with good feeding practice at a level not to exceed 15 parts per million. Addition of more than 15 parts per million of copper to finished swine or poultry feed is unlawful and causes both the feed and the animals to be adulterated.

Interested persons may, on or before November 12, 1973, file with the Hearing Clerk, Food and Drug Administration, Rm. 6–86, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof. Received comments may be seen in the above office during working hours, Monday through Friday.

Dated September 4, 1973.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.73–19468 Filed 9–13–73;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 73–SO–38]

TRANSITION AREA

Proposed Alteration

On June 27, 1973, FR Doc. No. 73–12850 was published in the FEDERAL REGISTER (38 FR 16914), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would alter the Dillon and Bennettsville, S.C., transition area.

Subsequent to publication of the notice, it was determined that the type of aircraft utilizing Dillon County Airport requires a basic radius circle of 6.5 in lieu of 5 miles. Additionally, the Dillon extension was erroneously predicated on the 245° in lieu of the 239° bearing, and the Bennettsville extension was erroneously predicated on the 239° in lieu of the 245° bearing.

In consideration of the foregoing, effective immediately, the following proposed descriptions published in FR Doc. No. 73–12850 are amended to read:

DILLON, S.C.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Dillon County Airport (Lat. 34°27'00" N, Long. 79°22'00" W); within 2.5 miles each side of Florence VORTAC 046° radial, extending from the 6.5-mile radius area to 16 miles northeast of the VORTAC; within 3 miles each side of the 239° bearing from Dillon RBN (Lat. 34°27'01" N, Long. 79°22'09" W), extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN.

BENNETTSVILLE, S.C.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Bennettsville Airport (Lat. 34°37'45" N, Long. 79°43'57" W.); within 3 miles each side of the 245° bearing from Bennettsville RBN (Lat. 34°37'39" N, Long. 79°43'53" W), extending from the 6.5-mile radius area to 8.5 miles southwest of the RBN; excluding the portion within Darlington, S.C., transition area.

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

Issued in East Point, Ga., on September 6, 1973.

PHILLIP M. SWATEK,
Director, Southern Region.

[FR Doc.73–19581 Filed 9–13–73;8:45 am]

Federal Highway Administration

[23 CFR Part 772]

TRAFFIC NOISE

Invitation for Comment on Proposed Guidelines

Section 114 of the Federal-Aid Highway Act of 1973 provides that:

The Secretary, after consultation with the Administrator of the Environmental Protection Agency and appropriate Federal, State and local officials, may promulgate standards for the control of highway noise levels for highways on any Federal-aid system for which project approval has been secured prior to July 1, 1972. The Secretary may approve any project on a Federal-aid system to which noise-level standards are made applicable under the preceding sentence for the purpose of carrying out such standards. Such project may include, but is not limited to, the acquisition of additional rights-of-way, the construction of physical barriers, and landscaping. Sums apportioned for the Federal-aid system on which such project will be located shall be available to finance the Federal share of such project. Such project shall be deemed a highway project for all purposes of this title.

Pursuant to the Federal-Aid Highway Act of 1970, the Federal Highway Administration (FHWA) developed noise standards for use in the planning and design of new highway projects. These standards were promulgated February 8, 1973, and published in the FEDERAL REGISTER June 19, 1973 (38 FR 15953), amending 23 CFR by the addition of Part 772.

The new legislation authorizes FHWA to develop and promulgate "standards" for the control of traffic noise on previously constructed highways. It further provides that noise abatement projects may be programed as highway projects, and that the Federal share on such projects shall be the same as that for the Federal-aid system on which the project is located.

The "standards" which FHWA plans to develop in response to this legislation will probably take the form of guidelines which will be an extension of the noise standards which were promulgated February 8, 1973. Because of its desire that these guidelines respond to public needs to the greatest possible extent, the FHWA wishes to offer an opportunity to interested persons to submit written comments, suggestions, or objections. All views submitted will receive consideration during the development of the standards. Such views or comments should be received in the Office of Environmental Policy, HEV–10, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590, on or before November 1, 1973.

Issued on September 10, 1973.

NORBERT T. TIEMANN,
Federal Highway Administrator.

[FR Doc.73–19540 Filed 9–13–73;8:45 am]

[49 CFR Part 393]

[Docket No. MC–52; Notice 73–23]

SLEEPER BERTHS IN COMMERCIAL MOTOR VEHICLES

Proposed Dimensional Requirements

The Director of the Bureau of Motor Carrier Safety is considering a revision of § 393.76 of the Motor Carrier Safety Regulations, 49 CFR 393.76, which contains the dimensional requirements for sleeper berths on commercial motor vehicles. The principal purpose of the revision under consideration is to increase the minimum interior dimensions of sleeper berths. In addition, the proposal would recast the language of § 393.76 in order to eliminate areas of ambiguity or lack of clarity.

This proceeding was initiated by a petition for rulemaking filed by Local 222 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers. The petition argued that the present minimum interior dimensions of sleeper berths (72 inches long,

18 inches wide, and 18 inches deep for berths on older vehicles, and 75 inches long, 21 inches wide, and 21 inches deep for berths on vehicles manufactured after December 31, 1952) are inadequate, in that they prevent drivers who must rest in sleeper berths from getting sufficient rest to enable them to be alert enough to handle large, complex trucks safely. The petition requested that the minimum dimensions of sleeper berths be increased to 84 inches in length, 36 inches wide, and 36 inches deep. In addition to the information contained in the petition, the Bureau has received driver complaints alleging that sleeper berth dimensions are inadequate.

A review of the available literature [1] indicates that, with respect to truck and bus drivers, the height of the 50th percentile male driver is 68.4 inches, and the height of the 95th percentile male driver is 72.5 inches. Chest breadth is 11.8 inches for the 50th percentile driver and 13.5 inches for the 95th percentile drivers. The shoulder breadth of the 50th percentile male truck and bus driver is 18.3 inches, and the shoulder breadth of the 95th percentile truck and bus driver is 19.9 inches. The available data also show that since 1953, when the dimensions of sleeper berths were last amended, the body dimensions of Americans have increased. We have not increased significantly in height; there has been growth in terms of breadth.

Accordingly, the Director is proposing to require a three-inch increase in the minimum width and height of sleeper berths and to retain the existing 75-inch length requirement. The Bureau will, however, give careful consideration to documented arguments that other dimensional criteria should be established.

In addition, the Director is proposing to remove air mattresses from the list of allowable sleeping equipment. The Bureau has tentatively concluded that air mattresses generally do not provide sufficient support for drivers to obtain adequate rest.

The new requirements would be effective on October 1, 1975.

In consideration of the foregoing, the Director proposes to amend § 393.76 in Subchapter B of Chapter III of Title 49, CFR to read as set forth below.

Interested persons are invited to submit written data, views, or arguments pertaining to the proposal. All comments submitted should refer to the docket number and notice number appearing at the top of this document and should be submitted in three copies to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. All comments received before the close of business on December 3, 1973, will be considered before further action is taken. Comments will be available for examination in the public docket of the Bureau of Motor Carrier Safety, located in Room 4136, 400 Seventh Street SW., Washington, D.C., both before and after the closing date for comments.

This notice of proposed rule making is issued under the authority of section 204 of the Interstate Commerce Act, as amended, (49 U.S.C. 304), section 6 of the Department of Transportation Act, (49 U.S.C. 1655), and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator in §§ 1.48 and 389.4 of Title 49, Code of Federal Regulations.

Issued on September 4, 1973.

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

§ 393.76 Sleeper berths.

(a) *Dimensions.*—(1) *Size.*—A sleeper berth must be at least the following size:

Date of installation on motor vehicle.	Length measured on centerline of longitudinal axis (inches)	Width measured on centerline of transverse axis (inches)	Height measured from highest point of top of mattress (inches)
Before January 1, 1953	72	18	18
After December 31, 1952, and before October 1, 1975	75	21	21
After September 30, 1975	75	24	24

(2) *Shape.*—A sleeper berth installed on a motor vehicle on or after January 1, 1953, must be of generally rectangular shape, except that the horizontal corners and the roof corners may be rounded to radii not exceeding 10½ inches.

(3) *Access.*—A sleeper berth must be constructed so that an occupant's ready entrance to, and exitf rom, the sleeper berth is not unduly hindered.

(b) *Location.*

(1) A sleeper berth must not be installed in or on a semitrailer or a full trailer other than a house trailer.

(2) A sleeper berth located within the cargo space of a motor vehicle must be securely compartmentalized from the remainder of the cargo space. A sleeper berth installed on or after January 1, 1953, must be located in the cab or immediately adjacent to the cab and must be securely fixed with relation to the cab.

(c) *Exit from the berth.*—(1) Except as provided in subparagraph (2) of this paragraph, there must be a direct and ready means of exit from a sleeper berth into the driver's seat or compartment. If the sleeper berth was installed on or after January 1, 1963, the exit must be a doorway or opening at least 18 inches high and 36 inches wide. If the sleeper berth was installed before January 1, 1963, the exit must have sufficient area to contain an ellipse having a major axis of 24 inches and a minor axis of 16 inches.

(2) A sleeper berth installed before January 1, 1953 must either—

(i) Conform to the requirements of subparagraph (1) of this paragraph; or

(ii) Have at least two exits, each of which is at least 18 inches high and 21 inches wide, located at opposite ends of the vehicle and useable by the occupant without the assistance of any other person.

(d) *Communication with the driver.*—A sleeper berth which is not located within the driver's compartment and has no direct entrance into the driver's compartment must be equipped with a means of communication between the occupant and the driver. The means of communication may consist of a telephone, speaker tube, buzzer, pull cord, or other mechanical or electrical device.

(e) *Equipment.*—A sleeper berth must be properly equipped for sleeping. Its equipment must include—

(1) Adequate bedclothing and blankets; and

(2) Either—

(i) Springs and a mattress; or

(ii) An innerspring mattress; or

(iii) A cellular rubber mattress at least four inches thick.

A sleeper berth must be designed and constructed so that its mattress and bedclothing can readily be removed for cleaning.

(f) *Ventilation.*—A sleeper berth must have louvers or other means of providing adequate ventilation. A sleeper berth must be reasonably tight against dust and rain.

(g) *Protection against exhaust and fuel leaks and exhaust heat.*—A sleeper berth must be located so that leaks in the vehicle's exhaust system or fuel system do not permit fuel, fuel system gases, or exhaust gases to enter the sleeper berth. A sleeper berth must be located so that it will not be overheated or damaged by reason of its proximity to the vehicle's exhaust system.

(h) *Occupant restraint.*—A motor vehicle manufactured on or after July 1, 1971, and equipped with a sleeper berth must be equipped with a means of preventing ejection of the occupant of the sleeper berth during deceleration of the vehicle. The restraint system must be designed, installed, and maintained to withstand a minimum total force of 6,000 pounds applied toward the front of the vehicle and parallel to the longitudinal axis of the vehicle.

[FR Doc.73-19572 Filed 9-13-73;8:45 am]

[1] McFarland et al., Anthrometry in the Design of the Driver's Workspace, 16 Amer. Journal of Physical Anthropology 1 (1958).

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR, Part 51]

USE OF SUPPLEMENTARY CONTROL SYSTEMS AND IMPLEMENTATION OF SECONDARY STANDARDS

Preparation, Adoption, and Submittal of Implementation Plans

On August 14, 1971 (36 FR 15486), the Administrator promulgated as 40 CFR, Part 420, regulations for the preparation,

adoption, and submittal of State Implementation Plans (State plan guidelines) under section 110 of the Clean Air Act, as amended. These regulations were republished November 25, 1971 (36 FR 22398), as 40 CFR, Part 51. The amendments proposed herein would revise 40 CFR, Part 51 by making certain modifications and additions.

The proposed amendments would allow selective use of supplementary control systems as a means of attaining and maintaining the national ambient air quality standards (referred to hereafter as "national standards") in cases where permanent production curtailment, shutdown, or delays in attainment of the national standards are the only other alternatives. The proposed amendments also clarify policies on the use of increased stack height to take advantage of the dispersive effects of the atmosphere; modify the definition of "reasonable time" for attainment of secondary national ambient air quality standards; and modify guidelines for preparation of future State Implementation Plan revisions related to attainment and maintenance of national standards for sulfur dioxide and particulate matter.

Supplementary Control Systems

Supplementary control systems, as addressed herein, are systems whereby the rate of emissions from a source is curtailed when meteorological conditions conducive to high ground-level pollutant concentrations exist or are anticipated. Supplementary control systems continuously monitor emissions, meteorological conditions, and ambient air quality in the vicinity of the source, and, by combining these and other data in an appropriate prediction model, provide a procedure for estimating the ambient air quality which would exist in the future. Integral to supplementary control systems are comprehensive and enforceable emission limitation criteria and source control procedures to insure that emissions are curtailed at the times and to the extent necessary to attain and maintain the national standards regardless of meteorological conditions. Systems of this general type have been discussed in the past under various terminologies such as "intermittent control systems," "variable control systems," etc., and have not been previously considered acceptable for maintenance of the national standards.

The previous Environmental Protection Agency position on supplementary control systems was set forth in the Federal Register on July 27, 1972 (37 FR 15095), as follows:

> * * * At this time, it [supplementary control] is not considered an acceptable substitute for permanent control systems for attaining and maintaining national standards. Experience with systems employing intermittent process curtailment indicates that although air quality is improved, violations of ambient air quality standards still occur. Additional experience with these systems may, however, in specific cases improve this reliability.

Over the past year, EPA has continued to assemble and evaluate available data on the development and use of supplementary control systems. EPA has examined published reports and statements 1–3 containing information on experience with supplementary control systems at the Tennessee Valley Authority's Paradise Steam Plant and the American Smelting and Refining Company copper smelter at El Paso, Texas. In addition, EPA personnel have visited these facilities and have discussed the use of supplementary control systems with air pollution control officials, citizens' groups, and industry representatives.

The available data show a substantial and consistent improvement in the performance of supplementary control systems in the recent past. As one example, data provided by the Puget Sound Air Pollution Control Authority (PSAPCA) show substantial improvement in air quality around a copper smelter using a supplementary control system which meets some of the criteria set forth in these proposed regulations. In this instance, at the one PSAPCA monitoring station that has been operating since 1969, the frequency of one-hour sulfur dioxide concentrations exceeding 0.25 ppm dropped progressively from 102 times in 1969, before the supplementary control system was initiated, to 7 times in 1972, to only once in the first five months of this year. Similarly, one-hour concentrations exceeded 0.5 ppm 25 times in 1969, only once in 1972, and not at all during the first five months of this year. At seven other PSAPCA monitoring stations, data for the period beginning in August-October 1971 and running through May 1973, show that one-hour sulfur dioxide concentrations exceeded 0.25 ppm ten times and exceeded 0.5 ppm only twice.

Analysis of data such as these indicates that incorporation of the design and enforcement features required by these proposed regulations and the proposed Appendix P would insure that such systems would be reliable means of attaining and maintaining the national standards in carefully selected situations. Furthermore, given the limitations on availability of stack-gas cleaning systems and low-sulfur fuels over the next few years, the difficulty in retrofitting some facilities with stack-gas cleaning systems, and the distribution/allocation problems associated with low-sulfur fuels, it would be undesirable to rely solely upon these methods to attain and maintain the national standards in cases where supplementary control systems could be applied in an equally reliable and enforceable manner. Also, since the availability of stack-gas cleaning systems and low-sulfur fuels is, in part, a function of time (e.g., the time required to design, build, and install hardware without unduly disrupting production of electric power, and the time required to develop new fuel sources), their availability will improve with time. The use of supplementary control systems in selected situations could, therefore, result in attainment of the national standards in a shorter time than would otherwise be possible.

These proposed regulations impose stringent limitations on the types of sources and situations for which use of supplementary control systems may be considered acceptable. These limitations are based on two principal considerations: First, supplementary control systems will be allowed only in situations where their use is necessary to augment constant emission limitation techniques which are available to a specific source, and only until completely adequate constant emission limitation techniques become available; that is, in situations wherein the sole alternatives are either permanent production curtailment or delay of an attainment date for the national standards. Second, supplementary control systems will be allowed only in situations where they will exhibit a high degree of reliability and can be made legally enforceable; that is, where the emission sources can be readily and unequivocally identified.

These considerations preclude use of supplementary control systems to control carbon monoxide and particulate emissions; constant emission reduction techniques and equipment capable of adequately reducing such emissions are widely used and can be considered available for application to all sources. Although temporary shortages of low sulfur fuel oil may occur during the next several years, techniques for producing low sulfur oil are expected to become sufficiently available so that the use of supplementary control systems for oil-fired boilers will not be necessary.

The requirement for enforceability precludes the use of supplementary control systems to control hydrocarbon and nitrogen oxides emissions. Hydrocarbons and nitric oxides are precursors to photochemical oxidants and nitrogen dioxide—Formation of the latter two pollutants is a result of complex photochemical processes involving atmospheric conditions which may be highly variable and requires the interaction of pollutants from a variety of sources, including motor vehicles. The contribution of one precursor source to the resultant photochemical oxidant or nitrogen dioxide concentration cannot be defined with sufficient confidence to ensure enforceability, nor is it likely that any source owner or operator would be willing to accept sole responsibility for attaining and maintaining the national standards for photochemical oxidants or nitrogen dioxide throughout the area potentially influenced by that source's emissions.

Finally, if supplementary control systems are to be reliable, a strong predictive relationship must be established between the user's emissions and the ambient air quality in the affected area. This predictive relationship cannot be established with confidence if other sources have a significant impact on air quality in the area. Hence, the enforceability

requirement can only be satisfied for supplementary control systems applied to a source sufficiently isolated from others that the owner or operator is willing and able to accept full legal responsibility for maintaining the national standards throughout the area in which emissions from that source influence ambient air quality. It is essential that this area be carefully defined on a case-by-case basis. In a few instances, it may be possible for two or more sources to implement a supplementary control system jointly, and thus share responsibility for the ambient air quality. The regulations proposed herein are not intended to prevent this type of arrangement so long as the appropriate conditions, including enforceability, are met. It should be noted, however, that designing and operating a system involving more than one source increases the complexity of this technique. These criteria, therefore, generally restrict consideration of supplementary control systems for application to only a small number of isolated sources of sulfur dioxide.

The regulations proposed herein would also require demonstration by each candidate source on a case-by-case basis that adequate constant emission reduction techniques are not available to attain and maintain the national standards, and that those techniques which are available would be applied to permanently reduce emissions to the maximum extent practicable prior to application of supplementary control systems. Further, these regulations would require that each source or system of sources utilizing a supplementary control system support and participate in an appropriate research, development, engineering, and demonstration program to insure that the supplementary control system can be replaced by constant emission limitation techniques as soon as possible. In cases where the source is subject to a current compliance schedule, good faith efforts to achieve that schedule should be attempted prior to resorting to a supplementary control system. If a supplementary control system is found to be necessary, the revised compliance schedule should contain the major applicable milestones associated with the program to obtain constant emission limitation techniques. It is not intended that accomplishment of the milestones be legally binding, because in many cases the schedule for a particular phase may be dependent upon the results of a previous phase. However, the milestones should be sufficiently definitive so that the progress of the program can be included in the annual review of the supplementary control system performance as specified in these regulations.

Obviously, the necessity for the continued application of supplementary control systems must be reassessed from time-to-time in consideration of the increasing availability of constant emission limitation techniques. The proposed regulations require that this reassessment be accomplished at least once during each five-year period in addition to the annual review of the source's efforts to replace the supplementary control system.

Supplementary control systems will not be authorized for new or modified sources. It is intended that in all cases, new sources be properly designed, located, and constructed with constant emission limitation techniques adequate to maintain the national standards.

However, in the Administrator's judgment it does not appear to be in the public interest to require shutdown or permanent curtailment of production for existing sources which could temporarily use supplementary control systems to attain and maintain the national standards. For example, many existing nonferrous smelters would require emission reductions in excess of 90 percent in order to avoid violations of the national standards for sulfur dioxide during all adverse meteorological conditions. Constant emission limitation techniques capable of achieving this degree of emission reduction are not available for every smelter. The alternatives in most cases will be either to close these facilities (or drastically curtail production), or apply supplementary control systems. Weak gas stream scrubbing and process changes may become available for application to many nonferrous smelters in the future. However, at this time, available control technology for most nonferrous smelters consists of operation of byproduct sulfuric acid plants to control emissions from strong gas streams. The regulations proposed herein require that, where byproduct sulfuric acid plants are impractical on sources currently violating the NAAQS, procedures such as permanent production curtailment must be implemented to permanently reduce emissions to the level attainable with acid plants. This level must be achieved through permanent emission limitation procedures; if further reductions are still necessary to meet national standards, and cannot be achieved through other control techniques, then a supplementary control system would be required until constant emission limitation techniques become available. It is estimated that the majority of the major nonferrous smelters in the country will require and qualify for supplementary control systems to attain the national standards.

A similar, though less severe, situation exists for a few coal-fired electric generating plants which, if not allowed to use supplementary control systems, would have to either delay attainment of the standards or permanently curtail power production in order to accommodate adverse meteorological conditions occurring only a few percent of the time. Conventional sulfur oxides control techniques for coal-fired electric generating plants include stack-gas cleaning and use of low-sulfur coal. Stack-gas cleaning to control sulfur oxides emissions is considered "adequately demonstrated" for the purposes of section 111 of the Clean Air Act and therefore was the basis for the new source performance standards promulgated December 23, 1971 (36 FR 24876). Sulfur oxides scrubbing equipment currently is being installed at a number of new and existing electric generating plants, and its use at existing facilities will be increased gradually over the next few years. However, there are practical limitations to this technology including: Sulfur oxides scrubbing is relatively new technology which means, among other things, that each installation must be individually designed to a much greater extent than is necessary for most other air pollution control systems; there are limitations on control equipment manufacturers' capacity to design, build, and install sulfur oxides scrubbing equipment on a retrofit basis; and, perhaps most importantly, the retrofit of available equipment is not currently possible on all existing coal-fired electric generating plants. Nevertheless, EPA continues to believe that sulfur oxides scrubbing is completely appropriate and available for use in most situations where adequate amounts of low-sulfur fuel are not available. As for the use of low-sulfur coal, the limitations on its availability impose definite constraints on its use as a sulfur oxides control technique at this time. Low-sulfur fuels cannot be considered available for all coal-fired electric generating plants in all sections of the country.

Accordingly, demonstration that stack gas cleaning and low-sulfur (and desulfurized) coal are not available for use by a specific source will have to be evaluated on a case-by-case basis. It is estimated that less than 50 coal-fired electric generating plants would qualify for supplementary control systems under these criteria.

Concern has been expressed that the approval of supplementary control systems could tend to inhibit further development and application of improved constant emission limitation techniques. However, the vast majority of sulfur dioxide sources cannot meet the criteria required for use of supplementary control systems. Hence, there are many hundreds of sulfur dioxide sources which must attain and maintain the national standards by use of constant emission limitation techniques. These will provide sufficient stimulus for development and application of new and improved techniques. Also, a condition for the use of a supplementary control system will be support of a research and demonstration program by the firm operating the source to accelerate the development of constant emission reduction technology applicable to the source.

The Administrator recognizes that there are several unquantified factors which could cause the widespread use of supplementary control systems to be undesirable. The effect of total atmospheric loading of sulfur oxides is of particular concern: It includes the impact of suspended sulfate formation, acidification of soil and water, visibility reduction, and changes in background concentration. It is not currently possible to quantify these effects of atmospheric loading, nor is it

possible to accurately estimate the impact of supplementary control systems on total atmospheric loading. It is for this reason, in addition to the implied preference in the Clean Air Act, that attainment of the national standards through constant emission reduction is preferable to use of supplementary control systems.

It should be emphasized that these proposed regulations merely allow States to give appropriate sources the option of using such systems as a temporary measure to attain and maintain national standards. EPA cannot and would not require States to offer this option. Moreover, each request for approval to use such a system would have to be evaluated individually by the State agency, and State approval will be subject to review and approval by EPA. In addition, it must be recognized that the monitoring and enforcement efforts will be more extensive and, therefore, more costly than in cases where constant emission limitation systems are used. Accordingly, States are encouraged to require licensing of supplementary control systems and to impose fees to defray the additional monitoring and enforcement costs.

Section 110(a)(2) of the Clean Air Act requires that State Implementation Plans must include "emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, land-use and transportation controls." It is the Administrator's judgment that the use of supplementary control systems is in certain situations a "necessary" measure as authorized by the Act. Because such systems can be designed and operated in such a way as to be a reliable means of attaining and maintaining national standards in selected situations, it would serve no stated purpose of the Act to prohibit their use where no other reasonable alternatives exist.

While the Administrator is well aware that questions have been raised as to the legal basis for allowing the use of supplementary control systems, it is his judgment that their use, under the conditions set forth in these proposed regulations, is fully consistent with the purposes and provisions of the Clean Air Act and is in the best interests of the public.

Acceptability of Increased Stack Height

Effective and reliable operation of a supplementary control system often can be enhanced by increasing the stack height beyond what would normally be considered good engineering practice. For purposes of this discussion a stack which conforms to good engineering practice is sufficiently tall that emissions from the stack are not significantly affected by the atmospheric downwash, eddies, or wakes created by the facility or nearby structures and terrain. Emissions from stacks which are shorter than required by good engineering practice often can cause excessively high ground level concentrations and nuisances within, and in the immediate vicinity of, the facility. For fairly level terrain, good engineering practice will normally result in stack height approximately two and one-half times the height of the facility and nearby obstructions. For more complex situations, this rule-of-thumb is too simplistic, and detailed engineering and meteorological investigations of the proposed site should be conducted to determine the appropriate stack height. The use of stack height up to the level of good engineering practice is encouraged by EPA in order to avoid local nuisances. But although the Environmental Protection Agency will accept existing stacks, it will not credit, as an acceptable portion of an air pollution control strategy, any extension of stack height beyond that of good engineering practice unless the extension is accomplished as part of an approved supplementary control system.

Definition of Reasonable Time

The revisions proposed herein also modify the definition of "reasonable time" for attainment of secondary standards by specifying that "reasonable time" shall be the time required to design, fabricate, and install reasonably available control technology, as defined in Appendix B to the State plan guidelines (40 CFR Part 51). States may postpone application of such measures only in cases where the control strategy would have a severe adverse economic or social impact. The Administrator expects such postponements to be rare, but they may be required in special cases to prevent plant shutdown or to prevent massive replacement of recently installed equipment which would result in an inequitable economic impact. Any postponement beyond January 1, 1978, must be subject to periodic reevaluation at five-year intervals.

Future Revisions To Control Strategies

The proposed regulations would establish more stringent requirements for future demonstrations of attainment and maintenance of standards for particulate matter and sulfur dioxide. Diffusion modeling would be required for use in estimating maximum concentrations, and the areas in which these concentrations occur, unless application of a diffusion model is shown to be inappropriate. The alternatives to diffusion models, such as the simple rollback techniques which have been used and accepted in the past, are particularly inappropriate for prediction of the short-term peak concentrations which are a major factor in detailed analyses of air quality around large point sources.

The use of "example regions" would also be eliminated in revisions to sulfur dioxide and particulate matter control strategies. This concept was necessary and acceptable during the initial development of State Implementation Plans, but it can result in inadequate analysis of the impact of large point sources. Elimination of the "example region" concept is intended to lead to better understanding and solution of air quality control problems in regions not initially selected as examples.

These changes would apply only to future revisions to particulate matter and sulfur dioxide control strategies. The currently approved State Implementation Plans have been reviewed and are considered necessary and adequate to attain and maintain the national ambient air quality standards. The proposed regulations would not require that revisions be submitted solely in order to redemonstrate adequacy of these control strategies under the revised guidelines.

Public Participation

Interested persons are encouraged to participate in this rule-making by submitting written comments in triplicate to the Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Mr. Robert Neligan. All relevant comments received not later than thirty days after the date of publication of this notice will be considered. Receipt of comments will be acknowledge but substantive responses will not be provided. Comments received will be available for public inspection during normal business hours at the Office of Public Affairs, 401 M Street SW., Washington, D.C. 20460.

This notice of proposed rulemaking is issued under the authority of section 301(a) of the Clean Air Act, as amended (42 U.S.C. 1857g(a)).

Dated September 6, 1973.

John R. Quarles, Jr.,
Acting Administrator,
Environmental Protection Agency.

References

1. Montgomery, T. L., J. M. Leavitt, T. L. Crawford and F. E. Gartrell, "Control of Ambient SO_2 Concentrations by Noncontinuous Emission Limitation, Large Coal-Fired Power Plants." Presented at 102d Annual Meeting, the American Institute of Mining Metallurgical and Petroleum Engineers, Chicago, Ill., February 1973.

2. Peters, M., "Report of Investigation at ASARCO, El Paso, Texas." Texas APCS, Austin, Texas, February 2–4, 1971 (MS).

3. Nelson, K. W. Statement Regarding Alternatives to an Emission Standard. Att. 18, letter from J. F. Boland, Attorney for ASARCO, to Casandra Jencks, Legal Counsel, Region IX, October 16, 1972.

It is proposed to amend Part 51 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

1. In § 51.1, the first sentence in paragraph (n) is revised and paragraph (q) is added. As amended § 51.1 reads as follows:

§ 51.1 Definitions.

* * * * *

(n) "Control strategy" means a combination of emission reductions and such other measures as may be necessary for the attainment and maintenance of a national standard, including, but not limited to, measures such as:

* * * * *

(q) "Supplementary control systems" are systems which limit the rate of pollutant emissions during periods when meteorological conditions conducive to ground-level concentrations in excess of national standards exist or are anticipated.

2. In § 51.12, paragraph (a) is revised to read as follows:

§ 51.12 Control strategy: General.

(a) In any region where existing (measured or estimated) ambient levels of a pollutant exceed the levels specified by an applicable national standard, the plan shall provide for the degree of emission reduction and other measures necessary for attainment and maintenance of such national standard, including those necessary to offset emission increases that can reasonably be expected to result from projected growth of population, industrial activity, motor vehicle traffic, or other factors that may cause or contribute to an increase in emissions.

* * * * *

3. In § 51.13, paragraphs (a) and (b) are revised and subparagraphs (d)(4), (e)(4), and (e)(5) and paragraph (h) are added. As amended § 51.13 reads as follows:

§ 51.13 Control strategy: Sulfur oxides and particulate matter.

(a) In any region where emission reductions and other measures are necessary for attainment and maintenance of a primary standard for sulfur oxides or particulate matter, the plan shall set forth a control strategy which shall provide for the attainment of such primary standard within the time prescribed by the Act.

(b)(1) "Reasonable time" for attainment of a secondary standard pursuant to § 51.10(c) shall be the time required to design, fabricate and install necessary control systems or to apply other control measures, unless the State shows that good cause exists for postponing their application. Good cause for postponing the application of such systems or other measures may include the unavailability of necessary control systems or measures, or the likelihood that their installation or application would cause severe adverse social and economic impacts. (b)(2) Where the time for attainment of a secondary standard established by the State extends beyond January 1, 1978, the State shall submit, after notice and public hearing, a reanalysis of the plan at intervals of no more than five years from the date of plan approval by the Administrator. States shall consider application of reasonable interim emission reduction measures to minimize adverse welfare effects which occur at air quality levels in excess of the secondary standards.

* * * * *

(d) * * *

(4) Control strategy demonstrations submitted as a revision to an approved plan after the effective date of this subparagraph shall provide an explicit control strategy demonstration for each region affected by such revision.

(e) * * *

(4) Control strategy demonstrations submitted as a revision to an approved plan after the effective date of this subparagraph shall utilize a diffusion model to estimate the maximum air quality concentrations which are expected after application of the control strategy. Other methods of relating emissions to air quality may be used only when the application of a diffusion model is shown to be inappropriate.

(5)(i) Before supplementary control systems can be authorized, the owner or operator of the source must show that (1) all constant emission reduction technology (or its equivalent) available to the source has been applied and is insufficient to attain national standards; (2) further constant emission reduction means are not available in its particular case; and (3) a program will be undertaken to research, develop, engineer, and demonstrate such constant emission reduction technology as is necessary to attain the national standards. An estimated schedule for their attainment by such means must be provided.

(ii) If supplementary control systems are authorized, each source using this technique must be treated separately. It must be shown through a combination of diffusion modeling and air quality sampling that operation of the system will enable national standards to be attained and maintained at all points significantly influenced by emissions from said source.

(iii) It must be shown that each source using a supplementary control system to achieve national air quality standards has accepted liability for violations of such ambient standards in all areas where air quality is significantly affected by the source's emissions. In some exceptional cases, two or more sources may be considered jointly under paragraph (e)(4)(i) of this section provided that it is established a priori how the liability for an air quality standard violation is to be shared by the sources involved.

(iv) A detailed description of and additional conditions for the acceptability of supplementary control systems for attainment of national standards are set forth in Appendix P.

* * * * *

(h) The increase of stack height up to a height consistent with good engineering practice is acceptable without qualification. An increase in stack height beyond this level is not an acceptable air quality control measure unless accomplished as part of an approved supplementary control system (see Appendix P to this part).

A stack which conforms to good engineering practice is sufficiently tall that emissions from the stack are unaffected by the atmospheric downwash, eddies and wakes which may be created by the facility itself, nearby structures or terrain obstacles.

For fairly level terrain, good engineering practice is normally taken to be a stack height 2½ times the height of the facility or nearby structure. For complex terrain, the 2½ times rule-of-thumb is too simplistic. For such cases, and for more detailed information on good engineering practices, the references listed should be consulted.

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1. Briggs, G. A., "Plume Rise," pp. 7–8, AEC Critical Review Series, U.S. Atomic Energy Commission, Division of Technical Information, Oak Ridge, Tenn., 1969.

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3. Smith, Maynard (editor), "Recommended Guide for the Prediction of the Dispersion of Airborne Effluents," pp. 25–35, American Society of Mechanical Engineers, 345 East 47th Street, New York, N.Y. 10017, May 1968.

4. Turner, D. B., "Workbook of Atmospheric Dispersion Estimates," Publication No. AP-26, EPA, Office of Air Programs, Research Triangle Park, N.C., Revised 1970.

5. Slade, David H. (editor), "Meteorology and Atomic Energy," pp. 221–255, U.S. Atomic Energy Commission, Division of Technical Information, Oak Ridge, Tenn., July 1968.

4. In Part 51, Appendix P is added as follows:

APPENDIX P—DESCRIPTION OF A SUPPLEMENTARY CONTROL SYSTEM AND CRITERIA FOR AN ACCEPTABLE STATE REGULATION

This appendix describes supplementary control systems for the attainment and maintenance of National Ambient Air Quality Standards by taking advantage of the dispersive capability of the atmosphere. It is now concluded that for a limited number of cases and under carefully controlled conditions, procedures which enhance the dispersion of emissions from large isolated sources are reliable means by which ground-level ambient air quality standards can be met.

The supplementary control system is a relatively new control procedure for most States. Its successful application depends on careful design and vigorous surveillance. This Appendix provides guidance to the States and sources for use in the development of supplementary control systems.

The statements presented herein are not intended to require or encourage State agencies to authorize such supplementary control techniques as a means to attain and maintain national standards without first considering (1) the frequency and severity of threats to the national standards in the vicinity of the source, (2) the availability to the source of constant emission reduction techniques, including low sulfur fuel, for the attainment of national standards around such source, (3) the reliability and enforceability of supplementary control techniques, (4) the potential environmental effects of emissions even though such emissions are sufficiently diluted at ground level to attain national standards, and (5) problems unique to the source or state regulatory system.

1.0 DEFINITIONS

"Supplementary Control Systems" are systems which limit the rate of pollutant emissions during periods when meteorological conditions conducive to ground-level concentrations in excess of national standards exist or are anticipated. They are designed to meet air quality standards by varying the emission rate with meteorological conditions in order to take advantage of the changing

dispersive capacity of the atmosphere. Supplementary control systems may also make use of the increased dispersion of pollutants usually achieved by an increase in effective stack height.

"Effective stack height" means the sum of the physical height of the stack above grade and the height the effluent plume rises above the height of the stack top. (Under most circumstances, an increase in the effective stack height results in a decrease in the maximum ground-level concentration of the emitted pollutant and an increase in the distance from the source that the maximum concentration occurs. 1,2)

"Isolated source" means a source that will assume responsibility for all ground-level concentrations of the pollutant covered by the supplementary control system in all areas significantly influenced by its emissions.

2.0 ELEMENTS OF A SUPPLEMENTARY CONTROL SYSTEM

2.1 Figure 2.1 presents a block diagram of the elements of an acceptable supplementary control system and the relationships among them.

2.2 The function of each element follows:

(a) *Meteorological inputs.*—Observations and predictions of the values of meteorological variables required by the operational model to determine the degree of control needed to avoid threats to the national standard (e.g., wind speed, wind direction, stability, mixing height).

(b) *Operating model.*—An intellectual construct which relates meteorological inputs, emission rates, source data and terrain and location factors to current and future ambient air quality in the vicinity of the source.

(c) *Scheduled emission rate.*—The emission rate which would result under the currently scheduled processes and levels of operation.

(d) *Control decision.*—Decisions, based on either the model prediction or real-time air quality (whichever dictates the lower emission rate), whether or not to continue with scheduled processes and their attendant emissions, and if not, how much to curtail the emission rate.

(e) *Controlled emissions.*—The emission rate resulting from the control decision.

(f) *Actual meteorological conditions.*—The measures of wind speed, wind direction, stability, mixing height, and other meteorological factors at the time of emission release.

(g) *Time delays.*—Time will be required to implement the control decision, and more time will pass before the reduced emission rate affects air quality at a distance from the source.

(h) *Air quality.*—Ground-level pollutant concentrations and their temporal and spatial distribution resulting from the source's emissions.

(i) *Air quality monitors.*—An array of sampling stations located at points where maximum ground-level concentrations are most probable to occur (inaccessible points excepted), and in sufficient numbers to allow calibration of the dispersion model so that it may accurately interpolate air quality between samplers. A portion of the monitors may be mobile or portable.

(j) *Threshold values.*—Measured concentration levels somewhat below air quality standards and/or rates of change of concentrations that serve as indicators of potential violations of the standard. They are selected so that a control decision for emission reduction can be made in sufficient time to prevent air quality standards from being violated.

(k) *Data storage.*—Synchronous records meteorological conditions, emission rate, model prediction, measured air quality, and control decisions available for control agency review and model upgrading.

(l) *Upgrade system.*—A periodic evaluation of all system parameters (including the operating model, the meteorological prediction methods, threshold values and other control criteria), based on stored data, with the objective to improve the system's reliability in maintaining the national standards.

2.3 The supplementary control system described in Figure 2.1 will be seen to consist of three basic operations: control based on air quality prediction, control based on air quality measurement, and periodic model upgrading. Each of these operations is considered necessary to a reliable system, for each performs a valuable function. The operating model is used to predict ground-level pollutant concentration sufficiently in advance of its potential occurrence, and to interpolate between monitors. The monitored data and threshold values are used to supplement and, if necessary, override decisions based on the model output, thus compensating for the less than perfect accuracy of the model. The model upgrade operation is used to convert the tentative initial model into an accurate prediction mechanism tailored to the specific plant and site.

3.0 CRITERIA FOR AN ACCEPTABLE STATE REGULATION AUTHORIZING USE OF TECHNIQUES TO ATTAIN NATIONAL AMBIENT AIR QUALITY STANDARDS BY SUPPLEMENTARY CONTROL SYSTEMS

3.1 This section presents criteria for an acceptable State regulation concerning supplementary control systems. The purpose of such a regulation is to ensure that supplementary control systems will be authorized only in the limited situations prescribed by these regulations, and that the systems authorized will be reliable and enforceable with all necessary elements of the system clearly and legally identified.

3.2 An acceptable State regulation must:

(a) Authorize approval of each supplementary control system only after reasonable notice and public hearing.

(b) Authorize supplementary control systems on a source-by-source basis only after demonstration by each source that technology is not available in its case to meet national standards through application of constant emission reduction. The justification must include:

(1) A short description of the type and location of the facility.

(2) The number, location and emissions of other relevant sources in the vicinity of the facility.

(3) Data on the frequency and severity of recent air quality standard violations.

(4) Methods of constant emission reduction that will be applied and the degree of emission reduction expected due to their application.

(5) A statement by an appropriate senior official of the firm which operates the facility that the firm has investigated in good faith the availability and reliability of constant emission reduction methods necessary to reduce the emissions of the facility sufficiently to attain and maintain air quality standards. Documentation should accompany the statement that attests to the firm's efforts to obtain and apply appropriate flue gas control devices and, in the case of combustion sources, to obtain an adequate supply of low sulfur fuel. A description must be presented of the firm's research and demonstration programs, or its participation in such programs, which will accelerate the development of constant emission reduction technology applicable to the source. Such description must include schedules and resources to be committed, and an anticipated date when adequate emission reduction technology can be applied to the source.

(6) A plan for development, operation and demonstration of a supplementary control system.

(7) Any other factors pertinent to the justification for the use of a supplementary control system.

(c) Apply only to isolated sources.

(d) Define air quality violations as:

(1) A single ambient concentration that exceeds the standard at any point in the area significantly affected by the source emissions. Repeated or consecutive excesses at the same monitor or non-simultaneous excesses at different monitors are multiple violations.

(2) Non-compliance with stated and agreed upon emission curtailment conditions and procedures.

(e) Require that penalties be specified for violations of ambient air quality standards or for failure to control emissions in accordance with the approved criteria associated with the supplementary control systems.

(f) Apply only to those sources which can curtail their emissions at a rate compatible with the advance warning time (of adverse atmospheric dispersion conditions) afforded by the supplementary control system, and which will provide assurances that curtailment actions necessary to attain national standards will be appropriately implemented.

(g) If permission is granted to develop and operate a supplementary control system, require formal review and reexamination of the permit at intervals of 5 years or less. The reexamination should include a survey of control techniques which may have become available, the continued relative isolation of the facility and other factors which may bear on the conditions for use of a supplementary control system by the facility.

(h) Require the source to establish, maintain and continuously operate monitors for sensing the pollutant emission rate, air quality and meteorological variables. Emission rate estimates may be substituted for emission measurements provided such estimates provide data of equivalent accuracy, documentation, and legal acceptability as direct emission measurements.

(i) Grant the agency continuous access to all emission, air quality and meteorological data collected by the source and authority to inspect, test and calibrate all sensors, recorders and other equipment operated by the source to collect these data. "Continuous access" may, in practice, require telemetering of such data to the control agency.

(j) Require the source to notify the control agency when emission curtailment is initiated and when air quality standards are exceeded.

(k) Require the source to submit a plan and schedule for implementing a supplementary control system, which is subject to approval by an appropriate control agency. The plan shall have two parts:

(1) A comprehensive report of a thorough background study which demonstrates the capability of the supplementary control system to attain the national standards. The report shall describe a study during a period of at least 120 days when national standards are frequently or likely to be exceeded which:

(i) Describes the emission monitoring system and the air quality monitoring network.

(ii) Describes the meteorological sensing network and the meteorological prediction program.

(iii) Identifies the frequency, characteristics, times of occurrence and durations of meteorological conditions associated with high ground-level concentrations.

(iv) Describes the methodology (e.g., dispersion modeling and measured air quality data) by which the source determines the degree of control needed under each meteorological situation.

(v) Describes the method chosen to vary the emission rate, the basis for the choice, and the time required to effect a sufficient reduction in the emission rate to avoid violations of national standards.

(vi) Estimates the frequency that emission rate reduction is required to attain national standards.

(vii) Describes the basis for the above estimate.

(viii) Includes data and results of objective reliability tests. "Reliability," as the term is applied here, refers to the ability of the supplementary control system to protect against violations of national standards.

(2) An operational manual which:

(i) Specifies and substantiates the number, type, and location of ambient air quality monitors, in-stack monitors, and meteorological instruments to be used.

(ii) Identifies the meteorological situations and monitor readings before and/or during which the emission rate must be reduced to avoid exceeding short-term national standards.

(iii) Describes techniques, methods and criteria used to anticipate the onset of meteorological situations associated with gound-level concentrations in excess of national standards.

(iv) Describes the criteria by which the source determines the degree of control needed for each situation.

(v) Identifies specific actions that will be taken to curtail emissions when critical meteorological conditions exist or are predicted and/or when specified air quality levels occur.

(vi) Identifies the company personnel responsible for initiating and supervising such actions.

(vii) Demonstrates that the curtailment program will result in maintenance of short-term and long-term national standards.

(viii) Describes the manner in which monitoring data are transmitted to the control agency (in a manner acceptable to the agency).

(ix) Describes a program whereby the source systematically evaluates and improves the reliability of the supplementary control system.

(x) Identifies a responsible and knowledgeable person (and alternates) on site who are authorized to curtail and who can apprise the control agency on the status of the supplementary control system at any time.

(l) Require the source to submit monthly reports on the supplementary control system, including an analysis of how the system affected air quality and how response to adverse dispersion conditions will be improved.

(m) Require annual review of the supplementary control system by the control agency, and authorize the agency to deny continued use of the supplementary control system if:

(1) The source has not complied with all provisions designed to protect long-term national standards.

(2) The source has not developed a control program that is effective in enabling short-term national standards to be met (e.g., the source has not followed the control criteria set forth in the approved operational manual).

(3) The source has not demonstrated good faith in operating an effective control program by failing to:

(i) Utilize trained competent personnel.

(ii) Maintain, operate and calibrate the monitoring equipment properly.

(iii) Refine and continuously validate and upgrade the response of the supplementary control system to adverse dispersion conditions.

(iv) Reduce the emission rate in accordance with stipulated control criteria.

(4) The source has not demonstrated good faith efforts to follow its stated program for developing and applying constant emission limitation procedures.

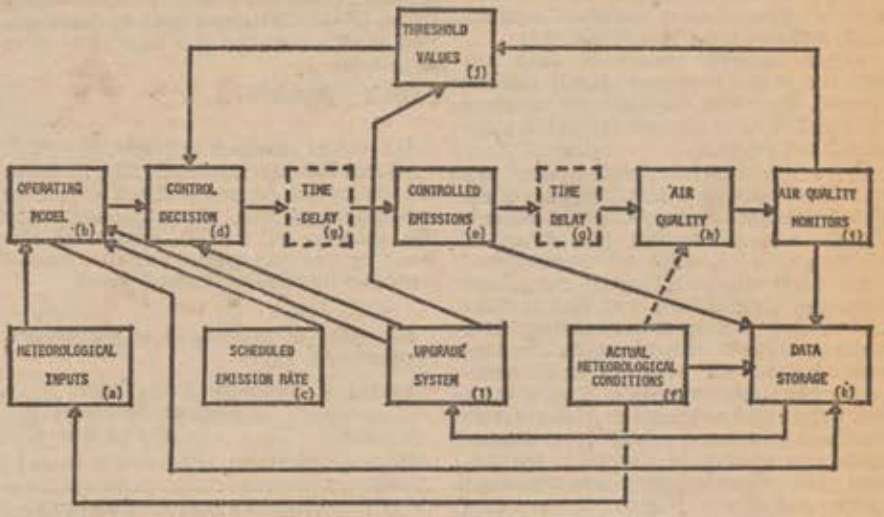


Figure 2.1 Elements of a Supplementary Control System

REFERENCES

1. Briggs, G. A., "Plume Rise," p. 67, AEC Critical Review Series, U.S. Atomic Energy Commission, Division of Technical Information, Oak Ridge, Tenn., 1969.

2. Turner, D. B., "Workbook of Atmospheric Dispersion Estimates," Publication No. AP-26; pp. 5, 10-17, 31-32; EPA, Office of Air Programs, Research Triangle Park, N.C., Revised 1970.

[FR Doc.73-19296 Filed 9-13-73;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[Docket No. 19795]

FM BROADCAST STATIONS

Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations. (Rapid City, South Dakota) RM-2014.

1. On July 26, 1973, the Commission adopted a notice of proposed rulemaking in the above-captioned proceeding. Publication was given in the FEDERAL REGISTER on August 2, 1973, 38 FR 20627. Comment and reply comment dates are presently designated as September 7 and September 17, 1973, respectively.

2. In a petition for extension of time dated September 6, 1973, Counsel for Robert W. Gunderson, Ray J. Aldrich, William A. Goodhope, and Bruce H. Lien requested that the time for filing comments and reply comments be extended to September 21 and October 1, 1973, respectively. Counsel states that the additional time is necessary in order to obtain certain additional information to include in the comments and for the further reason that he has been out of town for 3 weeks on a Commission field hearing.

3. It appears that the requested extension is warranted. Accordingly, *It is ordered*, That the dates for filing comments and reply comments are extended to and including September 21 and October 1, 1973, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d)(8) of the Commission's rules.

Adopted September 7, 1973.

Released September 10, 1973.

[SEAL] WALLACE E. JOHNSON,
Chief,
Broadcast Bureau.

[FR Doc.73-19593 Filed 9-13-73;8:45 am]

FEDERAL RESERVE SYSTEM

[12 CFR Part 204]

RESERVES OF MEMBER BANKS

Definition of Gross Demand Deposits

The Board of Governors proposes to apply reserve requirements against certain accounts classified among "Other liabilities" against which reserves are presently not maintained. The certain "Other liability" accounts against which reserve requirements will now apply are those accounts which a member bank has created to balance its books after debiting demand deposit accounts (or any other accounts for the transfer of funds).

For example, member banks, at present, sometimes exchange checks in the late afternoon or evening, and may debit an account on the day the checks were received, while not making settlement

until the following business day. Some banks balance their books until the next business day by creating an "Other liability" account the night that the debit is posted. On the next business day, the "Other liability" account is debited and the check is paid. The Board of Governors proposes to regard that "Other liability" account as a "deposit" against which reserves must be maintained.

"Other liability" accounts that are used for other purposes would not be affected, e.g. bills payable for services and supplies received and for which payment is not yet due.

There are several reasons why the Board proposes the change. The use of an "Other liability" account for this purpose involves a one business day delay in crediting accounts after debits are posted and the practice may deprive customers of the use of funds in a way that is difficult to detect and is misleading. The Board is also concerned that the practice outlined above can result in understatement of the money supply. Also, a bank that became accustomed to the practice described may have problems in adapting to any electronic payments mechanism that will require simultaneous credits and debits. Finally, the practice allows the level of required reserves to be lower than the Board intended.

To aid in the consideration of this matter by the Board, interested persons are invited to submit relevant data, views, and arguments. Any such material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than October 12, 1973. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's rules regarding availability of information.

To implement its proposal, the Board proposes to amend § 204.1(g) of its Regulation D (12 CFR Part 204) by adding a new sentence at the end thereof to read as follows:

§ 204.1 Definitions.

* * * * *

(g) *Gross demand deposits.* * * *

"Gross demand deposits" also includes any obligation to pay a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the Bank, where the account of the bank's customer has already been debited.

* * * * *

By order of the Board of Governors, September 7, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19542 Filed 9-13-73;8:45 am]

SELECTIVE SERVICE SYSTEM

[32 CFR Part 1604]

SIGNING OF OFFICIAL PAPERS

Notice of Proposed Rule Making

Pursuant to the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 et seq.) and § 1604.1 of Selective Service Regulations (32 CFR 1604.1), the Director of Selective Service hereby gives public notice that consideration is being given to the following proposed amendment to the Selective Service Regulations constituting a portion of Chapter XVI of the Code of Federal Regulations. These Regulations implement the Military Selective Service Act, as amended (50 U.S. Code App., sections 451 et seq.).

The proposed amendment provides authority for additional persons to sign official papers of appeal boards.

All persons who desire to submit views to the Director on the proposals should prepare them in writing and forward them to the Director, Selective Service System, Attn: LLD, 1724 F Street, Northwest, Washington, D.C., 20435. Comments received by October 16, 1973 will be considered.

The proposed amendment follows:

Section 1604.28 is amended to read as follows:

§ 1604.28 Signing official papers.

Official papers issued by an appeal board or panel may be signed by any member or compensated employee of the appeal board or panel or any compensated employee of the Selective Service System whose official duties require him to perform administrative duties at the appeal board or panel except when otherwise prescribed by the Director of Selective Service.

BYRON V. PEPITONE,
Director.

SEPTEMBER 7, 1973.

[FR Doc.73-19536 Filed 9-13-73;8:45 am]

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF STATE

[Public Notice CM-66]

ADVISORY COMMITTEE TO UNITED STATES SECTION, INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION

Notice of Meeting

Notice is hereby given, pursuant to the provisions of Pub. L. 92-463, that a meeting of the Advisory Committee to the United States Section, International North Pacific Fisheries Commission, will be convened on September 24, 1973, at Montlake Laboratory, Northwest Fisheries Center, National Marine Fisheries Service, 2725 Montlake Boulevard East, Seattle, Washington at 9:00 a.m. The agenda of the meeting will include discussion of surveillance of foreign fishing fleets, the progress of fisheries research, the Alaska salmon fisheries, the status of the stocks of halibut, other groundfish and king and tanner crab, the observer program, and world fishery developments as they affect the International North Pacific Fisheries Commission. The meeting on September 24 will be open to the public.

The Advisory Committee will also meet on September 25, 1973. This meeting will not be open to the public inasmuch as the discussion will be devoted to matters exempt from public disclosure under 5 U.S.C. 552(b)(1) and the public interest requires that such discussion be withheld from disclosure.

SUE M. MORELAND,
Committee Management Officer.

SEPTEMBER 11, 1973.

[FR Doc.73-19623 Filed 9-13-73;8:45 am]

[Public Notice CM-64]

LAW OF THE SEA ADVISORY COMMITTEE

Notice of Closed Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is given that the Law of the Sea Advisory Committee shall hold a meeting on Friday and Saturday, September 21 and 22. As it has been determined that the meeting will involve discussion of law of the sea matters exempt from public disclosure under (5 U.S.C. 552(b)(1)) and that the public interest requires that such discussions be withheld from disclosure, the meeting shall be a closed one not open to the general public. The reason for this determination is that documents classified in accordance with Executive Order 11652 would be circulated and discussed.

Dated September 7, 1973.

MYRON H. NORDQUIST,
Executive Secretary.

[FR Doc.73-19565 Filed 9-13-73;8:45 am]

[Public Notice 398]

TRAVEL INTO OR THROUGH CUBA

Restriction on Use of U.S. Passports

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72(c), use of U.S. passports for travel into or through Cuba remains restricted. To permit unrestricted travel would be incompatible with the resolutions adopted at the Ninth Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States, of which the United States is a member. At this meting, held in Washington from July 21 to 26, 1964, it was resolved that the governments of the American States not maintain diplomatic, consular, trade or shipping relations with Cuba under its present government. This resolution was reaffirmed in the Twelfth Meeting of Ministers of Foreign Affairs of the OAS held in September 1967, which adopted resolutions calling upon Member States to apply strictly the recommendations pertaining to the movement of funds and arms from Cuba to other American nations. Among other things, this policy of isolating Cuba was intended to minimize the capability of the Castro government to carry out its openly proclaimed programs of subversive activities in the Hemisphere.

U.S. passports shall not be valid for travel into or through Cuba unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire on September 14, 1974 unless extended or sooner revoked by public notice.

Effective date.—This notice becomes effective on September 14, 1973.

Dated August 31, 1973.

[SEAL] KENNETH RUSH,
Acting Secretary of State.

[FR Doc.73-19537 Filed 9-13-73;8:45 am]

[Public Notice 399]

TRAVEL INTO OR THROUGH NORTH KOREA

Restriction on Use of U.S. Passports

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72(c), use of U.S. passports for travel into or through North Korea remains restricted. In view of the continued hostility of the North Korean regime toward the United States, the unsettled situation along the Military Demarcation Line, and the special position of the Government of the Republic of Korea which is recognized by the U.S. as well as by U.N. resolution as the only lawful government in Korea, the Department of State believes that wholly unrestricted travel by American citizens to North Korea would seriously impair the conduct of U.S. foreign affairs.

U.S. passports shall not be valid for travel into or through North Korea unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire on September 13, 1974, unless extended or sooner revoked by public notice.

Effective date.—This notice becomes effective on September 14, 1973.

Dated August 31, 1973.

[SEAL] KENNETH RUSH,
Acting Secretary of State.

[FR Doc.73-19538 Filed 9-13-73;8:45 am]

[Public Notice 400]

TRAVEL INTO OR THROUGH NORTH VIETNAM

Restriction on Use of U.S. Passports

Pursuant to the authority of Executive Order 11295 and in accordance with 22 CFR 51.72(c), the use of U.S. passports for travel into or through North Vietnam remains restricted. In the aftermath of the signing on January 27, 1973, of the Agreement on Ending the War and Restoring Peace in Vietnam, tensions continue to be high and conditions unsettled in the Indo-China area. The Peace Agreement envisages that the implementation of the Agreement will create conditions for establishing a new, equal and mutually beneficial relationship between the United States and North Vietnam. However, the development of such a new relationship is still in its earliest stages. In these circumstances the Department of State believes that unrestricted travel by American citizens to North Vietnam would seriously impair the conduct of U.S. foreign affairs.

U.S. passports shall not be valid for travel into or through North Vietnam unless specifically validated for such travel under the authority of the Secretary of State.

This public notice shall expire on September 14, 1974, unless extended or sooner revoked by public notice.

Effective date.—This notice becomes effective on September 13, 1973.

Dated August 31, 1973.

[SEAL] KENNETH RUSH,
Acting Secretary of State.

[FR Doc.73-19539 Filed 9-13-73;8:45 am]

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

REGIONAL ADVISORY COMMITTEE ON BANKING POLICIES AND PRACTICES; TENTH NATIONAL BANK REGION

Notice of Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a closed meeting of the Comptroller of the Currency's Regional Advisory Committee on Banking Policies and Practices of the Tenth National Bank Region will be held at 9:00 a.m. on September 28, 1973, at the Board Room of the First National Bank & Trust Company of Lincoln, Lincoln, Nebraska.

The purpose of this meeting is to assist the Regional Administrator and Comptroller of the Currency in a continuing review of bank regulations and policies. The meeting will also apprise agency officials of current conditions and problems banks are experiencing in the Tenth National Bank Region.

It is hereby determined pursuant to section 19(d) of Pub. L. 92-463 that the meeting is concerned with matters listed in section 552(b) of Title 5 of the United States Code and particularly with exceptions (3), (4), and (8) thereof, and is therefore exempt from the provisions of section 10(a)(1) and (a)(3) of the Act (Pub. L. 92-463) relating to open meetings and public participation therein.

Dated September 11, 1973.

[SEAL] JAMES E. SMITH,
Comptroller of the Currency.

[FR Doc.73-19602 Filed 9-13-73;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

SCIENTIFIC ADVISORY BOARD

Notice of Meetings

SEPTEMBER 7, 1973.

The USAF Scientific Advisory Board Science and Technology Advisory Group will hold closed meetings on September 24 and 25, 1973, from 9 a.m. until 5 p.m., at Headquarters Air Force Systers Command, Andrews Air Force Base, Maryland 20331.

The Group will receive classified briefings on the Air Force Systems Command Laboratory Exploratory and Advanced Development Program Elements.

The USAF Scietnific Advisory Board Electronic Systems Division Advisory Group will hold a closed meeting on September 26, 1973 from 8 a.m. until 4 p.m., at L. G. Hanscom Field, Maine.

The Group will receive classified briefings on various Electronics Systems Divisions systems.

The USAF Scientific Advisory Board Ad Hoc Commitee on Electro Optics Technology will hold closed meetings on September 27 and 28, 1973, from 8:30 a.m. until 5 p.m., at the Pentagon, Washington, D.C.

The Committee will receive classified briefings on the Air Force Programs and Requirements for Electro Optics.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-4648.

JOHN W. FAHRNEY,
Colonel, USAF, Chief, Legislative Division, Office of The Judge Advocate General.

[FR Doc.73-19551 Filed 9-13-73;8:45 am]

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

HUNGRY HORSE CLOUD SEEDING PROGRAM

Notice of Public Meeting Regarding Draft Environmental Statement

Bonneville Power Administration will hold a public information meeting at 7:30 p.m., October 15, 1973, in the Large Lecture Room of the Flathead County High School, Kalispell, Montana to present its draft environmental statement covering its proposed Hungry Horse Cloud Seeding Program.

This program is designed to enhance the snowpack in the area drained by the South Fork of the Flathead River above Hungry Horse Dam. The purpose of the program is to help alleviate a projected shortage of firm energy in the Pacific Northwest by assuring normal streamflows and hydroelectric generation. The program is scheduled to begin November 15, 1973, and end no later than April 15, 1974.

All interested parties are urged to attend. The environmental impacts of the cloud seeding program will be described at the meeting and comments on these environmental impacts will be received from the public. All comments are welcomed in order to assist the Administration in fully evaluating the environmental factors of the proposed program.

Copies of the draft environmental statement can be obtained from, or reviewed at, the BPA Kalispell District Office, Box 758, Kalispell, Montana 59901. Copies will also be available at the following:

BPA Headquarters Building
1002 NE. Holladay
Portland, Oregon 97232

BPA Washington, D.C. Office
5600 Interior Building
Washington, D.C. 20240

State of Montana
Department of Planning and Economic Development
Helena, Montana

Flathead County Free Library
37 First Street West
Kalispell, Montana 59901

For further information, you are invited to contact the Kalispell District Office at 406-756-4365.

Dated September 10, 1973.

RAY FOLEEN,
Deputy Administrator.

[FR Doc.73-19627 Filed 9-13-73;8:45 am]

Bureau of Land Management

ROSEBURG DISTRICT ADVISORY BOARD

Notice of Meeting

Notice is hereby given that the Bureau of Land Management Roseburg District Advisory Board will meet at 8:30 a.m., October 2, 1973, at The Roseburg District Office, 1928 Airport Road, Roseburg, Oregon, for the purpose of making a field tour of the southern portion of the district.

The tour is for the purpose of observing forest management problems on adverse sites. There will be no business meeting. The tour will be open to the public, though non-board members must provide their own transportation.

GEORGE C. FRANCIS,
District Manager.

SEPTEMBER 6, 1973.

[FR Doc.73-19545 Filed 9-13-73;8:45 am]

[M 20307; Power Project No. 407]

MONTANA

Order Providing for Opening of Lands

SEPTEMBER 7, 1973.

By virtue of the authority contained in section 24 of the Act of June 10, 1920 (41 Stat. 1075 (16 U.S.C. 818)), as amended, and in accordance with Bureau of Land Management Order No. 701 dated July 23, 1964 (29 FR 10526), as amended, and pursuant to the vacating order of the Federal Power Commission issued June 27, 1973, it is ordered as follows:

1. The following described lands, so far as they are withdrawn and reserved for power purposes, are hereby restored to disposition under applicable public land laws from the withdrawal for Federal Power Project No. 407 dated April 12, 1923, as amended February 1, 1926, subject to valid existing rights and the provisions of existing withdrawals:

PRINCIPAL MERIDIAN, MONTANA

T. 5 S., R. 15 E.,
Sec. 32, S½NE¼, SE¼, and unsurveyed E½SW¼; and
Sec. 33, SW¼NW¼, SW¼, and W½SE¼.
T. 6 S., R. 15 E., (unsurveyed)
Sec. 4, N½NW¼ and SW¼NW¼;
Sec. 5, N½, SW¼, N½SE¼, and SW¼SE¼;
Sec. 6, SE¼NE¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 7, N½N½; and
Sec. 8, NW¼NW¼.

The areas described aggregate approximately 1,840 acres in Stillwater County.

The lands are withdrawn as part of the Custer National Forest and are under the jurisdiction of the Department of Agriculture. In addition to the withdrawal for national forest purposes, the SW¼SE¼NE¼, NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, and N½SE¼SE¼, Sec. 32, T. 5 S., R. 15 E., are withdrawn for a national forest recreation area and the NW¼ Sec. 6, T. 6 S., R. 15 E., is withdrawn for Federal Power Project 1662.

2. At 10 a.m. on October 20, 1973, the lands shall be open to such forms of disposition as may by law be made of national forest lands. The above described land has been open to application and offers under the mineral leasing laws, and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955 (69 Stat. 682; (30 U.S.C. 621)).

ROLAND F. LEE,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.73-19546 Filed 9-13-73;8:45 am]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation No. A024]

SAN PATRICIO COUNTY, TEXAS

Designation as Emergency Areas

The Secretary of Agriculture has found that a general need for agricultural credit exists in San Patricio County, Texas.

The Secretary has further found that such general need for agricultural credit existing in these areas cannot be met temporarily by private, cooperative, or other responsible sources at reasonable rates and terms for loans for similar purposes and periods of time, and that the need for such credit in such areas is the result of a natural disaster consisting of hail and high winds on June 5, 1973, and excessive rains June 5 through July 7, 1973, which occurred during the incidence period of June 5, 1973, through July 7, 1973.

Therefore, the Secretary has designated this area as eligible for Emergency loans, pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 93-24, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for Emergency loans must be received by this Department prior to October 29, 1973, for physical losses and prior to May 30, 1974, for production losses, except that qualified borrowers who received initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

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

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.73-19560 Filed 9-13-73;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

CONSTRUCTION-DIFFERENTIAL SUBSIDY CONTRACT UNDER MARAD TANKER CONSTRUCTION PROGRAM

Notice of Award

Notice is hereby given that on June 29, 1973, the Maritime Subsidy Board awarded a construction-differential subsidy contract, Contract No. MA/MSB-283, to Seatrain Shipbuilding Corporation (Seatrain) and Contract No. MA/MSB-284 to Fillmore Tanker Corporation for one 225,000 deadweight ton tanker, MA Design T10-S-92a, to be constructed by Seatrain at its Brooklyn, New York, shipyard. The application of Fillmore Tanker Corporation for such contract was filed on June 12, 1972, and amended on May 29, 1973.

By Order of the Maritime Subsidy Board Maritime Administration.

Dated September 11, 1973.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-19612 Filed 9-13-73;8:45 am]

[Docket No. S-388]

OPERATING-DIFFERENTIAL SUBSIDY FOR CARRIAGE OF BULK CARGO PRINCIPALLY BETWEEN THE U.S. AND USSR

Notice of Application To Extend Existing Agreements

Notice is hereby given that applications have been filed under the Merchant Marine Act, 1936, as amended, for operating-differential subsidy with respect to bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire, unless extended, on December 31, 1973 (except for subsidized voyages in progress on that date). Inasmuch as the operators listed below and/or related persons or firms, employ ships in the domestic, intercoastal or coastwise service, written permission of the Maritime Administration under section 805(a) of the Merchant Marine Act, 1936, as amended, will be required for each operator upon extension of its contract, notwithstanding that a voyage in the above-mentioned bulk carrier service would not be eligible for subsidy if the vessel carried domestic commerce of the United States on that voyage.

Name of Applicant: Vancor Steamship Corp. (Vancor).

Description of Domestic Service and Vessels: Vancor is the parent of National Transport Corp. (National), which owns and operates the National Defender, a U.S. flag tanker with coastwise privileges. Accordingly, Vancor requests written permission for National or a charterer to operate the *National Defender* in domestic intercoastal or coastwise service during the period of requested extension of Vancor's operating-differential subsidy contract.

Name of Applicant: National Transport Corp. (National).

Description of Domestic Service and Vessels: National owns and operates the *National Defender*, a U.S. flag tanker with coastwise privileges. Accordingly, National requests written permission for it or a charterer to operate the *National Defender* in domestic intercoastal or coastwise service during the period of requested extension of National's operating-differential subsidy contract.

Name of Applicant: American Eagle Tanker Corp. (American Eagle).

Description of Domestic Service and Vessels: Applicant's parent, American Foreign Steamship Corporation, is the owner of the *SS American Oriole, SS American Robin*, each a U.S. flag dry cargo vessel with full U.S. flag privileges. A corporation affiliated with the applicant, American Condor Steamship Corp. owns the *SS American Condor, SS Star, SS Moon*, which are U.S. flag dry cargo vessels with full U.S. flag privileges. The vessels now owned by applicant's parent or affiliates may be engaged by the owner or charterer in the domestic intercoastal or coastwise service. Accordingly, American Eagle requests written permission for related companies or charterers to employ one or more of the aforementioned vessels in intercoastal or coastwise service.

Interested parties may inspect this application in the Office of The Secretary, Maritime Administration, Department of Commerce Building, Fourteenth & E Streets NW., Washington, D.C. 20230.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in the application and desiring to be heard on issues pertinent to section 805(a) or desiring to submit comments or views concerning the applications must, by close of business September 20, 1973, file same with the Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing has been tentatively scheduled for September 21, 1973, in Room 4896 Department of Commerce Building, Fourteenth & E Street NW., Washington, D.C. 20230. The purpose of the hearing will be to receive evidence under section 805(a) relative to whether

the proposed operation (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal services, or (b) would be prejudicial to the objects and policy of the Act.

By order of the Maritime Administration.

Dated September 6, 1973.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-19615 Filed 9-13-73;8:45 am]

[Docket No. S-389]

UNITED STATES LINES, INC.

Notice of Application

Notice is hereby given that United States Lines, Inc. (U.S. Lines), for a prospective wholly-owned subsidiary, has filed an application under the Merchant Marine Act of 1936, as amended (the Act), for operating-differential subsidy with respect to operation of four (4) 80,000 deadweight ton tankers in worldwide tanker trades. U.S. Lines operates containerships in a service between the U.S. East and West Coast and Hawaii and the Far East, including carriage of domestic intercoastal cargo and domestic cargo to Hawaii. Accordingly, U.S. Lines or the prospective wholly-owned subsidiary will require written permission under section 805(a) of the Act if its application for operating-differential subsidy is approved, for U.S. Lines to continue such domestic operations.

The Applicant believes that it is entitled under section 805(a) of the Act to mandatory permission to continue the intercoastal portion of such domestic service if its application is granted because in 1935, and before that almost continuously since the opening of the Panama Canal in 1915, the Applicant (and predecessors in interest) was in bona fide operation as a common carrier by water in the intercoastal trade and has so operated since that time except for interruptions of service over which the Applicant (or its predecessors in interest) had no control.

Interested parties may inspect this application in the Office of The Secretary, Maritime Administration, Department of Commerce Building, Fourteenth & E Streets NW., Washington, D.C. 20230.

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in the application and desiring to be heard on issues pertinent to section 805(a) or desiring to submit comments or views concerning the application must, by close of business September 24, 1973, file same with the Maritime Administration, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave to intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing has been tentatively scheduled for September 26, 1973 in Room 4896 Department of Commerce Building, Fourteenth & E Streets NW., Washington, D.C. 20230. The purpose of the hearing will be to receive evidence under section 805(a) relative to whether the proposed operation (a) could result in unfair competition to any person, firm or corporation operating exclusively in the coastwise or intercoastal services, or (b) would be prejudicial to the objects and policy of the Act.

By Order of the Maritime Administration.

Dated September 6, 1973.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-19614 Filed 9-13-73;8:45 am]

[Docket No. S-390]

WATERMAN STEAMSHIP CORPORATION

Notice of Application

Notice is hereby given that Waterman Steamship Corporation, a New York corporation, has filed an application with the Maritime Subsidy Board pursuant to Title VI (46 U.S.C. 1171-1183) of the Merchant Marine Act, 1936, as amended, (the Act) for a long term operating-differential subsidy agreement for operations on Trade Route No. 12 (U.S. Atlantic/Far East). This company presently has the privilege of calling at U.S. Atlantic ports under its current Operating-Differential Subsidy Agreement, Contract No. MA/MSB-138, covering operations on Trade Route No. 22 (U.S. Gulf/Far East), which agreement is scheduled to expire not later than May 8, 1975. Application for a long-term agreement for operating-differential subsidy on Trade Route No. 22 has been filed previously and has been docketed as S-336. In its present application, Waterman Steamship Corporation is requesting operating-differential subsidy on up to a maximum of 30 sailings per annum on Trade Route No. 12. The applicant proposes to operate such service in conjunction with its service on Trade Route No. 22, utilizing the same vessels. The service would be operated initially with war-built vessels and/or Mariner type vessels, and the applicant has proposed a replacement program which involves the ultimate replacement of three Mariners by two LASH-type vessels in 1977 and the remaining three Mariners by two LASH-type vessels in 1985.

Interested parties may inspect this application in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, Fourteenth & E Streets NW., Washington, D.C. 20230.

Any person firm or corporation having any interest in such application and desiring a hearing on issues pertinent to section 605(c) of the Act (46 U.S.C. 1175), should by the close of business on September 27, 1973, notify the Secretary, Maritime Subsidy Board, in writing in triplicate of his interest therein, and file petition for leave to intervene in accordance with the Rules of Practice and Procedure of the Maritime Subsidy Board (46 CFR, Part 201). Each such statement of interest and petition to intervene should indicate with as much specificity as possible those portions of the application with which the intervenor is concerned and the facts which the intervenor would undertake to prove at a hearing.

In the event that a section 605(c) hearing is ordered to be held, the purpose of the hearing will be to receive evidence relevant to (1) whether the application is one with respect to a vessel or vessels to be operated in an essential service, served by citizens of the United States which would be in addition to the existing service, or services, and if so, whether the service already provided by vessels of U.S. registry is inadequate, (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon, (3) whether the application is one with respect to a vessels or vessels operated or to be operated on an essential service served by two or more citizens of the United States with vessels of United States registry, and if so, whether the effect of the requested contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in such essential service, and (4) whether it is necessary to enter into such contract in order to provide adequate service by vessels of United States resigtry.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Maritime Subsidy Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such action as may be deemed appropriate.

Dated September 11, 1973.

By Order of the Maritime Subsidy Board.

(Catalog of Federal Domestic Assistance Program No. 11.504, Operating-Differential Subsidies (ODS).)

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc.73-19613 Filed 9-13-73;8:45 am]

National Oceanic and Atmospheric Administration

ALABAMA, LOUISIANA, AND MISSISSIPPI

Determination of Commercial Fishery Failure Due to Resource Disaster

Whereas, many individuals and firms in Alabama, Louisiana, and Mississippi are engaged in harvesting, processing, and marketing oysters to meet consumer demands; and

Whereas, the oyster resources in Alabama, Louisiana, and Mississippi make an important contribution to the economy of these States with a combined production value of more than $5 million; and

Whereas, mortalities of oyster stocks from excessive flood waters, a natural cause, ranged from 29 to 85 percent on individual oyster reefs in Alabama, over 40 percent on approximately 2,400 acres of oyster reefs in Louisiana, and 95 to 100 percent on 2,500 acres of oyster reefs in Mississippi; and

Whereas, natural rehabilitation has been hampered by deposition of silt and heavy fouling of cultch by marine organisms; and

Whereas, it is known that the damaged oyster resources can be effectively and economically restored through planting of cultch material;

Now, therefore, as the authorized representative of the Secretary of Commerce, I hereby determine that the foregoing circumstances constitute a commercial fishery failure due to a resource disaster arising from natural causes within the meaning of subsection 4(b) of the Commercial Fisheries Research and Development Act as amended. I hereby authorize the use of funds under this Act to restore and put back into production the damaged oyster resources in coastal areas of Alabama, Louisiana, and Mississippi.

HOWARD W. POLLOCK,
Acting Administrator.

SEPTEMBER 10, 1973.

[FR Doc.73-19552 Filed 9-13-73;8:45 am]

Social and Economic Statistics Administration

CENSUS ADVISORY COMMITTEE ON POPULATION STATISTICS

Notice of Public Meeting

The Census Advisory Committee on Population Statistics will convene on September 21, 1973, at 9:30 a.m. The Committee will meet in Room 2113, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on Population Statistics was established in 1965 to advise the Director, Bureau of the Census, on current programs, on plans for the 1970 Census of Population and on other matters dealing with the collection and issuance of population statistics.

The Committee is composed of 10 members appointed by the Secretary of Commerce.

The agenda for the meeting includes: (1) 1970 Census data delivery system—1970 Census experience, (2) Issues in statistical area concepts and definitions, (3) Net Census undercount—use in postcensal estimates and extension to subnational levels, (4) Neighborhood characteristics, (5) New population projections, (6) Review of poverty and income statistics, and (7) Revision of Current Population Survey March package.

A limited number of seats—approximately 15—will be available to the public. A brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Guidance Control Officer at least three days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting should contact the Committee Guidance and Control Officer, Mr. Daniel B. Levine, Associate Director for Demographic Operations, Bureau of the Census, Room 2061, Federal Building 3, Suitland, Maryland. (Mail address: Washington, D.C. 20233). Telephone 301-763-5167.

EDWARD D. FAILOR,
Administrator, Social and Economic Statistics Administration.

[FR Doc.73-19573 Filed 9-13-73;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADVISORY COMMITTEES

Notice of Renewal

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Food and Drug Administration announces the renewal by the Secretary, Department of Health, Education, and Welfare, of the National Advisory Food Committee for an additional period of two years beyond August 24, 1973, and the Anti-Infective Agents Advisory Committee and the Radioactive Pharmaceuticals Advisory Committee for an additional period of two years beyond August 30, 1973.

Authority for these committees will expire August 24, 1975, and August 30, 1975, unless the Secretary formally determines that continuance is in the public interest.

Dated September 10, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-19628 Filed 9-13-73;8:45 am]

NATIONAL ADVISORY VETERINARY MEDICINE COMMITTEE

Notice of Meeting

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Food and Drug Administration announces the following public advisory committee meeting and other required information in accordance with provisions set forth in section 10(a)(1) and (2) of the act:

Committee name	Date, time, and place	Type of meeting and contact person
National Advisory Veterinary Medicine Committee.	Sept. 27-28, 9 a.m., Conference Room A, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open—Kenneth E. Taylor, D.V.M., Room 7-79, 5600 Fishers Lane, Rockville, Md. 20852, 301-443-4490.

Purpose.—Advises the Commissioner of Food and Drugs on policy matters of national significance as they relate to assuring safety and efficacy of drugs, medical feeds and food additives used in veterinary medicine and animal production; truthful labeling and wholesomeness of animal foods; animal nutrition; and the safety of food from animals that have been treated with drugs or fed drugs or other additives.

Agenda.—Animal Drug and Feed Additive Residues: legal status, human health implications, safety criteria, animal husbandry practices, analytical methods. Veterinary Medical Practice and its Relationship to FDA: OTC and prescription drugs, certification of veterinary products, pet foods.

Agenda items are subject to change as priorities dictate.

During the open sessions shown above, interested persons may present relevant information or views orally to any committee for its consideration. Information or views submitted to any committee in writing before or during a meeting shall also be considered by the committee.

A list of committee members and summary minutes of meetings may be obtained from the contact person for the committee both for meetings open to the public and those meetings closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act.

Most Food and Drug Administration advisory committees are created to advise the Commissioner of Food and Drugs on pending regulatory matters. Recommendations made by the committees on these matters are intended to result in action under the Federal Food, Drug, and Cosmetic Act, and these committees thus necessarily participate with the Commissioner in exercising his law enforcement responsibilities.

Dated September 10, 1973.

SAM D. FINE,
Associate Commissioner for Compliance.

[FR Doc.73-19629 Filed 9-13-73;8:45 am]

National Institutes of Health

BREAST CANCER DIAGNOSIS COMMITTEE

Notice of Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Breast Cancer Diagnosis Committee, National Cancer Institute, September 19, 1973, 9:00 a.m. to 5:00 p.m., National Institutes of Health, Building 31, Conference Room 6. This meeting will be open to the public from 9:00 a.m. to 12:00 noon to discuss plans for a specimen radiography exhibit and make revisions in a prospective guide for Surgeons for Biopsy of Breast Lesions which is intended for future publication, and closed from 1:15 p.m. to 5:00 p.m. for the review of approximately five contracts in the fields of Diagnosis of Breast Cancer, in accordance with the provisions set forth in section 552(b) 4 of Title 5, U.S.

Code, and section 10(d) of Pub. L. 92-463. Attendance by the public will be limited to space available.

Mr. Frank Karel, Associate Director for Public Affairs, NCI, Building 31, Room 10A31, National Institutes of Health, Bethesda, Maryland 20014, 301-496-1911 will furnish summaries of the open/closed meeting and roster of committee members and participants.

Dr. Bernice T. Radovich, Executive Secretary, Landow Building, Room B-406, National Institutes of Health, Bethesda, Maryland 20014, 301-496-6773 will provide substantive program information.

JOHN F. SHERMAN,
Deputy Director, NIH.

SEPTEMBER 10, 1973.

[FR Doc.73-19617 Filed 9-13-73;8:45 am]

ATOMIC ENERGY COMMISSION

[Docket Nos. 50-413, 50-414]

DUKE POWER CO.

Notice of Further Prehearing Conference

In the matter of Duke Power Company, (Catawba Nuclear Station Units 1 and 2), Docket Nos. 50-413, 50-414.

Notice is hereby given that, pursuant to the Atomic Energy Commission's "Notice of Hearing on Application for Construction Permit" herein, published in the FEDERAL REGISTER on December 1, 1972 (37 FR 25560), and pursuant to the Memorandum and Order dated September 6, 1973, issued herein by the Atomic Safety and Licensing Board established by the Commission for this proceeding, a further Prehearing Conference will be held on Thursday, September 20, 1973, at 10:00 a.m., local time, in Courtroom No. 7, District Court, Mecklenburg County Courthouse, 700 East Trade Street, Charlotte, North Carolina 28201.

The further Prehearing Conference will deal with the following matters:

(1) Identification of the key issues;

(2) Any steps necessary for further identification of the issues;

(3) The need for discovery, and the time required therefor;

(4) Establishment of a schedule for further action; and

(5) Such other matters as may aid in the orderly and expeditious conduct of the hearing.

The parties are directed to confer prior to the Prehearing Conference in an effort to narrow, simplify and clarify the contentions and issues presented in this proceeding, so as to assist in the more orderly development of the record in this hearing.

The persons and organizations who were permitted by the aforesaid Memorandum and Order of September 6th to make limited appearances in this proceeding are not required to appear at this scheduled Prehearing Conference; such presentations will be received at the forthcoming Evidentiary Hearing.

Issued at Washington, D.C., this 10th day of September 1973.

It is so ordered.

THE ATOMIC SAFETY AND LICENSING BOARD,
MAX D. PAGLIN,
Chairman.

[FR Doc.73-19555 Filed 9-13-73;8:45 am]

[Docket Nos. 50-416, 50-417]

MISSISSIPPI POWER AND LIGHT CO.

Notice and Order for Third Prehearing Conference

In the matter of Mississippi Power and Light Company (Grand Gulf Nuclear Station, Units 1 and 2), Docket Nos. 50-416, 50-417.

Notice is hereby given, in accordance with § 2.752 of the Atomic Energy Commission's rules of practice, 10 CFR Part 2, that the Atomic Safety and Licensing Board (the Board) will hold a third prehearing conference in the above captioned case on Tuesday, October 23, 1973, at 10:00 a.m., local time, in the Main Courtroom, Circuit Court for Jackson County, 400 East Pascaugola Street, Jackson, Mississippi 39205.

The third prehearing conference shall consider the following matters:

1. All pending motions;

2. The status of discovery;

3. Further simplication, clarification, and specification of the issues;

4. The advisability of holding a separate hearing on environmental issues prior to a hearing on health and safety issues;

5. Scheduling of future hearings in this proceeding; and

6. Sueh other matters as may aid in the orderly disposition of the proceeding.

The attorneys for the respective parties are directed to confer in advance of this prehearing conference, in such matter as they deem appropriate, and report to the Board at said conference of any stipulations regarding issues or evidence, and on any other mutually agreeable procedures to expedite any evidentiary hearing that is to be scheduled.

Members of the public are invited to attend this third prehearing conference as well as all evidentiary hearings to be held at a later date to be fixed by the Board.

By order of the Atomic Safety and Licensing Board.

Dated this 10th day of September 1973, at Washington, D.C.

DANIEL M. HEAD,
Chairman.

[FR Doc.73-19554 Filed 9-13-73;8:45 am]

[Docket Nos. 50-450 and 50-451]

DELMARVA POWER & LIGHT COMPANY AND PHILADELPHIA ELECTRIC COMPANY

Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicants' Environmental Report; Time for Submission of Views on Antitrust Matter

Delmarva Power & Light Company, 800 King Street, Wilmington, Delaware 19899, and Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101 (the applicants), pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, have filed an application which was docketed on August 16, 1973, for authorization to construct and operate two generating units utilizing high temperature gas-cooled reactors. The application was tendered on April 30, 1973. Following a preliminary review for completeness, it was accepted on June 15, 1973.

The proposed nuclear facilities, designated by the applicants as the Summit Power Station, Units 1 and 2 will be located on a site in New Castle County, Delaware, approximately 1.2 miles south of the Chesapeake and Delaware Canal, 5 miles northeast of Middletown, Delaware, and 15 miles southwest of Wilmington, Delaware. Each reactor is designed for initial operation at approximately 2000 megawatts thermal, with a net electrical output of approximately 785 megawatts.

A Notice of Hearing with opportunity for public participation is being published separately.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, on or before October 30, 1973. The request should be filed in connection with Docket Nos. 50-450-A and 50-451-A.

A copy of the application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20545, and at the Newark Free Library, Elkton Road and Delaware Avenue, Newark, Delaware 19711.

The applicants also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR, Part 50, an environmental report dated April 1973. Following a preliminary review for completeness, it was rejected on June 15, 1973, for lack of sufficient information. The applicants submitted a supplement to the environmental report on July 30, 1973, and the report was accepted. The report has been made available for public inspection at the aforementioned locations. The report,

which discusses environmental considerations related to the proposed construction of the Summit Power Station, Units 1 and 2 is also being made available at the Delaware State Planning Office, Tomas Collins Building, 530 South Dupont Highway, Dover, Delaware 19901, and at the Wilmington Metropolitan Area Planning and Coordinating Council, 4613 Robert Kirkwood Highway, Wilmington, Delaware 19808.

After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement will be prepared by the Commission. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials thereon will be made available when received.

Dated at Bethesda, Maryland, this 20th day of August 1973.

For the Atomic Energy Commission.

DARRELL G. EISENHUT,
Acting Chief, Gas Cooled Reactors Branch, Directorate of Licensing.

[FR Doc.73-18380 Filed 8-30-73;8:45 am]

[Docket Nos. 50-448 and 50-449]

POTOMAC ELECTRIC POWER COMPANY

Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matter

Potomac Electric Power Company (the applicant), pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, has filed an application, which was docketed on August 9, 1973, for authorization to construct and operate two single cycle, forced circulation, boiling water nuclear reactors. The application was tendered on July 2, 1973. Following a preliminary review for completeness, it was found acceptable for docketing on August 6, 1973.

The proposed nuclear facilities, designated by the applicant as the Douglas Point Nuclear Generating Station, Units 1 & 2 are located on the east bank of the Potomac River, about 30 miles south-southwest of Washington, D.C., in Charles County, Maryland, and are designed for initial operation at approximately 3579 megawatts (thermal), with a net electrical output of approximately 1178 megawatts.

A Notice of Hearing with opportunity for public participation is being published separately.

Any person who wishes to have his views on the antitrust aspects of the application presented to the Attorney General for consideration shall submit such views to the U.S. Atomic Energy Commission, Washington, D.C. 20545, Attention: Chief, Office of Antitrust and Indemnity, Directorate of Licensing, on or before October 30, 1973. The request should be filed in connection with Docket Nos. 50-448-A & 50-449-A.

The applicant has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in Appendix D to 10 CFR, Part 50, an environmental report dated August 8, 1973. The report has been made available for public inspection at the aforementioned locations. The report, which discusses environmental considerations relative to the proposed construction of the Douglas Point Nuclear Generating Station, Units 1 & 2, is also being made available at the Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201 and at the Metropolitan Washington Council of Governments, 1225 Connecticut Avenue NW., Washington, D.C. 20036.

After the report has been analyzed by the Commission's Director of Regulation or his designee, a draft environmental statement will be prepared by the Commission. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the FEDERAL REGISTER a summary notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials thereon will be made available when received.

Dated at Bethesda, Maryland, this 14th day of August 1973.

For the Atomic Energy Commission.

WALTER R. BUTLER,
Chief, Boiling Water Reactors, Branch 1 Directorate of Licensing.

[FR Doc.73-18379 Filed 8-30-73;8:45 am]

[Docket Nos. 50-387 and 50-388]

PENNSYLVANIA POWER & LIGHT COMPANY (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2)

Assignment of Members of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority in 10 CFR 2.787 (a), the Chairman of the Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for these proceedings:

Alan S. Rosenthal, Chairman
Dr. John H. Buck, Member
William C. Parler, Member

Dated September 11, 1973.

MARGARET E. DU FLO,
Secretary to the Appeal Board.

[FR Doc.73-19591 Filed 9-13-73;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS' SUBCOMMITTEE ON BROWN'S FERRY NUCLEAR PLANT

Postponement of Meeting

SEPTEMBER 12, 1973.

The meeting of the Advisory Committee on Reactor Safeguards' Subcommittee on Brown's Ferry Nuclear Plant, Units 2 and 3, originally scheduled for September 20, 1973, a notice of which was previously published in the FEDERAL REGISTER on September 4, 1970 (Vol. 38, No. 170), at page 23814, has been postponed until further notice.

JOHN C. RYAN,
Advisory Committee Management Officer.

[FR Doc.73-19709 Filed 9-13-73;8:45 am]

CIVIL AERONAUTICS BOARD

[Docket 25280, Agreement CAB 23773, R-3]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Cargo Charters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of September 1973.

There has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958, as amended, and Part 261 of the Board's Economic Regulations, an agreement among various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA) adopted at meetings recently held in Mexico City, and assigned the above designated CAB agreement number. The agreement relates to IATA resolutions 045a and 045c governing cargo charters for various areas.[1] The resolutions are proposed for effectiveness October 1, 1973. The effect of the resolutions would be to revalidate the IATA cargo charter resolution and an IATA resolution concerning involuntary change of routing of cargo from chartered aircraft to scheduled service for all areas of the world through September 30, 1975.

On August 20, 1973, Trans International Airlines, Inc. and World Airways, Inc., filed a joint request urging the Board to disapprove IATA resolution 045a at such time as the Board amends Part 297 of its Economic Regulations to delete the provisions of § 297.23. On August 24, 1973, the Air Freight Forwarders Association requested the Board to disapprove IATA resolution 045a.

For reasons hereinafter set forth, the Board has decided to approve the above resolutions through October 31, 1973, and to afford interested parties an opportunity to show cause by October 1, 1973, why the above agreements should not be

[1] The agreement is IATA standard revalidation resolution 002, and so our action herein is only insofar as it concerns IATA resolution 045a and 045c.

disapproved after October 31, 1973, insofar as they apply to air transportation to or from the United States.

The Board is mindful of the differences between these two resolutions and the Board's own charter rules. These differences raise a basic question as to whether the present agreements, or in fact any agreement on these subjects between IATA members, continue to serve a useful regulatory purpose. It is on this question that we especially seek the comments of interested parties. We note that the Board, in disapproving the IATA passenger charter resolution (045), found that that agreement served no useful regulatory purpose.[3]

The Board is not satisfied with the disparity between its cargo charter rules and the cargo charter rules agreed to by the members of IATA. The IATA cargo charter resolution is in some respects more restrictive than the Board's rules,[5] and in other respects more liberal.[4] To the extent the IATA resolutions are more restrictive than the Board's rules, they prevent the public from taking advantage of charter services to the same extent as the Board has found to be required in the public interest. To the extent the IATA carriers have agreed to rules that are more liberal than the Board's rules, the Board's rules would, in any event, preclude such operations in air transportation. There does not appear to be any valid basis for having two sets of differing charter regulations, one by the U.S. government and one by certain air carriers.

For the foregoing reasons, the Board tentatively finds that the above IATA resolutions are adverse to the public interest. However, the Board recognizes that the resolutions have been in effect, and have been approved by the Board and that it would be appropriate to afford interested parties an opportunity to show cause why we should not make our tentative finding final. In order that interested parties may have sufficient time to prepare their comments, and the Board may have time to consider the comments, we will approve the subject resolutions through October 31, 1973. The Board therefore finds that until October 31, 1973, these resolutions will not be adverse to the public interest nor in violation of the Act, and should be approved until that date.

Accordingly, *it is ordered:*

1. That Agreement CAB 23773, R–3 (insofar as it relates to resolutions 045a and 045c) be and it hereby is approved, provided that the Board's approval shall be limited to the period ending October 31, 1973, insofar as such resolutions relate to air transportation, as defined in the Act;

2. That interested parties are hereby directed to show cause why these IATA resolutions should not be disapproved to the extent that they relate to air transportation, as defined in the Act, after October 31, 1973;

3. That such comments shall be filed in this Docket on or before October 1, 1973; [5] and

4. That this order shall be served on all holders of foreign air carrier permits or certificates of public convenience and necessity, and upon the Departments of Justice, State, and Transportation.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73–19598 Filed 9–13–73;8:45 am]

[Dockets 23333, 24488; Agreement C.A.B. 23845]

INTERNATIONAL AIR TRANSPORT ASSOCIATION

Order Regarding Currency Matters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of September 1973.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers and other carriers embodied in the resolutions of the Traffic Conferences of the International Air Transport Association (IATA). The agreement was adopted by mail vote, and has been assigned the above-designated C.A.B. agreement number.

The agreement would revise the IATA-agreed exchange rate for the Gambian dalasi from 1.91886 dalasi=1 U.S. dollar to 1.53508 dalasi=1 U.S. dollar.[1] This rate is used for conversion of specified dollar fares/rates into local currency selling fares and rates in Gambia, which would now be surcharged five percent. The subject changes were necessitated by currency fluctuations resulting in undervaluation of the dalasi in the existing IATA parities, and will effect a reduction of 16 percent in fares and rates stated in dalasi for transportation originating in Gambia.

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find that Resolutions 100(Mail 930)022x, 200(Mail 187)022x, and 300(Mail 411) 022x, incorporated in Agreement C.A.B. 23845, are adverse to the public interest or in violation of the Act.

Accordingly, *it is ordered that:*

Agreement CAB 23845 be and hereby is approved.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

[SEAL] EDWIN Z. HOLLAND,
Secretary.

[FR Doc.73–19599 Filed 9–13–73;8:45 am]

COST OF LIVING COUNCIL

HEALTH INDUSTRY ADVISORY COMMITTEE

Notice of Change of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 88 Stat. 770), notice is hereby given that the meeting of the Health Industry Advisory Committee scheduled, as previously announced, on September 17, 1973, at the Cost of Living Council offices, 2000 M Street NW., will meet instead in the Chinese Room of the Mayflower Hotel in Washington, D.C. Also, the afternoon portion of the meeting will be held in the same room and will be open to the public. Therefore, both morning and afternoon sessions will be open to the public on a first-come, first-serve basis.

Issued in Washington, D.C., on September 12, 1973.

HENRY H. PERRITT, Jr.,
Executive Secretary,
Cost of Living Council.

[FR Doc.73–19707 Filed 9–12–73;3:31 pm]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19812; FCC 73–926]

GTE SATELLITE CORP.

Memorandum Opinion and Order Re Oral Argument En Banc

In the matter of applications of GTE Satellite Corporation for authorization to lease satellite transponders and to construct five earth stations to provide domestic communications satellite services, Docket No. 19812, File Nos. 14–DSE–P–71, 15–DSE–P–71, 16–DSE–P–71, 17–DSE–P–71, 14–DSE–P–73.

1. One of the domestic satellite system proposals considered by the Commission in the domestic satellite proceeding (Docket 16495) was a proposal by GTE Service Corporation and various GTE operated companies to provide interstate message toll telephone service (MTT) and private line services by means of satellite facilities leased from Hughes Aircraft Company, now National Satellite Services, Inc. (NSS) and earth stations owned by GTE. Following the issuance of the Second Report and Order in Docket 16495, GTE Service Corporation formed a separate corporate subsidiary, GTE Satellite Corporation (GSAT), to engage in domestic satellite operations and transferred the pending applications to that entity. NSS proposes to use the

[3] See Order 72–6–91, dated June 21, 1972, at page 5.

[5] The IATA resolution is more restrictive than the Board's charter rules in that it does not allow member carriers to charter to airfreight forwarders.

[4] Examples of instances where the IATA resolutions are more liberal than the Board's charter rules are that they allow the carrier to allocate unused space for the carriage of mail, and for the use of the carrier's government, that they allow split cargo charters in limited circumstances, and that they allow charter traffic to be rerouted over scheduled services in certain instances.

[5] Twelve (12) copies of such comments shall be filed.

[1] The dalasi/U.K. pound parity would also be revised, from 5.00 to 4.00=1 pound.

remainder of the satellite capacity now used by GSAT to provide interconnection service to public broadcasting interests without charge and to engage in its own private venture for distributing programming to the cable television industry. The two proposals are interdependent in that NSS represents that it cannot proceed and will abandon its application if the GSAT proposal is not authorized.

2. In the Second Report and Order on domestic satellites in Docket No. 16495 (38 FCC 2d 844, 853–854, paragraphs 27–30), the Commission left open the question of whether GSAT should be authorized to provide interstate MTT service via domestic satellite and determined that GSAT would, in any event, be under the same restriction as A.T. & T. with respect to the provision of private line and other specialized services. Concerning MTT service, the Commission stated:

27. * * * in encouraging multiple entry and the development of competition in the supply of domestic communications, we have maintained a distinction between the so-called monopoly switched telephone services now being furnished by A.T. & T. and all other classes of existing and potential specialized services. We have made this distinction not for the purpose of protecting any established position that A.T. & T. occupies in the MTT field. Rather, it has been our purpose and concern to protect the public in the availability of efficient and economic switched MTT services—an interest that might well be adversely affected by unnecessarily fragmenting responsibility for the planning and provision of the facilities required for this integrated service. On the other hand, we should not reject any proposal that might prove feasible and beneficial to the public simply because it represents some departure from the established scheme. This is particularly true when the proposal comes from an entity, such as GTE, which already is a significant participant in the furnishing of MTT facilities and services, although essentially as a carrier which originates, terminates, and switches large volumes of MTT traffic rather than in the provision of long lines transmission facilities.

28. At least potentially, GTE's proposal offers several advantages. It would introduce more directly, although on a limited scale, the perspective and experience of another responsible entity into the planning and operation of the interstate MTT network, which heretofore has been the sole responsibility of A.T. & T. It could provide a basis for regulatory comparison of the relative efficiencies and cost advantages of somewhat different technologies represented by A.T. & T.'s proposal and GTE's proposal. It could also tend to lessen A.T. & T.'s dominance and economic influence in the domestic communications field.

29. Notwithstanding these potential public benefits, there are a number of uncertainties, not dispelled by the information contained in the record before us, that must be resolved before we can make the required statutory finding that GTE's proposal will serve the public interest. Accordingly, before determining whether this portion of the Hughes/GTE applications should be authorized, we will require a showing of the nature described by the staff (paragraphs 98–99) concerning: what potential benefits might be achieved by affording GTE access to the satellite technology for this purpose; whether its proposal is economically justified from the standpoint of the public in terms of costs and prospective fill; the effect on GTE's present contracts for settlement with A.T. & T.; GTE's plans for handling traffic in case of temporary outages or catastrophic failure of its satellite system facilities; how the costs of such facilities would be treated for rate-making and accounting purposes; and the kinds of data it will gather and report to the Commission to assist our evaluation of the efficiency and economy of any authorized operations compared to continued exclusive reliance on the interstate switched telephone facilities of A.T. & T.

3. Further, if GSAT's domestic satellite proposal is authorized, the Second Report did not foreclose the possibility that GSAT would be the designated entity to provide MTT service to Hawaii if it showed that the cost of using its facilities would be less than or approximately equivalent to the cost of utilizing A.T. & T. facilities (Second Report, 38 FCC 2d at 858, paragraph 39).

4. Neither GSAT nor NSS sought reconsideration of the Second Report. Instead GSAT filed amendments to the pending applications on October 16, 1972, which purported to make the showings required by the Commission. The staff afforded A.T. & T. an opportunity to comment on the GSAT amended proposal, and A.T. & T. filed its comments on November 27, 1972. Subsequently, GSAT filed a reply and A.T. & T. filed supplemental comments.

5. The Commission has given careful consideration to the showings made by GSAT in support of its application with respect to the remaining issues specified in paragraph 29 of the Second Report and Order quoted above, as well as to the comments filed by A.T. & T. and GSAT's replies thereto. It is the Commission's view that its resolution of these issues and the pleadings with respect thereto would be assisted by an oral argument at an early date as hereinafter designated with our final decision issued immediately thereafter.

6. Since no parties other than GSAT and A.T. & T. have filed data and pleadings concerning the GSAT applications, we are limiting the arguments herein to those two parties. We are not concerned with the NSS aspects of the applications in this matter.

7. *It is therefore ordered*, That an oral argument will be held before the Commission en banc at its offices in Washington, D.C., on September 11, 1973, at 9:30 a.m.

8. *It is further ordered*, That GSAT and A.T. & T. shall each limit themselves to the issues as quoted above from paragraph 29 of the Second Report and Order in Docket 16495 and to the context of data and pleadings heretofore filed by said parties.

9. *It is further ordered*, That each party shall have 60 minutes of argument and GSAT shall have the right to open and close said argument.

Adopted September 6, 1973.

Released September 7, 1973.

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

[FR Doc.73-19595 Filed 9-13-73;8:45 am]

[Docket No. 19808; FCC 73-901]

TELERENT LEASING CORP., ET AL.

Federal Pre-emption of Interconnection of Subscriber Furnished Equipment

In the matter of Telerent Leasing Corporation, et al., petition for declaratory rulings on questions of Federal preemption on regulation of interconnection of subscriber-furnished equipment to the nationwide switched public telephone network.

1. The Commission has before it a petition for declaratory rulings filed on August 8, 1973 by North American Telephone Association (NATA) and a number of firms doing business in the States of North Carolina and Nebraska, hereinafter jointly referred to as Petitioners. NATA is a national trade organization of companies engaged in the manufacture, distribution, installation, and maintenance of interconnected communications terminal equipment and systems.[1] The primary question raised by the petition is whether and, if so, to what extent the actions which we have taken on interconnection of customer-provided communications equipment to the nationwide switched public telephone network have preempted state action in this area. A ruling is also sought as to whether customers, such as hotels and motels, providing their own communications systems (e.g., PABX) are communications common carriers and therefore subject to regulation as such.

2. On August 15, 1973, we invited persons interested in commenting on the subject petition to file comments on or before September 12, 1973, and reply comments on or before September 24, 1973.[2]

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[1] Commissioners Robert E. Lee, Johnson, and H. Rex Lee dissenting.

[1] In addition to NATA, Petitioners are comprised of Telerent Leasing Corporation, Crescent Industries, Inc., Long Engineering Co., Petty Communications, Inc., Tele-Sound Company, Inc., and Telephone Interconnect Company, all NATA members in the States of North Carolina or Nebraska.

[2] Public Notice dated August 15, 1973 (Mimeo No. 05725). In an earlier News Release dated August 10, 1973 (mimeo No. 05612) our Public Information Office called attention to Petitioners' filing as one of a number received of more than routine interest.

3. In our Carterfone decision,[3] we held that the Carterfone[4] filled a need, that its use did not adversely affect the telephone system, that its use was nevertheless precluded by provisions in an American Telephone & Telegraph Company (A.T. & T.) tariff, and that the tariff was unlawful because it prohibited the use of the Carterfone and other interconnecting devices without regard to actual harm caused to the telephone system. We did not prescribe the terms of a new tariff, but left that to the initiative of the telephone companies, pointing out that they were in no wise precluded from adopting reasonable standards to prevent harmful interconnection. Basic to our holding was a rejection of A.T. & T.'s position that because A.T. & T. could not control the interconnected private system, interconnection was by definition a degradation of the message toll telephone system without regard to the quality of the interconnecting device or of the interconnected mobile radio system, i.e., without regard to actual harmful effects. We viewed that position, and the tariff rule embodying it, as unreasonable.

4. As a result of our Carterfone decision, A.T. & T. filed new and revised tariffs, presently in effect, which permit the interconnection and use of customer-provided terminal devices or communications systems to the telephone message toll and exchange network subject to certain conditions. One such condition is that any network control signalling unit (NCSU) must be furnished, installed and maintained by the telephone company (except for certain military installations and remote or hazardous locations). In permitting such tariffs to go into effect without formal investigation or hearing, we held that the tariff bar against any customer providing his own NCSU in connection with telephone company facilities was not in conflict with our Carterfone ruling.[5] Similarly, we have held that the present restrictions in the interstate MTS and WATS tariffs against customers providing connecting arrangements (CA's) for direct connection of customer-provided equipment (e.g., electrocardiograph, telephotograph, and recording devices) to the telephone system also did not violate our Carterfone decision.[6]

5. On June 14, 1972, we instituted a Federal-State Joint Board proceeding under section 410(c) of the Communications Act (Docket 19528) to determine whether there was a public need to go beyond what we ordered in Carterfone. We made clear at that time that we were not looking toward any modification of our holding in Carterfone and stated:

> We believe that the soundness of our Carterfone decision has been amply demonstrated. New markets have been opened to the innovative enterprise of many companies; the public has benefitted from having a wide range of choices available when the individual user selects the terminal device or private system which will best serve his particular communications need; and there has been no actual demonstrable harm to the telephone system or its users. Accordingly, this proceeding will not be concerned with any question relating to whether or not modifications should be made in that decision or in any of the provisions in the interstate MTS and WATS tariff provisions filed in compliance therewith. Our proceeding herein is concerned with the pending and unresolved basic issues now before us as to whether, and to what extent, there is public need for us to go beyond what we ordered in Carterfone and permit customers to provide, in whole or in part, the aforementioned NCSU's and CA's in interstate MTS and WATS and, if so, what terms and conditions should apply to protect the telephone system and services of others.[7]

6. On June 29, 1973, the North Carolina Utilities Commission gave notice of a proposed rule (R9-5)[8] which would generally prohibit interconnection of customer-owned or customer-provided equipment to the communications system of any telephone company doing business in North Carolina. It appears that, under the proposed rule, any such telephone company could provide such interconnection for interstate services only over facilities distinct and separate from those used for intrastate service.

7. By letter dated July 11, 1973 to the North Carolina Utilities Commission, the Chief of our Common Carrier Bureau noted that all interstate message toll service is offered over equipment used for both interstate and intrastate service. It was further noted that A.T. & T. Tariff No. 263 on file with this Commission governs the provision of interstate message toll telephone service throughout the nation, and that all subscribers have a right to interconnect their own equipment to such commonly used network facilities under that Tariff. Accordingly, the North Carolina Utilities Commission was advised that its proposed rule could not be implemented without a major restructuring of intrastate and interstate service offerings and the tariffs reflecting the terms and conditions of those offerings. It was noted that such a major revision in interstate service offerings would present numerous public interest questions under the Communications Act. It was further noted that the National Association of Regulatory Commissioners had taken the view, in which we have concurred, that because of the commonality of the joint use of telephone company facilities by all subscribers for intrastate and interstate message toll service, matters of interconnection with the message toll network should be treated on a cooperative, coordinate basis and that the pending Federal-State Joint Board proceeding in Docket 19528 was such an effort.

8. By letter dated July 18, 1972 to the Nebraska Public Service Commission, the Attorney General of Nebraska rendered an advisory opinion that our Carterfone decision did not prevent a telephone company from prohibiting interconnection of customer-provided equipment or wire interconnection for intrastate use. He also advised, in effect, that a hotel or motel could not interconnect privately-owned communications equipment with the telephone company without a hearing and finding by the Nebaska commission that the telephone company in the area had refused or failed to provide adequate service. (See attachment B.)

9. Petitioners contend that the above described actions of Nebraska and North Carolina, and the probability of similar State actions threatens the jurisdictional basis of Federal and State authority in our Joint Board proceeding in Docket 19528, compromises Federal-State Joint Board proceedings, imparts uncertainty to other Commission proceedings, and undermines our Carterfone, MCI[9] and Specialized Common Carrier[10] decisions. Petitioners further contend that these actions also threaten the ability of interconnect industry to furnish equipment and services to users of interstate and foreign communications, and could result in rolling back this service to a point where telephone companies again became the sole source of supply of user services and facilities.

10. On August 22, 1973, the North Carolina Utilities Commission filed pleadings[11] requesting that it be authorized to participate in this proceeding for the limited purpose of contesting our jurisdiction to grant the relief sought by Petitioners. The Utilities Commission stated that the specific relief sought raises serious and substantial constitutional questions with respect to state and federal relations and accordingly should be set for oral argument before this Commission. The Utilities Commission contends that, after hearing oral argument, we should dismiss the subject petition as premature and contrary to the provisions of section 2(b) and 221(b) of the Communications Act (47 U.S.C. 152 (b) and 47 U.S.C. 221(b)).

11. We are of the opinion that the above described advisory opinions of the Attorney General of the State of Nebraska and Rule R9-5 proposed by the North Carolina Utilities Commission have created uncertainty concerning whether and, if so, to what extent actions which we have taken, and policies which we have promulgated, in *Carterfone* and

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[3] *Carterfone*, 13 FCC 2d 420; reconsideration denied, 14 FCC 2d 571 (1968).

[4] The Carterfone is a device used to interconnect mobile radio systems to the interstate and foreign message toll telephone system.

[5] *A.T. & T.*, 15 FCC 2d 605, reconsideration denied, 18 FCC 2d 871, 872.

[6] See *Interstate and Foreign MTS and WATS*, 35 FCC 2d 539, 542.

[7] *Interstate and Foreign MTS and WATS*, 35 FCC 2d 539, 542.

[8] The text of the proposed rule is contained in Attachment A hereto.

[9] *Microwave Communications, Inc.*, 18 FCC 2d 953, reconsideration denied, 21, FCC 2d 190.

[10] *Specialized Common Carrier Services*, 29 FCC 2d 870 (1971).

[11] The pleadings were: (1) A special appearance for the limited purpose of contesting jurisdiction, (2) an opposition to the petition for declaratory rulings, and (3) a motion to dismiss petition and request for oral argument before the full Commission. Such pleadings, to the extent not acted upon herein, and all comments filed pursuant to our Public Notice of August 15, 1973 will be considered in reaching our decision in this proceeding.

related cases with respect to interconnection of customer-provided communications equipment to the nationwide switched public telephone network have pre-empted state action in this area. We are of the further opinion that such uncertainty and the legal issues raised can and should be promptly resolved on the basis of briefs and oral argument before the Commission.

12. Accordingly, *It is hereby ordered*, Pursuant to sections 4(i), 4(j), and 403 of the Communications Act and §§ 1.1 and 1.2 of our rules, that this matter is designated for oral argument before the Commission, en banc, in Washington, D.C. on October 30, 1973, at 9:30 a.m.

13. *It is further ordered*, That each person or entity intending to participate in the oral argument shall file a brief on or before October 1, 1973 and a statement of intention to appear, specifying the amount of time requested for oral argument, by no later than October 15, 1973, and may file reply comments on or before October 15, 1973. The Commission reserves the right to limit the numbered of participants and the time of argument of each participant in the oral argument.

14. *It is further ordered*, That the petition of Telerent Leasing Corporation, et al., is hereby granted to the extent reflected above, and otherwise is denied.

15. *It is further ordered*, That the pleadings described in footnote 11 herein filed by the North Carolina Utilities Commission are hereby granted to the extent indicated herein and otherwise shall be held in abeyance pending oral argument and our decision thereafter.

Adopted September 6, 1973.

Released September 7, 1973.

FEDERAL COMMUNICATIONS COMMISSION,[12]

[SEAL] VINCENT J. MULLINS, *Acting Secretary.*

[FR Doc.73-19596 Filed 9-13-73;8:45 am]

FEDERAL MARITIME COMMISSION

[Docket No. 73-56]

NON VESSEL OPERATING COMMON CARRIERS IN DOMESTIC OFFSHORE TRADES

Order To Show Cause

On February 1, 1973, the Commission issued an order pursuant to section 21 of the Shipping Act, 1916 (46 U.S.C. 820), requiring all Non Vessel Operating Common Carriers by Water (NVOCC's) in the Domestic Offshore Trades, with tariffs on file at this Commission, to complete and return a questionnaire attached to that order.[1] Notice was given in the last paragraph of the order that failure to furnish the questionnaire would result in the issuance of an Order to Show Cause why that NVOCC's tariff(s) in the Domestic Offshore Trade(s) should not be canceled. Appendix A, attached below, lists the NVOCC's who have failed to furnish the subject questionnaire, and who continue to have FMC Tariffs on file. The Commission considers this failure to be prima facie evidence that those NVOCC's no longer operate pursuant to their tariffs.

Now, therefore, it is ordered, That pursuant to sections 18(a), 21, and 22 of the Shipping Act, 1916 (46 U.S.C. 817, 820 and 821), and section 2 of the Intercoastal Shipping Act, 1933 (46 U.S.C. 844), each of the NVOCC's listed in Appendix A hereto be named as respondent in this proceeding and that each be ordered to show cause why its individual tariff(s) in the Domestic Offshore Trade(s), on file with this Commission, should not be canceled for failure to reflect the service actually offered by that NVOCC.

It is further ordered, That this proceeding shall be limited to the submission of affidavits and memoranda of law, replies, and oral argument if deemed necessary by the Commission. Should any party feel that an evidentiary hearing is necessary, that party must accompany any request for such hearing with a statement setting forth in detail the facts to be proven, their relevance to the issues in this proceeding, and why such proof cannot be submitted through affidavit. Requests for hearing shall be filed on or before October 10, 1973. Affidavits of fact and memoranda of law shall be filed by respondents and served upon all parties no later than the close of business October 10, 1973. Reply affidavits and memoranda shall be filed by the Commission's Bureau of Hearing Counsel and intervenors, if any, no later than close of business October 25, 1973.

It is further ordered, That a notice of this order be published in the FEDERAL REGISTER and that a copy thereof be served upon respondents.

It is further ordered, That persons other than those already party to this proceeding who desire to become parties to this proceeding and to participate therein shall file a petition to intervene pursuant to Rule 5(1) of the Commission's rules of practice and procedure (46 CFR 502.72), no later than close of business October 3, 1973.

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in an original and 15 copies as well as being mailed directly to all parties of record.

By the Commission.

[SEAL] JOSEPH C. POLKING, *Assistant Secretary.*

APPENDIX A

Alvarez Shipping Co., Inc., 3854 3rd Avenue, Bronx, New York 10457.

Cal-Hawaiian Freight, Inc., 695 N. Batavia, Orange, California 92667.

Columbus Express Shipping Co., Inc., 1158 Southern Blvd., Bronx, New York 10459.

Distribution International Service Co., 201 North Federal Highway, Deerfield Beach, Florida 33441.

El Faro Shipping Co., 110 Scholes Street, Brooklyn, New York 11206.

El Sol De Mayo Express Furniture, 937 East Tremont Avenue, Bronx, New York 10460.

Fast Mar Service, Inc., 4711 Dell Avenue, North Bergen, New Jersey 07047.

Hawaiian Express Service, Inc., 9 First Street, San Francisco, California 94105.

Hawaiian Freight Lines, Inc., P.O. Box 1601, Honolulu, Hawaii 98806.

D. L. Haynes, Inc., 4757 E. Slauson Avenue, Maywood, California 90270.

La Isla Shipping Co., 399 Hooper Street, Brooklyn, New York 11211.

La Rosa Del Monte Express, Inc., 559 East 180th Street, Bronx, New York 10457.

Maritime Trucking Co., Inc., P.O. Box 2770, San Juan, Puerto Rico 00903.

Modern Intermodal Traffic Corp., 1417 Clay Street, Oakland, California 94612.

Nunez Express Co., Inc., 1376 Bronx River Avenue, Bronx, New York 10472.

Ocean Truck Express Co., Inc., 989 S.E. 11th Place, Hialeah, Florida 33010.

Rodriguez Trucking, Inc., 661 Park Avenue, Brooklyn, New York 11206.

San Juan Freight Forwarders, Inc., P.O. Box 2099, Carolina, Puerto Rico 00630.

San Lorenzo Express Corp., 1548 W. North Avenue, Chicago, Illinois 60622.

Sea Freight Express, Inc., 720 Tonnele Avenue, Jersey City, New Jersey 07307.

Sea-Progress, Inc., 144-29 156 Street, Jamaica, New York 11434.

Set Forwarders, Inc., 330 Wythe Avenue, Brooklyn, New York 11211.

Shipcosmos Thrucontainers, P.O. Box 1205, Hato Rey, Puerto Rico 00919.

Siegmunds, Inc., P.O. Box 1205, Hato Rey, Puerto Rico 00919.

Timline, 724 N. E. 2nd Avenue, Miami, Florida 33122.

Windward Marine Inc., 575 Sakett Street, Brooklyn, New York 11217.

Beverly Hills Transfer & Storage Co., 221 S. Beverly Drive, Beverly Hills, California 90212.

Cargo in Containers, Inc., 2800 West 38th Street, Chicago, Illinois 60632.

Convan Corp., 271 Madison Avenue, New York, New York 10016.

Household Goods Carriers Bureau, Agent, 2425 Wilson Boulevard, Arlington, Virginia 22201.

Agent for:
Alaska Orient Van Service, Inc., Holman & Co., George B. Martin Van Lines, Inc., Salt Lake Transfer Company.

International Export Packers, Inc., 5360 Eisenhower Avenue, Alexandria, Virginia 22304.

Liberty Pac International Corp., 43 West 64th Street, New York, New York 10023.

Movers' & Warehousemen's Association of America, Inc., Suite 522, Munsey Building, 1329 E Street NW., Washington, D.C. 20004.

Agents for:
Airline Vans, Inc.
Anchor Van Lines, Inc.
Bader Bros., Van Lines, Inc.
Bentley's Inc.
Cartwright Van Lines, Inc.
Dean Van Lines, Inc.
Delcher Brothers' Storage Company

[12] Commissioner Robert E. Lee Absent.

[1] The date on which the questionnaires were originally ordered to be furnished was April 1, 1973. Several extensions of time were granted to various parties, however, and the last date on which any questionnaire was permitted to be filed was April 16, 1973.

Empire Household Shipping Company of New York, Inc.
Fogarty-Bros. Transfer, Inc.
Interstate Van Lines, Inc.
King Van Lines, Inc.
Pyramid Van Lines, Inc.
Republic Van and Storage Co., Inc.
Smyth Van & Storage Co., of California
Trans Country Van Lines, Inc.
Nevares Express Shipping, Inc., 560 Claremont Parkway, Bronx, New York 10457.
U. C. Household Shipping Co., 4601 Shattuck Avenue, Oakland, California 94609.

[FR Doc.73-19609 Filed 9-13-73;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. G-2712, et al.]

RATE SCHEDULES

Findings and Order After Statutory Hearing

AUGUST 31, 1973.

Each Applicant herein has filed an application pursuant to section 7 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 or a petition to amend an order issuing a certificate, all as more fully set forth in the applications and petitions to amend.

Applicants have filed FPC gas rate schedules or supplements to rate schedules on file with the Commission and propose to initiate, add or discontinue in part natural gas service in interstate commerce as indicated in the tabulation herein.

After due notice by publication in the FEDERAL REGISTER, no petitions to intervene, notices of intervention, or protests to the granting of the applications and petitions have been filed.

At a hearing held on August 24, 1973, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications and petitions and exhibits thereto, submitted in support of the authorizations sought herein, and upon consideration of the record,

The Commission finds

(1) Each Applicant herein is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission or will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act upon the commencement of service under the authorizations hereinafter granted.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications in this proceeding, will be made in interstate commerce subject to the jurisdiction of the Commission; and such sales by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(4) The sales of natural gas by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity; and certificates therefor should be issued as hereinafter ordered and conditioned.

(5) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates of public convenience and necessity in various dockets involved herein should be amended as hereinafter ordered.

(6) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that Applicant in Docket No. CI73-339 should be made co-respondent in its predecessors' rate proceedings and that Applicant in Docket No. G-14460 should be substituted as respondent in its predecessor's rate proceeding.

(7) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the FPC gas rate schedules and supplements related to the authorizations hereinafter granted should be accepted for filing.

(8) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the orders issuing certificates, for sales authorized herein to be continued under new or amended certificates, should be amended by deleting therefrom authorization to sell gas.

(9) Section 154.93 of the regulations under the Natural Gas Act should be waived to the extent necessary to permit the acceptance for filing of the rate schedules for the sales authorized in Docket Nos. CI73-527 and CI73-529 with contractual provisions for the possible sales of the Federal Government's royalty shares of the gas at prices in excess of the otherwise applicable rates and with contractual provisions to increase rates to higher area rates found to be proper by hearing, rulemaking, or Commission approved settlement.

(10) The application filed in Docket No. CI72-700 by Car-Tex Producing Company, predecessor of Applicant in Docket No. CI73-437, for authorization to continue sales of natural gas authorized in Docket No. G-12500, is now moot.

(11) The rate at which the sale in Docket No. CI73-704 is authorized to be continued is below the just and reasonable area ceiling rate.

The Commission orders

(A) Certificates of public convenience and necessity are issued upon the terms and conditions of this order authorizing sales by Applicants of natural gas in interstate commerce for resale, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, all as hereinbefore described and as more fully described in the applications and in the tabulation herein.

(B) The certificates granted in paragraph (A) above are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

(C) The grant of the certificates issued in paragraph (A) above shall not be construed as a waiver of the requirements of section 7 of the Natural Gas Act or of part 154 or part 157 of the Commission's regulations thereunder and is without prejudice to any findings or orders which have been or which may hereafter be made by the Commission in any proceedings now pending or hereafter instituted by or against Applicants. Further, our action in this proceeding shall not foreclose or prejudice any future proceedings or objections relating to the operation of any price or related provisions in the gas purchase contracts herein involved. The grant of the certificates aforesaid for service to the particular customers involved does not imply approval of all of the terms of the contracts, particularly as to the cessation of the service upon termination of said contracts as provided by section 7(b) of the Natural Gas Act. The grant of the certificates aforesaid shall not be construed to preclude the imposition of any sanctions pursuant to the provisions of the Natural Gas Act for the unauthorized commencement of any sales of natural gas subject to said certificates.

(D) The orders issuing certificates of public convenience and necessity in various dockets are amended by adding thereto or deleting therefrom authorization to sell natural gas or by substituting successors in interest as certificate holders as more fully described in the applications and in the tabulation herein. In all other respects said orders shall remain in full force and effect.

(E) Within 90 days from the date of initial delivery, Applicants in Docket Nos. G-18117, CI73-6, CI73-181, CI73-339, CI73-363, CI73-394, CI73-395, C73-435, CI73-437, CI73-528, and CI73-572 shall each file three copies of a rate schedule-quality statement in the form prescribed in Opinion Nos. 586, 598, and 607, as applicable.

(F) The certificates and certificate authorization granted in Docket Nos. G-18117, CI73-6, CI73-181, CI73-339, CI73-363, CI73-394, CI73-395, CI73-435, CI73-437, CI73-528, and CI73-572 are subject to the Commission's findings and orders accompanying Opinion Nos. 586, 586-A, 598, 598-A, 607, and 607-A, as applicable. If the quality of the gas deviates at any time from the quality standards set forth in the regulations under the Natural Gas Act so as to require a downward adjustment of the existing rates, notices of changes in rate shall be filed pursuant to

section 4 of the Natural Gas Act; provided, however, that adjustments reflecting changes in Btu content of the gas shall be computed by the applicable formula and charged without the filing of notices of changes in rate.

(G) Applicants in the dockets indicated shall charge and collect the following rates, subject to Btu adjustment where applicable:

Docket No.	Rate (cents per M c.f.)	Pressure base (p.s.i.a.)
CI73-181	15.0	14.65
CI73-288	23.5	15.025
CI73-339	[1] 19.3278	14.65
	[2] 18.243	14.65
	[3] 20.8536	14.65
CI73-395	[4] 21.0	14.65
	[5] 19.7925	14.65
CI73-427	12.4374	14.65
CI73-529	24.0	15.025

[1] Applies to FPC Gas Rate Schedules Nos. 1, 3, and 5.
[2] Applies to FPC Gas Rate Schedules No. 2.
[3] Applies to FPC Gas Rate Schedule No. 4.
[4] For gas-well gas.
[5] For casinghead gas.

(H) The certificates issued in Docket Nos. G-8845 and CI62-202 are terminated.

(I) Docket No. CI73-505 is cancelled.

(J) The rate schedules and rate schedule supplements related to the authorizations granted herein are accepted for filing or are redesignated, all as set forth in the tabulation herein. Where the effective date is the date of initial delivery, Applicant shall advise the Commission of said date within 10 days thereof.

(K) Polaris Production Corp., Applicant in Docket No. CI73-339, is made a co-respondent in the proceedings pending in Docket Nos. RI69-650, RI70-544, RI70-869, RI72-154 and RI72-265. Applicant shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(L) Orders issuing certificates in the following dockets are amended by deleting therefrom authorization to sell gas where said sales are authorized to be continued under new or amended certificates herein:

New certificate authorization Docket No.:	*Amended certificate Docket No.*
G-18117	G-13299 [1] and G-17260 [2].
CI73-339	G-2978,[3] G-5145,[4] and G-17012.[5]
CI73-572	G-8906.
CI73-704	G-2906 and 2907.

[1] Certificate issued to Atlantic Richfield Company, predecessor to Cabot Corporation which assigned properties to Applicant in Docket No. G-18117.
[2] Certificate issued to Monsanto Company, predecessor to Cabot Corporation which assigned properties to Applicant in Docket No. G-18117.
[3] G-2978—Certificate issued to Sun Oil Company.
[4] G-5145—Certificate issued to Exxon Company.
[5] G-17012—Certificate issued to Sohio Petroleum Company.

(M) The acceptance for filing of the rate schedules for the sales authorized in Docket Nos. CI73-527 and CI73-529 should not be construed as meaning that any rate increase based upon the provisions for the sales of the Federal Government's royalty shares of the gas at prices in excess of the otherwise applicable rate would be accepted for filing without suspension.

(N) The petition to amend filed October 27, 1972, by Mobil Oil Corporation in Docket No. CI61-137 is unnecessary and is dismissed.

(O) The application in Docket No. CI72-700 is dismissed.

(P) The certificate issued in Docket No. CI73-181 authorizes the sale of gas only from acreage dedicated under the basic contract and not from acreage which may be dedicated by the option agreement. Within 30 days from the date of this order Applicant shall file a rate schedule supplement providing for a full percentage downward Btu adjustment from a base of 1,000 Btu per cubic foot measured on a wet basis and a billing reflecting the rate of 15.0 cents per M c.f. as required by § 154.92(b) of the regulations under the Natural Gas Act.

(Q) Odessa Natural Corporation, Applicant in Docket No. G-14460, is substituted in lieu of Odessa Natural Gasoline Corporation as respondent in the proceeding pending in Docket No. RI70-523 and said proceeding is redesignated accordingly. Odessa Natural Corporation shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the regulations thereunder.

(R) The certificate authorizations granted in Docket Nos. G-14460, CI62-990, CI73-288, CI73-395, and CI73-425 determine the rates at which Applicants may sell gas to the respective affiliated purchasers but are without prejudice to any action which the Commission may take in rate proceedings involving either the sellers or the buyers.

(S) The motion to be made co-respondent in the proceeding pending in Docket No. RI72-141, filed by Applicant in Docket No. CI73-704, is dismissed.

(T) Applicant in Docket No. CI73-427 shall not release any acreage dedicated to the contract on file as its FPC Gas Rate Schedule No. 111 without first having secured authorization from the Commission as required by section 7 of the Natural Gas Act.

By the Commission.

[SEAL] KENNETH F. PLUMB, *Secretary.*

Docket No. and date filed	Applicant	Purchaser and location	FPC gas rate schedule [20]		
			Description and date of document	Number	Supp.
G-2712 D [1]	Cities Service Oil Co. (Operator), et al.	United Gas Pipe Line Co., acreage in Panola County, Tex.	Assignment 1-24-73 [2] (Effective date: 1-24-73) [3]	332	26
		Arkansas Louisiana Gas Co., acreage in Panola County, Tex.	Assignment 1-24-73 [2] (Effective date: 1-24-73) [3]	365	22
			Assignment 1-24-73 [2] (Effective date: 1-25-73) [3]	379	10
G-2906 G-2907 D [4]	Atlantic Richfield Co. (Operator), et al.	Kansas-Nebraska Natural Gas Company, Inc., Sand Draw Field, Fremont County, Wyo.	Assignment 12-18-61 [2] (Effective date: The date of this order)	464	10
G-5145 D 8-24-72 [5]	Exxon Corp. (Operator), et al. (formerly: Humble Oil & Refining Co. (Operator), et al.).	El Paso Natural Gas Co., Kenneth "A" Lease, Reagan County, Tex.	Notice of Partial Cancellation 8-18-72 [7] (Effective date: 7-1-72) [8]	5	67
G-8845 9-18-72 [6]	Phillips Petroleum Co. (Operator), et al.	....do....	Notice of Cancellation 9-14-72 [7] (Effective date: 7-1-72) [8]	256	13
G-8906 D 12-29-72	The Superior Oil Co.	Cities Service Gas Co., North Rhodes Field, Barber County, Kans.	Assignment 10-25-72 [2] (Effective date: 10-25-72) [3]	46	13
G-12244 D 2-20-73	Texaco Inc. (Operator), et al.	Cities Service Gas Co., Northeast Waynoka Field, Woods County, Okla.	Amendment 3-21-72 [2] (Effective date: The date of this order)	161	18
G-14460 E 3-19-73	Odessa Natural Corp.	El Paso Natural Gas Co., Spraberry Trend Field, Midland and Reagan Counties, Tex.	Odessa Natural Gasoline Co., FPC Gas Rate Schedule No. 1 and Supplement Nos. 1-7 thereto.	6	1-7
			Notice of succession 3-13-73.		
			Assignment 1-1-71 [10] (Effective date: 1-1-71) [3]	6	8
G-18117 F 1-26-73 [11]	Ashland Oil, Inc.	Michigan-Wisconsin Pipe Line Co., Laverne Field, Beaver County, Okla.	Amendment 11-2-72 [12] (Effective date: 11-1-70) [8]	69	9
CI61-137 E 2-16-73 [13]	Columbia Oil Corp.	CRA, Inc., Canyon Nos. 2 and 3, Brooks Field, Irion County, Tex.	Mobil Oil Corp., FPC Gas Rate Schedule No. 362 and Supplement Nos. 1-11.	1 1	1-11
			Notice of succession 2-12-73.		
			Assignment 9-19-72 [9] [14] (Effective date: 9-1-72) [3]	1	12

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	FPC gas rate schedule [2] Description and date of document	Number	Supp.
CI69-202 [4]	Phillips Petroleum Co.	El Paso Natural Gas Co., Kenneth "A" Lease, Reagan County, Tex.	Notice of cancellation 9-14-72 [7]	378	3
			(Effective date: 7-1-72) [8]		
CI62-990 E 3-27-73	Odessa Natural Corp.	El Paso Natural Gas Co., Justis Gas Field, Lea County, N. Mex.	Odessa Natural Gasoline Co., FPC Gas Rate Schedule No. 6 and Supplement Nos. 1 and 1 to 1.	7 7	1 and 1-1
			Notice of Succession 3-22-73.		
			Assignment 1-1-71 [10] [11]	7	2
			Assignment 1-1-71 [10] [12]	7	3
			Assignment 1-1-71 [10] [13]	7	4
			(Effective date: 1-1-71) [9]		
CI67-248 C 2-15-73	Beacon Gasoline Co.	Walker Creek Field, [14] Lafayette, and Columbia Counties, Ark.	Gas Processing Contract 1-23-73.	38	
			Gas Gathering Agreement 1-23-73.	38	1
			Residue Gas Transportation Agreement 1-23-73.	38	2
CI73-6 A [15]	McCulloch Oil Corp. of Texas.	Arkansas Louisiana Gas Co. Mathers Ranch Area, Hemphill County, Tex.	Contract 2-26-70 [16]	5	
			Letter Agreement 1-21-72	5	1
			Assignment 10-26-72 [17]	5	2
			Letter Agreement 11-13-72.	5	3
CI73-181 F 9-6-72	Lone Star Producing Co.	NI-Gas Supply, Inc., Acreage in Beckham and Washita Counties, Okla.	Ratification 5-27-70	101	
			Contract 1-16-70 [18]	101	1
			Option agreement 1-16-70 [19]	101	2
			Assignment 4-1-70 [20]	101	3
			Assignment 5-27-70 [21]	101	4
			(Effective date: 5-27-70) [9]		
CI73-288 A 10-24-72 [22] [23]	Mountain Petroleum Ltd. (1972).	Kansas-Nebraska Natural Gas Co., Inc., Fleming Field, Logan County, Colo.	Contract 10-2-72 [24]	1	
CI73-339 F [25]	Polaris Production Corp.	El Paso Natural Gas Co., Kenneth "A" Lease, Reagan County, Tex.	Contract 5-26-52	1	
			Letter agreement 6-26-52	1	1
			Letter agreement 2-27-53	1	2
			Letter agreement 8-21-53	1	3
			Letter agreement 5-6-53	1	4
			Amendatory agreement 10-26-59.	1	5
			Amendment 2-10-64	1	6
			Amendatory agreement 4-1-69.	1	7
			Assignment 6-5-72 [26]	1	8
			Quality statement 12-5-72.	1	9
			(Effective date: 7-1-72) [8]		
			Contract 10-3-52	2	
			Letter agreement 5-12-55	2	1
			Amendment 10-20-60	2	2
			Amendatory agreement 7-21-69.	2	3
			Assignment 6-5-72 [26]	2	4
			Quality statement 12-5-72.	2	5
			(Effective date: 7-1-72) [8]		
			Contract 11-3-52	3	
			Letter agreement 5-12-55	3	1
			Amendatory agreement 1-1-61.	3	2
			Supplemental agreement 6-5-61.	3	3
			Assignment 6-5-72 [26]	3	4
			Quality statement 12-5-72.	3	5
			(Effective date: 7-1-72) [8]		

Docket No. and date filed	Applicant	Purchaser and location	FPC gas rate schedule [2] Description and date of document	Number	Supp.
CI73-339 E [25]	Polaris Production Corp.	El Paso Natural Gas Co., Kenneth "A" Lease, Reagan County, Tex.	Phillips Petroleum Co., FPC Gas Rate Schedule No. 256 and Supplement Nos. 1-13 thereto.	4 4	1-13
			Notice of succession 2-16-73.		
			Assignment 6-5-72 [26]	4	14
			Quality statement 12-5-72.	4	15
			(Effective date: 7-1-72) [8]		
			Phillips Petroleum Company FPC Gas Rate Schedule No. 378 and Supplement Nos. 1-3.	5 5	1-3
			Notice of Succession 2-16-73.		
			Assignment 6-5-72 [26]	5	4
			Quality statement 12-5-72.	5	5
			(Effective date: 7-1-72) [8]		
CI73-363 11-15-72 [27] [28]	Hunt Oil Co.	Arkansas Louisiana Gas Co., Waskom Field, Harrison, and Panola Counties, Tex.	Contract 8-1-50 [29]	73	
			Agreement 6-13-52 [30]	73	1
			Letter agreement 9-15-54 [31]	73	2
			(Effective date: 5-3-71) [32]		
CI73-378 F 11-24-72	Ada Land Co.	Columbia Gas Transmission Corp., Duson Field, Lafayette Parish, La.	Letter agreement 3-22-61 [33]	2	
			Contract 8-5-59	2	1
			Assignment 8-1-72 [34]	2	2
			Assignment 10-11-72 [35]	2	3
			(Effective date: 8-1-72) [8]		
CI73-394 A 11-30-72	Skelly Oil Co. (operator)	Lone Star Gas Co., Marlow Plant, Stephens County, Okla.	Contract 8-1-72 [36]	269	
CI73-395 A 11-30-72	Arkla Exploration Co.	Arkansas Louisiana Gas Co., Weatherford Area, Custer County, Okla.	Compliance 2-15-73 [6]	33	1
CI73-425 A 12-18-72 [37] [38]	Appalachian Exploration & Development, Inc.	Cabot Corp., Pocahontas-Bricker Unit, McDowell County, W. Va.	Contract 11-15-72 [39]	34	
CI73-427 A 12-18-72 [40]	Texas Pacific Oil Co., Inc.	Northern Natural Gas Co., Tiger Ridge Area, Blaine and Hill Counties, Mont.	Contract 11-1-72	111	
CI73-435 F 12-18-72	Herman Geo. Kaiser (Operator) et al.	Panhandle Eastern Pipe Line Co., South Peek Field, Ellis County, Okla.	Contract 6-16-66 [41] [42]	15	
			Amendment 11-9-66 [43]	15	1
			Amendment 6-2-67 [44]	15	2
			Amendment 7-3-68 [45]	15	3
			Amendment 11-18-68 [46]	15	4
			Assignment 10-26-72 [47] [48]	15	5
			(Effective date: 11-1-72) [9]		
CI73-437 F 12-18-72	Shreva Operating Co.	Arkansas-Louisiana Gas Co., Bethany Field, Panola County, Tex.	Contract 3-22-52 [49] [50]	1	
			Agreement 8-4-53 [51]	1	1
			Agreement 3-9-54 [52]	1	2
			Assignment 3-20-72 [53] [54]	1	3
			Amendment 7-26-72 [55]	1	4
			Assignment 12-1-72 [56] [57]	1	5
			(Effective date: 12-1-72) [8]		
CI69-558 E 1-18-73 [58]	Samedan Oil Corp.	El Paso Natural Gas Co., Jalmat Field, Lea County, N. Mex.	Texas Pacific Oil Co., Inc., FPC Gas Rate Schedule No. 94 and Supplement Nos. 1-3 thereto	40 40	1-3
			Notice of Succession (undated)		
			Amendatory agreement 10-17-69. [59]	40	4
			Assignment 8-28-72 [60]	40	5
			(Effective date: 9-1-72) [8]		
CI73-627 A 2-5-73 [61]	Amoco Production Co.	El Paso Natural Gas Co., Gallup, et al., Fields, San Juan County, N. Mex.	Contract 12-22-72 [62] [63]	605	

See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	FPC gas rate schedule [20] Description and date of document	Number	Supp.
CI73-528..... A 2-5-73	William Herbert Hunt Trust Estate.	Arkansas Louisiana Gas Co., Colquitt Field, Claiborne Parish, La.	Contract 12-20-72 [21].....	14	.....
			Agreement 4-22-71 [21].....	14	1
CI73-529..... A 2-5-73 [24]	Amoco Production Co....	El Paso Natural Gas Co., Ignacio Blanco Dakota Field, La Plata County, Colo.	Contract 12-15-72 [22 23].....	606	.....
CI73-572..... F 2-26-73	Clarke Corp.....	Cities Service Gas Co., North Rhodes Gas Field, Barber County, Kans.	Contract 4-1-55 [26].....	3	.....
			Letter agreement 1-25-71...	3	1
			Assignment 10-25-72 [27]... (Effective date: 10-25-72) [3]	3	2
CI73-704..... F 4-17-73	Pasco, Inc.....	Kansas-Nebraska Natural Gas Co., Inc., Sand Draw Field, Fremont County, Wyo.	Contract 12-18-61 [28].....	1	.....
			Supplemental agreement 10-16-67.	1	1
			Assignment 12-28-72 [29]... (Effective date: 1-1-73) [3]	1	2

[1] Assignment of acreage to small producer. Applicant has stated the assignment is a transfer of leases and not a transfer of reserves in place.
[2] Assigns acreage to Jack D. Nelson and George R. Womack. Nelson has a small producer certificate in Docket No. CS72-1057 and Womack in Docket No. CS72-1056.
[3] Effective date of transfer of producing properties.
[4] Succession filings by Pasco, Inc., included in this tabulation.
[5] From Atlantic Richfield Co. to Pasco, Inc.
[6] No certificate filing required. 18 CFR 2.64. Succession filings by Polaris Production Corp. is included in this tabulation.
[7] Assignment from Applicant to Polaris Production Corp. also submitted and attached to supplement.
[8] From Applicant to Clarke Corp. Clarke's succession filing is included in this tabulation.
[9] Delete leases which have expired and been released.
[10] Assignment by Odessa Natural Gasoline Co. to Odessa Natural Corp.
[11] Amended contract summary filed 3-2-73.
[12] Dedicates acreage acquired from Cabot Corp. Cabot acquired acreage from Monsanto Co. and Atlantic Richfield Co., effective the same date as assignment to Applicant. Predecessor's contracts were similar or identical to Applicant's contract.
[13] Columbia Oil Corp. has a small producer certificate in Docket No. CS69-10 but may not include this acreage acquired from a large producer thereunder.
[14] By Mobil Oil Corp. to CRA, Inc.
[15] Assignment, originally submitted by Mobil on 10-27-72 as a filing for deletion of acreage from its FPC Gas Rate Schedule No. 362, is being used as a filing of Columbia Oil Corp., successor to Mobil. Mobil's related certificate application in Docket No. CI61-137 will be dismissed.
[16] Acreage which includes Carlson Federal No. 1 Well.
[17] Acreage which includes Langlie Federal No. 1 Well.
[18] Acreage which includes Carlson Federal No. 1-A Well.
[19] Applicant transports Columbia Trust's gas to Beacon's Blackburn Gasoline Plant in Webster Parish, Louisiana; after processing, the residue gas will be delivered to United Gas Pipe Line Company; Columbia Trust has a small producer certificate in CS72-548.
[20] Where no effective date is shown, it is the date of initial delivery.
[21] Original application filed 7-5-72, by J. M. Huber, who assigned acreage to Applicant prior to certification. Applicant filed 11-9-72, to amend the application to be substituted for J. M. Huber. On 3-7-73, Applicant filed an amendment to release certain properties
[22] Between J. M. Huber Corp. and buyer.
[23] From J. M. Huber Corp. to Applicant.
[24] Contract between buyer and Glover Hefner Kennedy Oil Co.
[25] Provides that other than present contract acreage may be included under contract if developed and buyer agrees to take gas.
[26] From Glover Hefner Kennedy to Helena L. Glover.
[27] From Helena L. Glover to Applicant.
[28] By letter dated 2-20-73, Applicant agreed to accept permanent certificate conditioned to a rate of 23.5 cents per M c.f. subject to Btu adjustment.
[29] Midlands Gas Corp., a wholly owned subsidiary of the buyer, is a limited partner in Applicant.
[30] Previously accepted for filing by letter order granting temporary certificate.
[31] Previously accepted for filing.
[32] From Sun Oil Co. to Applicant.
[33] From Sohio Petroleum Co. to Applicant.
[34] From Humble Oil & Refining Co. to Applicant.
[35] From Phillips Petroleum Co. to Applicant.
[36] As amended on 12-4-72.
[37] Applicant's interest previously covered by operator (Bert Fields, Jr.) who is a small producer. Sales from Applicant's interests cannot be covered by the small producer certificate.
[38] Effective date of small producer certificate of operator.
[39] Modifies and adopts basic contract of 8-5-59 between J. P. Owen, *et al.*, and Columbia Gas Transmission Corp.
[40] Assigns interest from Monterey Pipeline Co. to Ada Oil Co. and subsequent reassignment to the Applicant, Ada Land Co.
[41] Applicant has agreed to accept a permanent certificate conditioned as in the temporary certificate.
[42] By letter filed 2-23-73, Applicant agreed to accept a permanent certificate conditioned as in the temporary certificate.
[43] Applicant is a wholly owned subsidiary of purchaser.
[44] Currently on file as Amerada Hess Corp. FPC Gas Rate Schedule No. 138.
[45] From Amerada Hess Corp. to Kaiser-Francis Special Account B (a partnership made up He Geo. Kaiser and a number of other parties).
[46] Currently on file as Barnwell-DeBardeleben Oil Co., *et al.* FPC Gas Rate Schedule No
[47] From Barnwell, Inc., and Barnwell Drilling Co., Inc., to Car-Tex Producing Co.
[48] From Car-Tex Producing Co. to E. H. Railsback, M. R. McCoy, Jr., Roland C. Smith, Arthur C. Ite and W. G. Stanley (partners in Shreve Operating Co.).
[49] Docket designation CI73-505, erroneously assigned to this filing, is cancelled. Succession is authorized in Docket No. CI69-458.
[50] Revises liquid settlement procedures.
[51] As amended on 2-6-73 and 2-22-73.
[52] Limited to casinghead gas produced from the Gallup Formation and does not apply to gas-well gas.
[53] Provides for: (1) increases to any higher area rate and (2) provides that buyer will reimburse seller for all "excess in royalty payments" which seller shall be required to pay the United States Government for royalty gas.
[54] As amended on 2-22-73.
[55] For gas produced from gas wells completed in the Dakota Formation.
[56] On file as The Superior Oil Co. FPC Gas Rate Schedule No. 46.
[57] From Superior to Applicant predecessor's filing reporting the assignment is included in this tabulation.
[58] Also on file as Atlantic Richfield Co. FPC Gas Rate Schedule No. 464, Atlantic's deletion filing is included in this tabulation.
[59] From Atlantic Richfield to Applicant.

[FR Doc.73-19347 Filed 9-13-73;8:45 am]

[Docket No. CI61-697 et al.]

AUTHORIZATION TO SELL NATURAL GAS

Notice of Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

AUGUST 31, 1973.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 27, 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates of the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per M cf.	Pressure base
CI61-607..... E 8-20-73	Jack H. Vaughn and R. J. Patrick (successor to Exxon Corp.), 708 First National Bldg., Oklahoma City, Okla. 73102.	Panhandle Eastern Pipeline Co., L. N. Nollner Lease, Hansford County, Tex.	18.5	14.65
CI69-1177..... (CI69-1235) C 8-2-73 [1] F	Mobil Oil Corp. (successor to Cities Service Oil Co., Three Greenway Plaza East, Suite 800, Houston, Tex. 77046.	Texas Eastern Transmission Corp., Main Pass Block 6 Field, Federal Domain, offshore Louisiana.	26.0	15.025
CI74-87..... (CS71-394) F 8-6-73	Sun Oil Co. (successor to Anchor Production Co.), P.O. Box 2880, Dallas, Tex. 75221.	Michigan Wisconsin Pipe Line Co., Laverne Field, Harper County, Okla.	[2] 20.823	14.65
CI74-96..... (CP68-206) (CI68-1047) F 8-9-73	McLain J. Forman (operator), et al. (successor to Southern Natural Gas Co. and North Central Oil Corp.), 540 Oil and Gas Bldg., New Orleans, La. 70112.	Texas Gas Transmission Corp., North Branch Field, Acadia Parish, La.	[2] 22.375	15.025
CI74-107..... 8-13-73 [4]	Southern Union Production Co., Suite 1700, Campbell Centre, 8350 North Central Expressway, Dallas, Tex. 75206.	Southern Union Gathering Co., Barker Dome Area, San Juan County, N. Mex.	[2] 16.2617	15.025
CI74-108..... (CI67-1649) F 8-8-73	W. W. F. Oil Corp. (operator), et al. (successor to Amerada Hess Corp.), P.O. Box 1746, Shreveport, La. 71166.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Southwest Belle Isle Field, St. Mary, Terrebonne and/or Iberia Parishes, La.	[2] 22.375	15.025
CI74-112..... (G-4810) (CS72-876) F 8-17-73	Texaco Inc. (successor to D. Thomason Production Co., Inc.), P.O. Box 430, Bellaire, Tex. 77401.	United Gas Pipe Line Co., Bethany Field, Panola County, Tex.	[2] 20.6117	14.65
CI74-113..... A 8-17-73	Clinton Oil Co., 217 North Water St., Wichita, Kans. 67202.	South Texas Natural Gas Gathering Co., Gregg Wood, S. Gregg Wood, and W. Gregg Wood Fields, Starr County, Tex.	[2] 25.0971	14.65
CI74-120..... (G-6206) F 8-20-73	I. W. Lovelady (operator), et al. (successor to Gulf Oil Corp.), 406 N. Marienfeld, Midland, Tex. 79701.	El Paso Natural Gas Co., Spraberry Trend Field, Glasscock County, Tex.	19.3278	14.65
CI74-121..... (CS71-394) F 8-14-73	Sun Oil Co. (successor to Anchor Production Co.), P.O. Box 2880, Dallas, Tex. 75221.	Cities Service Gas Co., Hadwiger-Johnson Unit, Grant County, Okla.	[2] 15.0	14.65
CI74-130..... 8-13-73 [3]	Gas Gathering Corp., P.O. Box 519, Hammond, La. 70401.	Transcontinental Gas Pipe Line Corp., Bayou Henry Field, Iberville Parish, La.	2.5	15.025
CI74-135..... (CI67-977) (CI67-1589) F 8-20-73	Jack H. Vaughn and R. J. Patrick (successor to Mobil Oil Corp. and Sohio Petroleum Co.), 708 First National Bldg., Oklahoma City, Okla. 73102.	Panhandle Eastern Pipeline Co., Guymon-Hugoton Field, Beaver County, Okla.	[7] 18.0	14.65
CI74-136..... (G-10336) F 8-20-73	Jack H. Vaughn and R. J. Patrick (successor to James W. Wise and Bill Weems Oil Inc.).	Northern Natural Gas Co., Acreage in Seward County, Kans.	[2] 15.0	13.2

[1] Amendment to a pending application.
[2] Including Btu adjustment.
[3] Subject to downward Btu adjustment.
[4] Applicant proposes to continue a portion of the limited-term sale authorized in Docket No. CI70-918 to be made o Southern Union Gas Co. for resale to El Paso Natural Gas Co.
[5] Including upward Btu adjustment.
[6] Applicant proposes to transport gas for Southern Natural Gas Company.
[7] Subject to upward and downward Btu adjustment.

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.

[FR Doc.73-19348 Filed 9-13-73;8:45 am]

[Docket Nos. RI74-33, RI74-34]

CONTINENTAL OIL CO. ET AL.

Hearing on and Suspension of Proposed Changes in Rates, and Allowing Rate Changes To Become Effective Subject to Refund [1]

SEPTEMBER 5, 1973.

Respondents have filed proposed changes in rates and charges for jurisdictional sales of natural gas, as set forth in Appendix A hereof.

The proposed changed rates and charges may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds

It is in the public interest and consistent with the Natural Gas Act that the Commission enter upon hearings regarding the lawfulness of the proposed changes, and that the supplements herein be suspended and their use be deferred as ordered below.

The Commission orders

(A) Under the Natural Gas Act, particularly sections 4 and 15, the regulations pertaining thereto (18 CFR, Chapter I), and the Commission's rules of practice and procedure, public hearings shall be held concerning the lawfulness of the proposed changes.

(B) Pending hearings and decisions thereon, the rate supplements herein are suspended and their use deferred until date shown in the "Date Suspended Until" column. Each of these supplements shall become effective, subject to refund, as of the expiration of the suspension period without any further action by the Respondent or by the Commission. Each Respondent shall comply with the refunding procedure required by the Natural Gas Act and § 154.102 of the Regulations thereunder.

(C) Unless otherwise ordered by the Commission, neither the suspended supplements, nor the rate schedules sought to be altered, shall be changed until disposition of these proceedings or expiration of the suspension period, whichever is earlier.

KENNETH F. PLUMB,
Secretary.

[1] Does not consolidate for hearing or dispose of the several matters herein.

APPENDIX A

Docket No.	Respondent	Rate schedule No.	Supplement No.	Purchaser and producing area	Amount of annual increase	Date filing tendered	Effective date unless suspended	Date suspended until	Cents per Mcf[1]		Rate in effect subject to refund in dockets Nos.
									Rate in effect	Proposed increased rate	
RI74-33	Continental Oil Co.	180	10	Transwestern Pipeline Co. (Bell Lake Unit Area, Lea County, N. Mex., Permian Basin).	$12,315	8-6-73	9-6-73 [3] 2-6-74	[2] Accepted	21.4683	24.0243	
RI74-34	Union Oil Co. of California	195	8	Transwestern Pipeline Co.	1,750	8-8-73	9-8-73 [3] 2-8-74	[2] Accepted	21.0	23.5	

[1] Unless otherwise stated, the pressure base is 14.65 psia.
[2] Accepted as of the date set forth in the "Effective Date Unless Suspended" column insofar as proposed rate does not exceed the ceiling prescribed in Opinion No. 662.
[3] Proposed rate is suspended until date shown insofar as it exceeds ceiling in Opinion No. 662.

The proposed increases are accepted in part for that portion of the proposed rate that does not exceed the applicable area rate pursuant to Opinion No. 662. These proposed rates will become effective upon expiration of the thirty day statutory notice period or the contractual effective date, whichever is later, and the remaining portions of the proposed rates that exceed the applicable area rate pursuant to Opinion No. 662 of each respondent is suspended for five months.

Nothing contained in this order shall relieve the respondents of any responsibility imposed by the Economic Stabilization Act of 1970 (Pub. L. 91-379, 84 Stat. 799, as amended by Pub. L. 92-15, 85 Stat. 38), or by any Executive Order or rules and regulations promulgated pursuant to such Act.

[FR Doc.73-19526 Filed 9-13-73;8:45 am]

FEDERAL RESERVE SYSTEM

BARNETT BANKS OF FLORIDA, INC.

Acquisition of Bank

Barnett Banks of Florida, Inc., Jacksonville, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of First Bank of Plantation, Plantation, Florida; University Bank, Broward County, Florida; and Riverland Bank, Fort Lauderdale, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than October 3, 1973.

Board of Governors of the Federal Reserve System, September 6, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19543 Filed 9-13-73;8:45 am]

FIRST TENNESSEE NATIONAL CORP.

Order Approving Acquisition of Pence Mortgage Company

First Tennessee National Corporation, Memphis, Tennessee, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval, under section 4(c)(8) of the Act and § 225.4(b)(2) of the Board's Regulation Y, to acquire not less than 99 percent of the voting shares of Pence Mortgage Company, Louisville, Kentucky (Company), a company that engages in originating, selling and servicing real estate mortgages, construction lending, and the offering of credit accident and health insurance in connection with such extensions of credit. Applicant has also applied for authority of Company to offer credit life insurance in connection with such extensions of credit. Such activities have been determined by the Board to be closely related to the business of banking (12 CFR 225.4(a)(1), (3), and (9)).

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 138). The time for filing comments and views has expired, and none has been timely received.

Applicant, the largest banking organization in Tennessee, controls eight banks with aggregate deposits of approximately $1.2 billion, representing 11.5 percent of the total commercial deposits in the State.[3] Applicant's lead bank, The First National Bank of Memphis, Memphis, Tennessee (First National), with deposits of approximately $994 million is the largest bank in the Memphis SMSA.[4] All of Applicant's subsidiary banks originate and service mortgage loans for their own account. In addition, First National originates and services mortgages for the accounts of others. Applicant's nonbanking subsidiaries engage in mortgage banking, investment and management services, personal property and equipment leasing, trust services, and underwriting, as reinsurer, credit life and disability insurance. None of Applicant's bank or nonbanking subsidiaries originate or service mortgages in the market areas served by Company.

On the basis of its loan servicing volume ($194 million on June 30, 1972), Company is the largest mortgage banking firm headquartered in the Louisville, Kentucky, SMSA (which includes Jefferson County, Kentucky, and Clark and Floyd Counties, Indiana) and is ranked 129th in the United States.[5] It is engaged primarily in originating, selling, and servicing all types of real estate mortgages and construction lending.[6] Company also has offices in Clearwater, Florida, and Indianapolis, Indiana, which are newly established and have operated less than a full fiscal year. During fiscal year 1973, Company's total originations of permanent mortgages was approximately $48 million, its mortgage servicing volume was $202 million and total closings of construction and development loans were $19.5 million. It appears that Company's market share in any of its business activities in the Louisville SMSA is less than 20 percent. Company derives no business from the service areas of any of Applicant's subsidiaries.

Since Applicant and Company do not compete in the same mortgage loan or construction loan markets, the proposed acquisition would eliminate no direct competition. Although it appears that both Applicant and Company could enter each other's market de novo, consummation of the proposal herein would not add significantly to the existing level of market concentration or result in an undue concentration of financial resources in any market.

Company is engaged in the sale of credit accident and health insurance in connection with its extensions of credit. In addition to these insurance actvities, Applicant proposes to engage de novo in the sale of credit life insurance in connection with its extensions of credit through Company. Due to the limited nature of its insurance activities, it does not appear that Company's engagement in such activities would have any significant effect on either existing or potential competition.

Approval of the proposed acquisition will make available to Company the financial resources of Applicant, and thereby provide Company an additional source of working capital enabling it to increase its lines of credit for construction and development lending. These increased capabilities are positive factors

[1] Includes acquisitions approved through August 26, 1973. Applicant has an application pending before the Board to acquire Jackson State Bank, Jackson, Tennessee, with deposits of $15 million.

[2] All banking data are as of December 31, 1972.

[3] Company has an office in Louisville, Kentucky, and an office in Clarksville, Indiana; the service area of these two offices is the Louisville, Kentucky, SMSA.

[4] Company, through two subsidiaries, holds certain real property for development. Company and Applicant have stated their intention to dispose of these holdings within six months.

in terms of public needs and convenience.

Based upon the foregoing and other considerations 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, and the application is hereby approved subject to the following condition: divestiture of real property held for development by Company's two wholly owned subsidiaries within six months after consummation of the proposed acquisition. 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 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 St. Louis pursuant to delegated authority.

By order of the Board of Governors,[5] effective September 5, 1973.

[SEAL] CHESTER B. FELDBERG,
Secretary of the Board.

[FR Doc.73-19541 Filed 9-13-73;8:45 am]

NORTHEAST BANKSHARE ASSOCIATION

Acquisition of Bank

Northeast Bankshare Association, Lewiston, Maine, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Sanford Trust Company, Sanford, Maine. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit his views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than October 3, 1973.

Board of Governors of the Federal Reserve System, September 6, 1973.

[SEAL] THEODORE E. ALLISON,
Assistant Secretary of the Board.

[FR Doc.73-19544 Filed 9-13-73;8:45 am]

FOREIGN-TRADE ZONES BOARD

[Order No. 95]

BAYONNE, NEW JERSEY

Voluntary Relinquishment of Grant for Foreign-Trade Zone No. 11

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR Part 400), the Foreign-Trade Zones Board has adopted the following Order:

Whereas, on November 20, 1968, the Foreign-Trade Zones Board by Order No. 77 (33 FR 17377) issued a grant to New Jersey Foreign Trade Zone, a private corporation, authorizing the establishment, operation and maintenance of a foreign-trade zone at Bayonne, New Jersey, designated Foreign-Trade Zone No. 11; and,

Whereas, New Jersey Foreign Trade Zone advised the Board on June 6, 1972, that due to circumstances beyond its control, unforeseen at the time of the application, it has not been able to activate the proposed zone, and as a result voluntarily relinquishes the grant;

Now, therefore, the Foreign-Trade Zones Board, after full consideration and a finding that approval of the grantee's voluntary relinquishment of the grant is in the public interest, hereby revokes the grant for Zone No. 11 and rescinds Order No. 77 under which the grant was issued.

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

[SEAL] FREDERICK B. DENT,
Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

Attest:
JOHN J. DA PONTE, Jr.,
Executive Secretary.

[FR Doc.73-19556 Filed 9-13-73;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Reg.; Temporary Reg. F-191]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.*—This regulation delegates authority to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government in a telecommunications proceeding.

2. *Effective date.*—This regulation is effective immediately.

3. *Delegation.*—a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Federal Communications Commission in a proceeding involving the application of the American Telephone and Telegraph Company for special permission to file a tariff establishing so-called Hi/Lo Density Rates for private line services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration and, further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

ARTHUR F. SAMPSON,
Administrator of General Services.

SEPTEMBER 6, 1973.

[FR Doc.73-19553 Filed 9-13-73;8:45 am]

[5] Voting for this action: Chairman Burns and Governors Mitchell, Brimmer, Sheehan, Bucher, and Holland. Absent and not voting: Governor Daane.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (73-71)]

NASA SPACE PROGRAMS ADVISORY COUNCIL (SPAC) APPLICATIONS COMMITTEE

Notice of Meeting

The NASA SPAC Applications Committee will meet on September 26, 1973, at the Headquarters of the National Aeronautics and Space Administration. The meeting will be held in room 226 of Federal Office Building 10B, 600 Independence Avenue, SW., Washington, D.C. 20546. Members of the public will be admitted to the meeting beginning at 9:15 a.m., on a first come first served basis up to the seating capacity of the room, which can accommodate about 35 persons. The approved agenda for the meeting is noted below.

The NASA SPAC Applications Committee serves in an advisory capacity only. It is concerned with the total range of applications of space-derived, space-related technology, including communications, meteorology, earth resources survey (includes agriculture/forestry, cartography, geography, geology/hydrology, oceanography), earth and ocean physics, solar energy conversion, space processing, and other technology applications. Currently, the Committee comprises 11 members, and a recording secretary, Louis B. C. Fong, who can be contacted for further information at (202) 755-2070.

The following is the approved agenda and schedule for the September 26, 1973, meeting of the Space Program Advisory Council Applications Committee:

NASA's 5-YEAR PLAN FOR APPLICATIONS

Time	*Topic*
9:00 a.m.----	(*Purpose.*—The 5-year plan for the Earth Observations Program, the Communications Program, and Special Programs (Space Processing and Solar Energy) will be presented to Committee members for comment.)
	AGRICULTURE IN A LOW OR ZERO "G" ENVIRONMENT
1:00 p.m.----	(*Purpose.*—The potential of agriculturel applications in a low or zero "G" environment will be discussed by Committee members.)

EXECUTIVE SESSION (CLOSED SESSION)

2:00 p.m.---- (*Purpose.*—To discuss and evaluate the qualifications of candidates for Chairman of and membership on the Committee.)

3:00 p.m.---- *Adjourn*

HOMER E. NEWELL,
Associate Administrator, National Aeronautics and Space Administration.

SEPTEMBER 11, 1973.

[FR Doc.73-19566 Filed 9-13-73;8:45 am]

TARIFF COMMISSION

[337-24]

AMPICILLIN

Notice of Termination of Investigation and Cancellation of Hearing

On the basis of a request from the complainants Beecham Group Limited and Beecham, Inc., and for other reasons, the Tariff Commission on August 30, 1973, terminated without prejudice investigation 337-24, regarding alleged unfair methods of competition and unfair acts in the importation and sale of ampicillin made in accordance with claim 5 of U.S. Patent Number 2,985,648 owned by Beecham Group, Ltd., and canceled the public hearing scheduled in connection therewith for October 2, 1973 (July 24, 1973, 38 FR 19878). Notice of the institution of the investigation was published in the FEDERAL REGISTER of November 28, 1970 (35 FR 18222).

Issued September 11, 1973.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.73-19584 Filed 9-13-73;8:45 am]

[AA1921-123]

ELECTRONIC COLOR SEPARATING OR SORTING MACHINES FROM THE UNITED KINGDOM

Determination of No Injury or Likelihood Thereof

SEPTEMBER 7, 1973.

On June 7, 1973, the Tariff Commission received advice from the Treasury Department that electronic color separating or sorting machines from the United Kingdom are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted investigation No. AA1921-123 to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on July 31, 1973. Notice of the investigation and hearing was published in the FEDERAL REGISTER of June 20, 1973 (38 FR 16118).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission[1] has unanimously determined that an industry in the United States is not being or is not likely to be injured, or is not prevented from being established, by reason of the importation of electronic color separating or sorting machines from the United Kingdom sold, or likely to be sold, at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS[2]

In the instant antidumping case, the Treasury Department advised the Tariff Commission that electronic color separating or sorting machines from the United Kingdom (hereinafter referred to as "color sorters") are being or are likely to be sold at less than fair value (LTFV). There were no imports of color sorters from any other foreign source. These color sorters are used chiefly to sort agricultural commodities of granular substance (such as beans, rice, coffee, nuts, etc.) by color. The purpose of the process is to separate out defective pieces and foreign substances, thereby upgrading the quality of the commodity sorted.

In making this determination, the Commission considered the United States industry to consist of those facilities in the United States engaged in the production of electronic color separating or sorting machines. There are presently three domestic producers of color sorters, two of which accounted for over 90 percent of the total sales value of all such machines during the period 1969-72.

A Commission survey of recent purchasers of the imported color sorters from the United Kingdom indicated that price was not the foremost consideration in their purchase determination. Factors more important than the initial price included the adaptability of a color sorter for specific uses and ease of maintenance. Sales of domestic producers lost to imports of U.K. color sorters by reason of LTFV sales were negligible. Moreover, evidence available to the Commission indicates that the U.K. color sorters sold at LTFV did not result, by reason of their being sold at LTFV, in depressing the prices of domestic producers. The prices of the imported color sorters sold at LTFV were higher than the prices of most domestically produced color sorters. To the extent that underselling occurred, it was closely related to the introduction of multichannel[3] gravity drop color sorters which provide color sorting capacity at a much lower price per channel than single-channel machines. The prices of both imported and domestic color sorters, on a per channel basis, have declined as the manufacturers turned increasingly to produce multichannel machines.

Imported color sorting machines from the United Kingdom were the first multichannel machines in the U.S. market—introduced in 1969. In terms of the number of channels supplied, imports from the United Kingdom achieved a 30 percent share of apparent U.S. consumption during that year. The imports declined considerably between 1969 and 1970 and a similar drop was experienced in the shipments of U.S. producers. These declines were attributable to generally depressed economic conditions in the U.S. market at that time. In 1971, the domestic shipments of color sorters, in terms of the number of channels, more than tripled with the introduction of multichanneled gravity drop machines manufactured by a domestic producer, and such shipments remained at a high level in 1972. Thus, while imports of color sorters from the United Kingdom increased in 1972, the share of the U.S. market supplied by the domestic producers was larger in 1972, when Treasury found sales at less than fair value, than in earlier years. Excluding domestic shipments of color sorters to rice producers to whom no imported color sorters were sold, data on apparent U.S. consumption[4] shows that the share of the U.S. market accounted for by imported color sorters declined from 32 percent in 1971 to 27 percent in 1972. There is no evidence that imports of color sorters disrupted the U.S. market by reason of their having been sold at LTFV.

Further evidence of the competitive strength of the domestic industry is demonstrated by its financial experience. In 1972, the year during which the Treasury Department found imports sold at LTFV, aggregate profits of two major domestic concerns producing color sorters were at a peak for the years 1969-1972.

Considering all the evidence developed during this investigation, any injury suffered by the domestic industry by reason of the imports of color sorters sold at LTFV is de minimis. With regard to likelihood of future injury to the U.S. industry, both the U.S. importer and the United Kingdom exporter of color sorters have offered assurances to the Treasury Department and to the Tariff Commission that LTFV sales ceased in May 1973 and will not reoccur.

On the basis of the foregoing, the Commission has determined that an industry in the United States is not being or is not likely to be injured by reason of the importation of electronic color

[1] Commissioners Leonard and Young did not participate in the decision.

[2] Vice Chairman Parker and Commissioner Ablondi concur in the result.

[3] One color sorter may incorporate any number of channels—the part of a color sorter which conveys the product to be sorted to the viewing chamber.

[4] Apparent consumption is calculated by adding imports to domestic shipments and subtracting U.S. exports from that total.

separating or sorting machines from the United Kingdom at less than fair value.[5]

By order of the Commission.

KENNETH R. MASON,
Secretary.

[FR Doc.73-19583 Filed 9-13-73;8:45 am]

[AA1921-124]

STEEL WIRE ROPE FROM JAPAN

Determination of Injury

SEPTEMBER 7, 1973.

On June 7, 1973, the Tariff Commission received advice from the Treasury Department that steel wire rope from Japan is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. In accordance with the requirements of section 201(a) of the Antidumping Act (19 U.S.C. 160(a)), the Tariff Commission instituted investigation No. AA1921-124 to determine whether an industry in the United States is being, or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

A public hearing was held on August 2 and 3, 1973. Notice of the investigation and hearing was published in the FEDERAL REGISTER of June 20, 1973 (38 FR 16118).

In arriving at a determination in this case, the Commission gave due consideration to all written submissions from interested parties, evidence adduced at the hearing, and all factual information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

On the basis of the investigation, the Commission has determined by a vote of 2 to 1[1] that an industry in the United States is being injured by reason of the importation of steel wire rope from Japan that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

STATEMENT OF REASONS FOR AFFIRMATIVE DETERMINATION BY CHAIRMAN BEDELL AND COMMISSIONER MOORE

The Antidumping Act, 1921, as amended, requires that the Tariff Commission find two conditions satisfied before an affirmative determination can be made.

First, there must be injury or likelihood of injury to an industry in the United States.[2] Second, such injury or likelihood of injury must be by reason of the importation into the United States of the class or kind of foreign merchandise which the Secretary of the Treasury has determined is being, or is likely to be, sold at less than fair value (LTFV).

In our judgment, both of the aforementioned conditions are satisfied. Accordingly, for the reasons set forth below, we have determined that an industry in the United States is being injured by reason of the importation of steel wire rope from Japan sold at LTFV.[3]

In making this determination under section 201(a) of the Antidumping Act, we have considered the injured industry to consist of the operations of the U.S. facilities producing steel wire rope.

The U.S. steel wire rope industry in the United States, presently consisting of 17 U.S. firms with 23 plants located in 13 states, has traditionally recognized six "zones" or "regions" as areas to be serviced either by a regional manufacturing plant or warehouse facility.

In addition to significant freight-cost differentials between these six regions, there also exist separate and distinct regional pricing and discounting levels that reflect specific regional market characteristics and competition.

Of these six regions, the Pacific Northwest and the Pacific Southwest and the South Central Regions were of the greatest concern to interested parties in this case. Data supplied to the Commission during its investigation indicated that during the period 1970-72 over half of U.S. shipments were sold in the Pacific Southwest, Pacific Northwest, and South Central Regional markets. It is apparent that these three regions are vitally important to the U.S. industry in its marketing of wire rope in the United States. We are of the opinion that there has been substantial injury to the U.S. industry in these three market areas. We believe that LTFV imports of steel wire rope from Japan into these three regions have been of sufficient magnitude to cause injury to the U.S. industry.

Market penetration.—Imports of steel wire rope from Japan, the principal foreign supplier, have nearly doubled over a 5-year period, from 9,912 net tons in 1968 to 18,996 net tons in 1972. During the 6-month period January-June 1973, such imports amounted to 11,413 net tons, or about one-fifth more than during the corresponding period in 1972. It is clear that the tide of imports determined by the Treasury Department to have been sold at less than fair value has entered the United States and the regional market areas identified above in substantial volume.

The penetration of LTFV imports has occurred in the regional markets identified above in sufficient volume as to be injurious to the entire U.S. industry. For example, in 1970 the bulk of Japanese imports of steel wire rope sold in the Pacific Southwest, Pacific Northwest, and the South Central Regions were equal to about 8 percent of U.S. producers' shipments for these areas. In 1972, such imports from Japan increased to about 11 percent of U.S. producers' shipments. Such regional market penetration by LTFV imports has caused plant closures, market withdrawals, and a general suppression of wire rope prices in these geographic areas to the point where such prices are lower than prices paid elsewhere for wire rope in the United States.

Price suppression.—Information developed during the investigation showed that prices received by Japanese importers were consistently well below those received by domestic producers. For example, between the first quarter of 1970 and the second quarter of 1973, the prices of five particular items of Japanese wire rope—which Treasury found to have been sold at LTFV—averaged 22 to 38 percent below the prices received by domestic producers for the same items. Such price differentials were even more pronounced in the Pacific Southwest, Pacific Northwest and South Central Regions. As a result, in order to remain competitive, U.S. producers have been prevented from increasing their prices to offset fully increased costs of domestic production.

Loss of sales.—Data supplied to the Commission documents specific examples of sales lost to LTFV imports. Although demonstration of every lost sale was not possible, it is clear from the evidence of price suppression that loss of sales has taken place, particularly in the Pacific Southwest, Pacific Northwest, and South Central Regions, where the price disparities between LTFV imports of wire rope and domestic wire rope are especially pronounced.

Plant closures.—Since January 1, 1968, six plants producing steel wire rope in the United States have closed, and an estimated 1,300 workers have lost their jobs. Among the plants closing were two operated by Colorado Fuel and Iron Corp., one of the largest U.S. steel wire rope producers, where over 900 workers were employed. We believe these plant closures and resultant unemployment have been due in part to LTFV imports of steel wire rope from Japan.

Conclusion.—On the basis of the foregoing we conclude that an industry in the United States is being injured by reason of the importation of steel wire rope from Japan that is being, or is likely to be, sold at less than fair value.

STATEMENT OF REASONS FOR THE NEGATIVE DETERMINATION OF COMMISSIONER ABLONDI

Although there have been LTFV imports of steel wire rope from Japan in recent years, and these imports may have caused some slight market disruption, I am unable to find injury, or likelihood of injury, to an industry within the meaning of the Antidumping Act, 1921, as amended.

There is an industry in the United States presently producing steel wire

[5] The prevention of establishment of an industry is not at issue in this case.

[1] Chairman Bedell and Commissioner Moore determined in the affirmative; Commissioner Ablondi determined in the negative. Commissioner Young did not participate in the determination, and Vice Chairman Parker and Commissioner Leonard were absent.

[2] Prevention of establishment of an industry is not an issue in the instant case.

[3] At the hearing, certain importers of a Japanese product, described as copper-coated steel-wire cord of stranded construction of a type used to reinforce automobile and truck tires, raised a question as to the applicability of the Treasury Department's determination of LTFV sales to this product. The complainants agreed that the U.S. steel wire rope industry did not make a product of this description.

rope and it consists of 17 firms which are geographically located nationwide. The complainant, for example, with production facilities in Kenosha, Wis., sells and services the west coast area. Other firms in the industry located on the east coast do the same. Evidence, in part, indicates that most of the 17 firms are now producing at capacity (three shifts a day, 5½ days a week); that many of these plants are weeks behind in filling current orders with existing productional capacity; and that the industry is operating at a generally increasing profit level. I do not believe that the industry above described is being injured by reason of the LTFV imports.

The complainant in this proceeding contends that the west coast area and the south central region are the areas most affected by LTFV imports from Japan. Application of this regional concept of injury would not, in my opinion, lead to a finding of injury to an industry of steel wire rope producers located in the regions complained of.

The four plants currently operating in the west coast area and south central region have increased their shipments by about 19 percent during the period 1970–72—the period when the injury alleged by the domestic producers is claimed to have occurred. Secondly, available data on net operating profits of wire rope operations for the plants most likely affected, i.e., those in the west coast and south central areas, indicate that profits were larger in 1972 (the year when Treasury found LTFV sales), both in absolute terms and as a percent of net sales, than in any year since 1968. Imports of steel wire rope from another Asian country were at a unit price level lower than that of the Japanese and compete in the same region.

The regional industry that would most likely be injured by reason of the importation of LTFV imports from Japan does not appear to be injured in light of available data. It has been reported that one large firm currently manufacturing on the east coast intends to begin manufacture of steel wire rope on a limited basis at one of its west coast steelmaking facilities.

In conclusion, since there appears to be sufficient reason to believe that no injury has occurred to domestic producers of steel wire rope by reason of LTFV imports of steel wire rope from Japan, I find no injury, or likelihood of injury, to an industry in the instant investigation.

By order of the Commission.

[SEAL] KENNETH R. MASON,
Secretary.

[FR Doc.73-19582 Filed 9-13-73;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

NATIONAL MANPOWER ADVISORY COMMITTEE

Notice of Meeting

The National Manpower Advisory Committee will meet at the Department of Labor on September 21. Appointed by the Secretary of Labor in 1962, the Committee makes recommendations to the Secretary relative to the carrying out of his duties under the Manpower Development and Training Act. Members of the Committee are chosen from representatives of labor, management, agriculture, education, training and the public at large. The chairman is Dr. Eli Ginzberg of Columbia University.

At its meeting on September 21 the National Manpower Advisory Committee will review the roles and outcomes of the Work Incentive Program (WIN) and the Job Corps; identify issues that might be considered for the President's Message in the 1974 Manpower Report of the President; and discuss possible courses of action for future meetings of its subcommittees.

The meeting will be held in Conference Room 107 in the Department of Labor starting at 9:30 a.m., and is expected to adjourn soon after 4:00 p.m. The meeting will be open to the public.

Signed at Washington, D.C., this 10th day of September 1973.

ROBERT R. BEHLOW,
Executive Secretary.

[FR Doc.73-19549 Filed 9-13-73;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice 341]

ASSIGNMENT OF HEARINGS

SEPTEMBER 11, 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 66121 Sub 28, Indian Bow Truck Lines, Ltd., now assigned October 29, 1973, will be held in Room 206, Tax Court, 26 Federal Plaza, New York, N.Y.

MC 62690 Sub 3, Carey F. Weathers Transfer & Storage Co., now assigned October 10, 1973, at Atlanta, Ga., will be held in Room 305, 1252 West Peachtree Street, NW.

MC 127418 Sub 7 Trop-Arctic Refrigerated Service Inc., now assigned October 15, 1973, at Atlanta, Ga., will be held in Room 305, 1252 West Peachtree Street, NW.

MC-F-11436, Milton Transportation, Inc., Purchase—Milton Trucking, Inc., MC 136343, Milton Transportation, Inc., Conversion and Extension, MC 134776 Sub 20, Milton Trucking, Inc., Extension-Paper, now being assigned hearing October 29, 1973, at the Offices of the Interstate Commerce Commission, Washington, D.C.

No. 35834, Increased Rates, Matson Navigation Company, No. 35834 Sub 1, Increased Rates, Seatrain Lines, California, No. 35834 Sub 2, Increased Rates, Trans-Continental Freight Bureau, and No. 35834 Sub 3, Increased Rates, United States Lines, now assigned September 17, 1973, at San Francisco, Calif., is postponed indefinitely.

MC 263 Sub 205, Garrett Freightlines, Inc., and MC 97699 Sub 39, Barber Transportation Co., now assigned October 1, 1973, at Denver, Colo., will be held in Room B-230, New Custom House, 19th and Stout Street.

MC 138237, Metro Heavy Hauling, Inc., now assigned October 1, 1973, at Olympia, Wash., will be held in Hearing Room 6th Floor, Highway Licenses Bldg., 12th and Washington Street.

MC-C-8041, Garrett Freight Lines, Inc., Et Al-V-Puget Sound Truck Lines, Inc., now assigned October 15, 1973, at Olympia, Washington, will be held in Hearing Room 6th Floor, Highway Licenses Bldg., 12th and Washington Street.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19618 Filed 9-13-73;8:45 am]

[Notice 352]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before October 4, 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-74417. By order of September 10, 1973, the Motor Carrier Board approved the transfer to Charles Eberly and Roger Eberly, a partnership, doing business as Valley Bus Lines, Scotland, Pa., of Certificates Nos. MC-125754 and MC-125754 (sub-No. 1), issued April 21, 1964, and December 10, 1964, respectively, to Lee McBeth, doing business as McBeth Bus Company, Walnut Bottom, Pa., authorizing the transportation of passengers and their baggage, in round-trip charter operations beginning and ending at specified points in Pennsylvania and extending to points in New York, New Jersey, Delaware, Maryland, Virginia, West Virginia, Ohio, Connecticut, Massachusetts, Rhode Island, Maine, and the District of Columbia. S. Berne Smith and Harry H. Frank, 100 Pine Street (P.O. Box 1166), Harrisburg, Pa. 17108, attorneys for applicants.

No. MC-FC-74601. By order entered September 10, 1973, the Motor Carrier Board approved the transfer to Sage Bros. Trucking Co., Mount Holly, N.J., of the operating rights set forth in Certificates Nos. MC-59495 and MC-59495 (sub-No. 2), issued by the Commission February 7, 1941 and May 6, 1949, respectively, to Benjamin B. Powell and Joseph P. Powell, doing business as Powell Bros., Moorestown, N.J., authorizing the transportation of agricultural commodities, fertilizer, lime, plaster, feed, and grain, from and to points in New Jersey, New York, Pennsylvania, and Delaware. William H. Wells, 135 High Street, Mount Holly, N.J. 08060, attorney for applicants.

No. MC-FC-74609. By order of September 7, 1973, the Motor Carrier Board approved the entry of a supplemental order to transfer to Leon Ledbetter Trucking, Inc., Amarillo, Texas, the additional operating rights in Certificates No. MC-125000 (sub-No. 8), issued August 7, 1973, to Leon Ledbetter, Vega, Texas, in order to accomplish applicants desires that all of the operating rights issued to the individual, Leon Ledbetter, under docket series No. MC-125000 be transferred to the above-named transferee corporation. The rights transferred cover the transportation of: Asphalt paying materials, in dump vehicles, from points in specified counties in Texas to points in specified counties in Kansas, Oklahoma, and New Mexico. John S. Fessenden, attorney, 1111 E St. NW., Washington, D.C. 20004.

[SEAL] ROBERT L. OSWALD,
Secretary.

[FR Doc.73-19619 Filed 9-13-73;8:45 am]

CUMULATIVE LISTS OF PARTS AFFECTED—SEPTEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during September.

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federal register

FRIDAY, SEPTEMBER 14, 1973

WASHINGTON, D.C.

Volume 38 ■ Number 178

PART II

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

■

MILK IN CHICAGO REGIONAL AND CERTAIN OTHER MARKETING AREAS

Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1030, 1032, 1046, 1049, 1050, 1062, 1099]

[Dockets No. AO-361-A3, etc.]

MILK IN CHICAGO REGIONAL 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.
1030	Chicago Regional	AO-361-A3.
1032	Southern Illinois	AO-313-A20.
1046	Louisville-Lexington-Evansville.	AO-123-A37.
1049	Indiana	AO-319-A16.
1050	Central Illinois	AO-355-A9.
1062	St. Louis-Ozarks	AO-10-A42.
1099	Paducah, Ky	AO-183-A24.

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. Seven 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 Clayton, Mo., on July 14–22, 1970, pursuant to notice thereof which was issued June 26, 1970 (35 FR 10692).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on June 4, 1971 (36 FR 11352), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

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 material issues on the record of the hearing relate to:

1. Application of a uniform milk classification plan in the seven 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 inventories;
   (e) Shrinkage allowances;
   (f) Allocation of receipts to utilization;
   (g) Obligations relative to other source milk; and
   (h) Reports;
5. Changing the butterfat differentials; and
6. Advance announcement of prices for surplus milk.

General setting of the hearing. Prior to the 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 Federal 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, Associated Milk Producers, Inc., Dairymen, Inc., Mid-America Dairymen, Inc., and Pure Milk Products Cooperative petitioned the Department for a hearing on various proposals relating to the classification and pricing of milk in the seven subject markets. These four cooperative associations, which will be referred to in this decision as the "principal" cooperatives, collectively represent a substantial number of the producers associated with each of these markets.

The main thrust of the cooperatives' proposals was the proposed use of an identical classification plan under each of the seven orders. As proposed, the new plan would have three classes of utilization rather than the two classes now provided in each order. 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 proposals by the principal cooperatives would provide that the Class III price under each order be the Minnesota-Wisconsin manufacturing milk price for the month. They proposed that the new Class II price under each order be the Minnesota-Wisconsin price plus 10 cents. They proposed also that a single handler butterfat differential apply to all three classes. This differential, which would be identical among the seven orders, would be based on the Chicago butter price times a factor of 0.115.

These proposals in general were endorsed at the hearing by the Association of Operating Cooperatives on behalf of six Wisconsin-based producer groups. These cooperatives proposed, however, that the price to be applicable to milk used in butter and nonfat dry milk be the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price. Another cooperative association, Land O'Lakes, Inc., proposed that the lower of the Minnesota-Wisconsin price or the product formula price apply to all Class III uses of milk. Its butter-nonfat dry milk formula price would be lower relative to the formula price proposed by the Association of Operating Cooperatives.

A uniform classification plan for the seven 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 seven subject markets. Instead of 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 scheme.

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 seven markets.* Each of the seven orders under consideration should provide for the same basic classification plan. As adopted herein, each order would provide for three classes of utilization, with the milk uses included in each class being the same for each order. Likewise, the same basic procedure would be used under each order for classifying milk transferred or diverted from pool plants to other plants, and for allocating a handler's receipts to his utilization to determine the classification of his producer milk. Each order would use the same Class II and Class III price formulas. Also, all 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 seven 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 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, market-

ing 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.

Widespread distribution patterns prevail particularly for the processors of specialty products such as yogurt and sterilized cream items. Although the volume of these 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.

Several cases cited on the record serve to illustrate the widespread movements of packaged specialty products. At the time of the hearing a handler regulated under the Paducah order was distributing half and half or whipping cream in 20 federally regulated marketing areas, including six of the markets involved in this hearing. Similarly, a handler under the Louisville-Lexington-Evansville order was selling half and half, yogurt or sour cream in 12 Federal order markets. A processor with plants in New York and Ohio was selling yogurt in nearly every State east of the Mississippi River, which includes most of the markets involved in this proceeding.

Although the seven 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 seven 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 Federal 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.

A revised recommended decision on uniform classification and pricing provisions for 32 other Federal orders is being issued concurrently with this seven-market decision. The format of order provisions adopted herein is comparable to the format set forth in the 32-market decision. 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. Moreover, coordination of the orders in this respect will be helpful to those in the industry who must work with more than one order, a situation that is becoming increasingly common as cooperatives and handlers continue to expand their marketing activities into more and more regulated markets.

Each of the seven orders under consideration is set forth in its entirety at the end of this document. Each order reflects the revised order format as well as the classification and pricing amendments adopted herein. In adapting each order to the new format, no substantive changes have been made in those provisions not under consideration at the hearing. Since the classification and pricing amendments may be less discernable to the reader with the reprinting of the complete order, the sections in each order that encompass the basic changes in classification and pricing are listed below:

Sections 12–16, 30, 40–44, 50, 52–54, 60, 62, 74–76, and 85.

Some of the amendments adopted herein would change certain procedures under the orders that are carried out after the end of the month to which they apply. These include the submission of reports, the classification of milk, and the computation and announcement of certain class prices, butterfat differentials, and producer prices. It is intended, however, that the amendments apply only to that milk handled after the effective date of the changes. Such amendments are not intended to affect the completion of previously existing procedures with respect to milk handled prior to the effectuation of the amendments.

2. *Revision of the present Class I classification.* With certain exceptions noted below, Class I milk under each of the seven subject orders should include all skim milk and butterfat disposed of in the form of milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milk shakes 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, and 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 seven 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 herein included in Class I are presently included in the Class I classification under each of the seven orders. Only the Chicago Regional order, however, now includes any milk shake mixes in Class I. The Paducah order is the only one of the seven orders that includes sterilized fluid milk products (other than cream items) in Class I.

The adopted Class I classification would not include cream products or mixtures of cream and milk or skim milk (such as half and half) containing 9 percent or more butterfat. Sweet cream (except that in frozen, concentrated, aerated or sterilized form) and half and half are presently Class I products under the seven orders. Grade A sour cream is a Class I product under all but the Indiana order, while Grade A sour cream mixtures are Class I items under all but the Indiana and Paducah orders. Also, non-Grade A sour cream is presently a Class I product under the Paducah and Louisville-Lexington-Evansville 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.

Under the adopted changes, yogurt would not be a Class I product. A Class I classification for yogurt, which is now in the surplus class under these orders, was proposed by the principal cooperatives.

Two of the seven orders now include ending inventories of packaged fluid milk products in Class I. As discussed later, such inventories would be classified as Class III 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 milk shake 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.

Milk shake 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.

The principal cooperatives proposed that milk shake mixes that "are not further processed in a commercial establishment" be in Class I. They proposed that all other milk shake mixes be in Class II. The national organizations of fluid milk and ice cream processors, on the other hand, asked that all milk shake mixes be included in the lowest classification.

Milk shake and ice milk mixes are being marketed generally through two channels. Limited quantities of such mixes are processed for home consumption, with such mixes being distributed to consumers through food stores and on home delivery routes. The major outlet for milk shake 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.

Milk shake 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 milk shake 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 milk shake 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 milk shake 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 milk shake 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.

No exception to the Class I classification of milk should be made for fluid milk products in sterilized form. This was proposed by the principal cooperatives and the national organizations of fluid milk and ice cream processors. A group of handlers in the Indiana and Louisville-Lexington-Evansville markets proposed, however, that all sterilized products in rigid metal or glass containers be excluded from Class I.

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 the principal 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, the 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 seven 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 generally 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 believed 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 seven orders will provide a uniform basis for identifying those products that are to be defined as "fluid milk products."

For simplicity, the fluid milk product definition should continue to list the generic names of those products commonly sold for consumption as beverages. The products listed in the adopted definition encompass most of the forms in which milk for fluid uses is sold. Anyone referring to this fluid milk product definition may easily ascertain in the case of most milk products whether or not a particular product is included in the definition.

A listing of products alone in the fluid milk product definition may not clearly indicate the classification of new milk products developed for fluid consumption. With certain limited exceptions noted, the fluid milk product definition is intended to include all milk products that are distributed for use as beverages. Although a new milk beverage introduced on the market might not be encompassed within the list of named products, it should be treated as a fluid milk product, nevertheless, if its composition is similar to that of the listed products. This will be the result of the standards of product composition for fluid milk products herein adopted.

As indicated, the adopted composition standards would embrace any fluid or frozen milk product not specified as a Class II or Class III product that contains by weight at least 80 percent water and 6.5 percent nonfat milk solids, and less than 9 percent butterfat and 20 percent total solids. The 9 percent butterfat standard coincides with the butterfat percentage adopted herein to delineate the mixtures of cream and milk or skim milk to be included in Class II. The total solids and water percentages represent a reasonable measure of the fluidity of those products that normally are consumed as beverages. The 6.5 percent nonfat milk solids standard is used to exclude from the fluid milk product definition those products which contain some milk solids but which are not closely identified with the dairy industry, such as chocolate flavored drinks in "pop" bottles.

These composition standards are chosen so as to conform as closely as possible to the water, solids and butterfat content of those products specifically listed in the fluid milk product definition, i.e., the traditional milk beverages. It is intended that these standards apply only to milk products, and only to such products that are being marketed for consumption in fluid form. Such standards would not be applied to products such as soups, which are not customarily thought of as milk products, or to products that would be a type of frozen dessert marketed for consumption in frozen form.

In determining whether or not a milk product in fluid form falls within the composition standards of the fluid milk product definition, such standards should be applied to the composition of the 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. Under the "filled milk" provisions in these orders, sodium caseinate in any product is treated as a nonmilk ingredient. 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 deveolpment of new milk products, as handlers contended. Should the Class I classification of a new product appear to be incongruous with the intended use of the product, the hearing process remains as an avenue through which a different classification may be considered. The use of composition standards should result, however, in a more uniform classification among orders of new products developed for fluid consumption.

3. *Classification and pricing of milk not needed for Class I use.* The present Class II classification of milk under each of the seven orders should be redesignated as Class III, and a new Class II classification that would include certain products now in Class I and Class II should be established. The new 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 the redesignated Class III classification should be the basic formula price for the month.

Class II milk should include skim milk and butterfat disposed of in the form of eggnog, yogurt or a "fluid cream product", i.e., cream (other than plastic cream or frozen cream), sour cream, or a mixture (including a cultured mixture) of cream and milk or skim milk containing 9 percent or more butterfat, 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 June 4, 1971, recommended decision.

The Class II classifications under the present orders are essentially alike. Class II uses include skim milk and butterfat used to produce any product other than a fluid milk product, and skim milk and butterfat in fluid milk products that are disposed of to commercial food processing establishments, dumped, disposed of for animal feed, or in inventory at the end of the month. Under the Southern Illinois and Central Illinois orders, such classification of inventory is limited to fluid milk products in bulk form. The orders also include shrinkage (within certain limits) in this classification and that portion of the skim milk equivalent of nonfat milk solids added to fluid milk products that is not classified as Class I milk.

Under five of the seven orders, the present Class II price is the Minnesota-Wisconsin manufacturing milk price. The Indiana order establishes the Class II price at the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price. Under the Louisville-Lexington-Evansville order, the Class II price for the months of September through March is the Minnesota-Wisconsin price. For the remaining months, it is the Minnesota-Wisconsin price less 10 cents.

The principal cooperatives proposed that the present Class II classification under each order be redesignated as Class III and that many of the uses now included in the surplus class be included in a new, higher-priced Class II classification. These uses would include all soft and hard cheeses except cheddar cheese, frozen desserts, milk shake mixes sold to commercial establishments for further processing, eggnog, cream in plastic, frozen, aerated or sterilized form, anhydrous milkfat, sour cream, sour mixtures (dips), 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, the cooperatives proposed that the new Class II also include all cream products now in Class I, i.e., cream, mixtures of cream and milk or skim milk containing 9 percent or more butterfat, sour cream and sour mixtures. Under their proposal, producer milk allocated to these uses would be priced under each order at the Minnesota-Wisconsin price plus 10 cents.

Of the present Class II uses, only cheddar cheese, butter, dried products, dumpage, animal feed, shrinkage, ending inventory, and the non-Class I portion of modified fluid milk products would remain in the lowest class under the cooperatives' proposal. These groups asked that milk in such uses be priced under each order at the Minnesota-Wisconsin price.

In support of their proposed classification plan, proponents contended that the present differences in the demand for certain groups of milk products support three different price levels, or classes of utilization, for milk. They stated that the demands for cheddar cheese, butter and nonfat dry milk are quite sensitive to changes in product prices, thus warranting the classification of milk used in such products in the lowest priced class. Proponents contended, on the other hand, that other products presently in Class II should be included in an intermediate-priced class since the demands for such products are less sensitive to price changes.

The principal cooperatives testified also that handlers generally demand a regular supply of producer milk for many of their proposed Class II uses and that alternative supplies of milk or milk products for such uses cannot be obtained for less than the Class II price they propose. Moreover, they claimed that a higher price for some of the surplus milk uses would result in products other than fluid milk products bearing some of the burden of attracting a total supply of milk for the market.

The principal cooperatives contended further that a lower price should apply to milk used in cream and cream mixtures now in Class I. They pointed out that the present classification has placed these products in a poor competitive position in the market relative to nondairy substitutes. Indicating that the industry already may have waited too long to shift cream products to a lower price category, proponents urged a lower price for milk used in such products with the hope that the declining demand for cream could be halted.

The classification plan proposed by the principal cooperatives was generally endorsed by other cooperative associations operating in or near the seven markets. One group of cooperatives urged, however, that all "American" cheeses, rather than just cheddar cheese, be included in Class III. "American" cheeses are commonly considered to include cheddar cheese, colby cheese, granular or stirred curd cheese, and washed curd cheese. Another cooperative proposed that cheddar cheese and colby cheese be in separate classes, but with little difference in the prices established for such classes. Three producer groups also proposed that yogurt be included in the proposed new Class II, rather than in Class I as proposed by the principal cooperatives.

As noted earlier, 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. The two handler groups stated that if a three-class system is adopted certain products proposed by the principal cooperatives to be in the new Class II should be included, instead, in Class III. They urged that the lowest classification apply to frozen desserts (including those with yogurt flavoring), puddings, sour cream, sour mixtures, and dispositions to commercial food processors.

Other handler groups and individual handlers likewise opposed a higher price on milk used in certain manufactured products. Particular attention was focused on milk and condensed products sold to food processors and on evaporated milk. Representatives of the "soft-serve" frozen dessert industry urged that milk shake mixes for commercial use be in the lowest class. Some handlers advocated that the only classification change be that of classifying cream products in a lower class. They proposed that any action to maintain producer returns at present levels because of a change in the classification of cream be limited to increasing the Class I price.

Producer milk not needed for Class I use must be priced at a level that insures the orderly disposition of the milk. Normally, excess milk supplies must be channeled into manufacturing uses. This requires that such milk be priced competitively with manufacturing grade milk if the market is to be cleared of its reserve supplies. At the same time, 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.

Several Wisconsin and Minnesota cooperative associations engaged in the manufacture of butter and nonfat dry milk proposed that all seven of the orders under consideration provide for the use of a butter-nonfat dry milk formula for pricing surplus milk. Under the proposal of the Wisconsin cooperatives, the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price would apply to producer milk processed into butter and nonfat dry milk. Other proposed Class III uses would be priced at the Minnesota-Wisconsin price. A cooperative based in Minnesota proposed that the lower of the Minnesota-Wisconsin price or a butter-nonfat dry milk formula price apply to all Class III uses.

Different formula prices were proposed, however, by these producer groups. The Wisconsin cooperatives urged the adoption of essentially the same butter-nonfat dry milk formula contained in the Indiana order. The formula proposed by the Minnesota cooperative, on the other hand, would yield a price 12 cents per hundredweight lower than the Indiana formula because of the greater processing costs for butter and nonfat dry milk, or "make allowance," built into the formula. In 1969, the proposed pricing would have returned 17 to 29 cents (depending on the formula used) per hundredweight less than the use of the Minnesota-Wisconsin price alone.

The basic contention of these cooperatives was that plants processing butter and nonfat dry milk from a Class I market's surplus milk cannot afford to pay

the Minnesota-Wisconsin price for milk so used. They indicated that the difference between the market value for these products and the Minnesota-Wisconsin price is considerably less than the amount required to cover the operating costs of such plants. Such plants associated with a fluid market, proponents claimed, have particularly high costs of operation because of the underutilized plant capacity that results when there is a heavy demand for milk at bottling plants. The cooperatives maintained that the class price for milk used in butter and nonfat dry milk must assure processors of such products a minimum processing allowance.

As pointed out, producer milk not needed for Class I use should not be priced lower than is necessary for the orderly disposition of the milk. Presently, handlers and cooperative associations in the seven markets are generally disposing of milk not needed for Class I use at prices that are not less than the Minnesota-Wisconsin price adopted herein as the minimum price for surplus milk. The Minnesota-Wisconsin price is now the lowest price for surplus milk under the St. Louis-Ozarks, Paducah, Southern Illinois, Central Illinois, and Chicago Regional orders. There is no indication that handlers or cooperatives in these five markets are experiencing difficulty in disposing of excess milk supplies at this price level. This includes the Chicago Regional market where nearly one-half of the 7.115 billion pounds of producer milk in 1969 was disposed of in Class II uses.

In the Louisville-Lexington-Evansville market where the Minnesota-Wisconsin price also applies to surplus milk except in certain months, reserve supplies likewise are being disposed of at not less than the Minnesota-Wisconsin price. During the period of January 1969 through June 1970, 176 million pounds of the market's 424 million pounds of Class II producer milk were disposed of by a cooperative to nonpool plants for manufacturing at not less than this price level. This included sales in those months (April–August) when the Class II price under the Louisville-Lexington-Evansville order is the Minnesota-Wisconsin price less 10 cents.

Although the Indiana order now provides for the use of a butter-nonfat dry milk formula price in combination with the Minnesota-Wisconsin price, there is no indication that handlers or cooperatives in this market are disposing of their surplus milk under conditions uniquely different from those faced by handlers in the other nearby markets under consideration. Much of the producer milk associated with the Indiana market is, in fact, produced in the State of Wisconsin.[2] Such milk not needed for Class I use by Indiana handlers is either transferred from Indiana pool plants back to manufacturing plants in the Wisconsin production area or diverted directly to such plants from nearby farms. Processors in Wisconsin buying milk for manufacturing use are generally paying not less than the Minnesota-Wisconsin price for such milk. Moreover, handlers in the Indiana market are not limited to butter and nonfat dry milk uses in disposing of milk not needed for Class I purposes. Of the total quantity of milk processed in this market into manufactured products in 1969, only one-fifth was used in butter and nonfat dry milk.

Under these circumstances, it must be concluded that conditions in each of the seven markets support the use of the Minnesota-Wisconsin price as the minimum price for surplus milk.

Certain uses of producer milk not needed for Class I purposes should be priced at a level 10 cents per hundredweight higher than the Minnesota-Wisconsin price. These uses, which are included in a new Class II classification, were set forth at the beginning of this discussion on pricing surplus milk.

Of the products adopted herein for inclusion in the new Class II, one of principal importance is 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.

In these markets cottage cheese has been considered for pricing purposes merely as one of various uses for producer milk not needed for the Class I market. There are, however, 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 the market, as is the case with respect to butter and nonfat dry milk, for instance. Regulated handlers, in conjunction with their fluid milk sales, generally move cottage cheese through the same retail and wholesale outlets. In addition to supplying the Class I requirements of handlers, producers are expected to make available sufficient supplies of fresh, high quality milk for the production of cottage cheese.[3] This is not the case with respect to butter, nonfat dry milk, or hard cheese.

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 at 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. Also, cottage cheese, unlike most other manufactured products, has a more limited storage life and must be processed on a regular basis. Thus, as in the case of fluid milk products, handlers require that adequate supplies of producer milk be made available at their distributing plants at all times for cottage cheese use.

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. The local producer supplies are the only dependable supplies of quality fluid milk within the normal milksheds of the seven subject markets for cottage cheese production. In these markets, any nearby milk of the necessary quality is attached to other regulated fluid milk markets and would be available to handlers only sporadically. With the handling and transportation charges, the cost of this milk to handlers would be at least as high as the adopted Class II price.

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 cottage cheese milk. 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 relatively bulky and perishable item, from distant areas to outlets in the seven markets would generally negate any apparent price advantage attributable to differences in order prices applicable to cottage cheese milk.

Milk used in yogurt should be priced at the Class II price level rather than at the Class I level as the principal cooperatives proposed. 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 in the seven markets under consideration. 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 indicated that milk is preferred. 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 production, these conditions warrant that producer milk used in yogurt be priced at a level above the price for milk disposed of through the traditional residual uses for surplus milk.

[2] Official notice is taken of the publication issued February 1971 by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture (C&MS-50 (1969)), titled "Sources of Milk for Federal Order Markets." This publication indicates that in December 1969 over 26 percent of the producer milk on the Indiana market was produced in Wisconsin.

[3] The reliance on producers for milk for cottage cheese production is not unique to the seven markets under consideration. As noted in the November 1970 issue of Federal Milk Order Market Statistics, 80 percent of the creamed cottage cheese made in the United States in 1969 was processed from milk regulated under Federal milk orders. Official notice is taken of this publication which was issued by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C.

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 June 4 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 June 4 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 these markets be set at 10 cents over the Minnesota-Wisconsin price. The national trade 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 in the seven-market area. Some regulated handlers rely regularly on producer milk for use in frozen desserts. Other handlers rely on purchases of condensed skim milk or nonfat dry milk 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 seven-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 seven 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, in the new 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 often 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 the same purpose. The same classification for these cream products will result in uniform pricing to handlers for milk used in products competing in the same trade channels for the same users.

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 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 approximately 2 percent of the present Class I market. Thus, this classification change will have relatively little effect on the total 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 if a plant meets the pooling requirements of the order. To accommodate this, certain changes are necessary in those pool plant definitions that make specific reference to the movement of cream.

Eggnog should be a Class II product, rather than a Class I product as was proposed in the June 4 recommended decision.

The principal cooperatives proposed that eggnog, which is presently a Class II product under each order, be included in the new intermediate price class. Although recognizing that eggnog is a beverage, the cooperatives contended that eggnog should not be a Class I product because of its relatively high butterfat content (6 percent or more) and its highly seasonal demand. This position was supported by handlers.

In their exceptions to the recommended inclusion of eggnog in Class I, handlers and producers pointed out that this classification would place eggnog at a competitive disadvantage with imitation eggnog containing nonmilk fat. It was noted that, as at present, only those "filled" products containing less than 6 percent nonmilk fat (or oil) would be included in Class I under the revised classification plan.

An estimated 40 percent of the marketings of eggnog-type products is in the form of imitation eggnog. Since imitation eggnog would not be a Class I product, it is concluded that eggnog similarly should be included in a lower class. This will enhance the competitive position of the product in the marketplace.

Certain handlers proposed that eggnog flavored fluid milk products be included in the same class as eggnog. This should not be adopted. The record in no way demonstrates that a Class I classification for fluid milk to which eggnog flavoring has been added is any less appropriate than for fluid milk to which chocolate or some other flavoring has been added. Returns to producers for milk disposed of in the form of a flavored fluid milk product should be the same regardless of the type of flavoring used.

With the establishment of a new intermediate price class, it is appropriate that any filled products that resemble the proposed Class II products made with milk fat likewise be included in this new 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 cooperatives proposed. Also, such classification should not apply to certain hard cheeses. Such storable products should be included in the redesignated Class III classification. 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 seven orders.

In proposing a generally uniform classification plan for the seven 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 these 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 seven 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.

Presently, fluid milk products (which include cream) 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. Under the revised classification plan, cream no longer would be defined as a fluid milk product. To facilitate the application of other provisions of each order, however, it is desirable 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.

This is a different accounting procedure than was proposed under the June 4 recommended decision. As proposed initially, fluid cream products received at a pool plant from any source in consumer-type packages and disposed of, or held in inventory, in the same container in which received would not have been considered as other source milk. Such products would have been treated as "pass-through" products and as such would not have been subject to the allocation and pricing provisions of the order. A somewhat similar treatment would have been accorded receipts of yogurt. Receipts of packaged eggnog (a Class I product under the initial recommendations) would have been accounted for under the other source milk provisions in the same manner as fluid milk products.

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 low-fat 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. Four of the seven orders now have a provision concerning the unaccounted for disappearance of such products. The other source milk definitions in the Chicago Regional, Paducah and Louisville-Lexington-Evansville 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.*—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, each of the seven orders provides 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 Class II.

The principal cooperatives proposed that the amount of a modified fluid milk product that is classified as Class I be the actual weight of the modified product rather than the weight of a like unmodified product.

Proponents stated that when verification of the nonfat milk solids used to modify natural milk and skim milk involves laboratory tests of the modified product, the amount of modification is expressed as a percentage of the weight of the modified product. Where laboratory analysis is used to determine the

total milk solids disposed of in modified products, proponents contended that administrative procedures could be simplified by using the actual product weight factor.

There was no showing of the extent to which laboratory analysis of modified products is used in verification by market administrators in these seven markets. Also, there was no claim that any saving in administrative cost would be possible under the procedure proposed by the cooperatives in those instances where the market administrator determines the amount of solids added to modified products by using production records rather than by laboratory tests of packaged products. Accordingly, it is not clear from this record that the proposed procedure 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 which 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 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 larger weight factor would add about one-tenth cent (ranging from 0.09 cent under the Chicago Regional order to 0.11 cent under the St. Louis-Ozarks order) to a handler's obligation under the order per gallon of such product sold.

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 final 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 proposed 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.

Each of the seven orders now provides that transfers of fluid milk products from a pool plant to a producer-handler shall be classified as Class I milk. The St. Louis-Ozarks order requires also that such transfers to a producer-handler under any other order likewise shall be Class I. This additional requirement should apply under each of the orders.

Under the Federal order program, producer-handlers, in their capacity as handlers, are exempt from the pricing and pooling provisions of the various orders. In consideration of this exemption, each order 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.

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 all reserve supplies for their Class I market. 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.

In addition to the Class I classification of all fluid milk products transferred to a producer-handler, the Chicago Regional order provides for a similar classification of all fluid milk products transferred to an "exempt distributing plant." Also, a similar classification applies under the St. Louis-Ozarks order to all fluid milk products transferred to a plant operated by a "governmental agency." Under each of these two orders, the adopted method for classifying bulk fluid cream products transferred to a producer-handler should apply likewise to transfers of bulk fluid cream products to these two other types of plants.

The classification of milk 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, such mileage (or area) limitations apply under the Chicago Regional, Louisville-Lexington-Evansville and St. Louis-Ozarks orders. Until recently, similar limitations applied also under the Southern Illinois and Central Illinois orders. These limitations under the latter two orders were removed by amendatory actions (35 F.R. 12267, 18107) subsequent to the classification hearing on which this decision is based.

The Chicago Regional order provides that fluid milk products transferred in bulk form from a pool plant to a nonpool plant located outside the States of Wisconsin, Minnesota, Iowa, Illinois, Indiana, Michigan, or Ohio shall be classified as Class I milk to the extent of the nonpool plant's Class I disposition, regardless of where such disposition is made. Transfers to nonpool plants located in these States, on the other hand, are classified on a basis that assigns the nonpool plant's Class I utilization to its various sources of receipts in accordance with where the plant disposes of its Class I milk.

Under the Louisville-Lexington-Evansville order, milk transferred or diverted to a nonpool plant located 250 miles or more from the nearer of Louisville, Kentucky, or Evansville, Indiana, is classified as Class I milk regardless of its use at the nonpool plant. Recognition is given under the classification provisions of such order to the nonpool plant's actual utilization in the case of milk transferred to less distant plants.

Classification provisions similar to those for the Louisville-Lexington-Evansville order are contained in the St. Louis-Ozarks order. In this case, the automatic Class I classification applies on transfers and diversions of milk to plants located more than 350 miles from St. Louis.

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 seven markets.

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 the Louisville-Lexington-Evansville and Paducah orders to only those movements in the form of interplant transfers. These two orders do not permit milk to be moved to other Federal order plants by diversion.

In connection with developing uniform classification provisions for the seven 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 provision will foster the efficient handling of surplus milk in these markets. 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. The handling of surplus milk can be facilitated 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.

(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, five of the orders classify all ending inventories of fluid milk products (which now include most cream products) in the lowest class. Under the Southern Illinois and Central Illinois orders, on the other hand, 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.

The principal cooperatives proposed that all seven orders classify all ending inventories of fluid milk products in Class III. They claimed that this procedure would be less complicated for handlers since handlers only occasionally would have any adjustment in their pool obligation as a result of having Class III inventories reclassified the following month in Class I. Proponents stated that with packaged inventories in Class I, as under the Central Illinois and Southern Illinois orders, each handler usually has some adjustment each month in his obligation for Class I inventories. The cooperatives' proposed classification of ending inventories 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. It was concluded in the June 4 recommended decision that the differences among these orders in classifying ending inventories of fluid milk products should be resolved in favor of the procedure now used under the Southern Illinois and Central Illinois orders (i.e., packaged inventory in Class I and bulk inventory in Class III). It is recognized, however, that either type of inventory 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, as expressed both at the hearing and in producers' and handlers' exceptions, 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 alloca-

tion 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.

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, five of the orders under consideration presently classify ending inventories of fluid milk products, including cream items, in the lowest class. Thus, in the last month that the present classification plan is effective, handlers under these orders will have paid the corresponding class price for these products. In the first month under the new plan, such inventories that had been held over in the form of a fluid milk product or a bulk fluid cream product would be allocated to the extent possible to the handler's Class III utilization. Should such inventories be allocated to a higher class, the appropriate reclassification charge would apply.

Under the new plan, beginning inventories of fluid cream products in packaged form normally would be allocated directly to a handler's Class II utilization. Such allocation assumes that the products were priced at the Class II price in the preceding month. Since this would not be the case for the first month under the new amendments, such inventories should be allocated in the first month to the extent possible to Class III, as in the case of inventories of fluid milk products and bulk fluid cream products. A reclassification charge should apply if a higher classification results.

Under the Southern Illinois and Central Illinois 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 two 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) *Shrinkage allowances.* The classification of shrinkage under each order should be changed only to the extent necessary to achieve uniformity among the seven orders in the application of certain shrinkage provisions.

A cooperative association proposed that any plant losses experienced by a handler be classified as Class I milk. Currently, a handler is permitted to have a certain amount of shrinkage classified in Class II. In conjunction with the shrinkage proposal, this producer group also proposed that no exception to the Class I classification of fluid milk products disposed of on routes be made for route returns. Presently, the orders permit route returns that are disposed of for animal feed or dumped to be classified in Class II.

The cooperative proposed that in lieu of the Class II shrinkage and route return allowances a handler be given a credit on his pool obligation of 2 cents per hundredweight for all milk, skim milk, and cream handled in bulk form in his plant. To maintain the present relationship in the proration of shrinkage between the receiving and processing operations, the cooperative proposed that a handler be allowed 0.5-cent per hundredweight for receiving and 1.5 cents per hundredweight for processing, or a total of 2 cents if the handler performed both operations.

While urging that the classification provisions of the seven orders be made as uniform as possible, the principal cooperatives proposed that no change be made at this time in the shrinkage provisions of the orders.

Other than to make them uniform in several respects, no basic change should be made at this time in the shrinkage provisions of the seven orders, or in the arrangement for classifying route returns. Although there may be some merit in revising these provisions to a greater extent than is set forth herein, such changes should be based on a thorough exploration of the issue at a hearing after adequate public notice. These conditions were not met at this hearing.

Each of the orders now provides that with respect to a handler's shrinkage of milk that is received at his pool plant directly from producers, up to 2 percent of such receipts may be classified as Class II milk, the lowest utilization. Should the handler transfer some of the producer milk to another pool plant for processing, the Class II shrinkage which the handler may claim on such milk is limited to 0.5 percent of the milk.

This division of shrinkage between the receiving handler and the processing handler also applies under those orders which provide for a cooperative association to be the handler on bulk tank milk which it receives at the farm and delivers to a pool plant. If, in this case, the plant operator purchases such milk on the basis of scale weights, the maximum Class II shrinkage allowance for the plant operator is 1.5 percent of such milk. The cooperative, as the receiving handler, is the responsible handler for any difference between the farm weights and the weight at which the plant operator purchases the milk. Of this difference, up to 0.5 percent of the milk at farm weights is allowed the cooperative as Class II shrinkage. If the plant operator purchases the milk on the basis of farm weights, however, he is permitted the full 2 percent Class II shrinkage allowance.

With respect to producer milk diverted from a pool plant to a nonpool plant or, under certain of the orders, to another pool plant, either by a plant operator or by a cooperative association, the shrinkage allowances under the present orders are not consistent in all cases with the shrinkage classification outlined above. There is little, if any, reason for applying shrinkage allowances differently under the several orders under comparable handling arrangements. The shrinkage provisions of these orders should be modified to the extent necessary to make them generally uniform with respect to the same handling arrangements.

In this regard, each order should provide that in the case of milk diverted to a nonpool plant or, if permitted, to another pool plant, the diverting handler shall be allowed up to 0.5 percent Class III shrinkage on the milk if it is not purchased on the basis of farm weights by the operator of the plant where the milk is physically received. Where such diversions are to a pool plant, the operator of the plant to which the milk is diverted should be permitted in this case up to 1.5 percent Class III shrinkage. If the operator of the nonpool plant or pool plant purchases such milk on the basis of farm weights, no shrinkage allowance on the milk should be permitted the diverting handler. In the case of the operator of the pool plant where the milk is physically received,

such operator should receive the full 2 percent allowance.

(f) *Allocation of receipts to utilization.* In adopting a revised classification plan under each of the seven 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. Such changes are necessary to provide for the allocation of receipts to three classes of utilization rather than two classes as at present.

In this connection, 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 that are not fluid milk products or fluid cream products (such as nonfat dry milk and condensed milk or skim milk).

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.

The principal 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. It was their contention that producer milk not used in Class I should receive the next highest possible classification since the milk was produced for the Class I market and represents the reserve supply for this segment of the dairy industry.

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.

In keeping with the goal of classifying milk uniformly under the seven orders, certain changes should be made in the orders to effect a uniform application of the allocation provisions to multiple-plant handlers. Presently, the seven 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 the Indiana and Louisville-Lexington-Evansville orders. The St. Louis-Ozarks, Central Illinois, and Southern Illinois orders also provide that allocation shall be on an individual plant basis. The three orders provide, however, that if there are receipts of other source milk at any one of the plants that are to be prorated with producer milk to the plant's Class I utilization, all allocations of the handler's receipts to utilization shall be done on the basis of his total system. The Chicago Regional order provides for system allocation unless a handler requests that allocation be on an individual plant basis and he has no other source milk to be allocated pro rata with producer milk. The Paducah order requires 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, difference in a handler's total obligation under the order, or in producer returns, from allocating receipts on either an individual-plant basis or a system basis. The latter procedure was proposed in the June 4 recommended decision. Such procedure required, however, rather extensive modification of the location adjustment provisions of these orders. With system allocation, it was considered necessary that rules for determining the quantity of producer milk eligible for Class I location adjustment be explicitly stated in each order. Such extensive changes can be avoided, however, with the use of individual-plant allocation, as adopted herein.

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, 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 Indiana and Louisville-Lexington-Evansville orders that use individual-plant allocation. 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.* As indicated earlier in this decision, it is proposed herein that each of the orders be clarified with respect to the classification of milk that is transferred or diverted from a pool plant to a nonpool plant not regulated under any order, particularly when the nonpool plant also has receipts of milk from plants regulated under other Federal orders. In conjunction with these changes, other revisions should be made to assure that handlers are not assessed a "double charge" on Class I other source milk from such nonpool plants for which a Class I charge already has been assessed under some Federal order. Under the present orders, such a charge could result in the following manner.

Producer milk could be transferred in bulk from a pool plant under the Indiana order 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 Southern Illinois 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 Southern Illinois 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 Indiana market as Class I milk, the Class I other source milk received at the Southern Illinois pool plant from the nonpool plant is, in effect, priced twice as Class I milk under the Federal order system.

More and more, plants are tending to specialize in the processing of certain products, or in the packaging of products in particular types of containers. It is not uncommon for milk to be transferred from a pool plant to an unregulated nonpool plant for special processing and the finished products to be moved back into the regulated market. When the milk is initially priced at the Class I price, the market price structure is in no way undermined if this milk, or its equivalent, is disposed of by the nonpool plant in the regulated market.

The orders therefore should provide that the operator of the Southern Illinois 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 in each order prescribing the obligation of a partially regulated distributing plant should be changed. 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 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 (uniform price in the case of the Chicago Regional order). 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 to the Class I price adjustment.

In his testimony on how to implement certain classification proposals, a witness for a cooperative association indicated that such a limitation on the Class I price adjustment should be provided. Although the producers' proposals are not being implemented in the manner envisioned by this witness, the problem raised concerning the applicable location adjustment nevertheless should be dealt with.

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. It is unreasonable to expect that such a handler credit should apply on the other source milk.

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 of the seven orders for adjusting prices to the actual butterfat content of the milk being priced. This differential should be the Chicago butter price multiplied by 0.115, rounded to the nearest one-tenth cent.

Presently, the Class I butterfat differential under these orders is the Chicago butter price for the preceding month multiplied by 0.120. The Class II butterfat differential is the Chicago butter price for the current month times the factor listed for the respective market: Chicago Regional and Louisville-Lexington-Evansville, 0.120; Central Illinois, Southern Illinois, and St. Louis-Ozarks, 0.115; Indiana, 0.113; and Paducah, 0.115 during the months of August–March and 0.110 during the months of April–July.

The "butter price" used to compute the butterfat differentials for Class I and Class II milk is the simple average, as computed by the market administrator, of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported during the month by the U.S. Department of Agriculture. This butter price would continue to be used under the revised orders.

The butterfat differential applicable to the uniform price to producers under each of the seven orders except Paducah is derived from the weighted average of the values of Class I and Class II butterfat. It is computed each month by multiplying the total pounds of butterfat in the producer milk allocated to each class by the respective butterfat differential for each class, dividing the sum of such values by the total pounds of butterfat in producer milk, and rounding the result to the nearest one-tenth cent. The butterfat differential to producers under the Paducah order is determined from a fixed schedule of rates in the order which are related to the Chicago butter price, i.e., for each 5-cent change in the butter price, the butterfat differential changes one-half cent per point of butterfat.

The principal cooperative associations proposed that all class and uniform prices be subject to adjustment by a single butterfat differential based upon the Chicago butter price times a factor of 0.115. Handler opposition to the proposal was limited largely to the proposed decrease in the Class I butterfat differential that would result.

Lowering the Class I butterfat differential factor from 0.120 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 1969, the average butterfat test for such products in 60 markets was 3.32 percent. Comparable data for the seven subject markets as they are presently constituted are not available. On the basis of information compiled for such of the area now regulated by the seven orders, however, there is every indication that the use of butterfat in Class I in each of the seven market is following the national trend.[4]

It is estimated that under the adopted classification plan the average butterfat test of Class I products in the seven markets would have ranged from 2.7 percent to 3.2 percent in 1969. On this basis, the effect of changing the Class I butterfat differential factor from 0.120 to 0.115 would be to increase the average Class I price at test by less than 3 cents per hundredweight. The effect upon the average handler's cost for skim milk would be an increase of 10.5 cents per hundredweight.

Using a single factor of 0.115 for computing the Class II and Class III butterfat differentials will result in a uniform adjustment of class prices of butterfat content among the markets under consideration. Continuation of the several butterfat differential factors now in use would offset to some extent the benefits to be gained through the adoption of a uniform classification plan and identical Class II and Class III prices for the seven orders. For example, if skim milk used to produce cottage cheese is to be priced uniformly among these markets, the same butterfat differential must apply under each order to such skim milk.

As indicated, the butterfat differential to producers under six of the 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 Paducah order. 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. Although handler butterfat differentials were provided in the June 4 recommended decision, no such 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 seven 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

[4] Official notice is taken of the annual summaries for 1960 and 1969 of Federal Milk Order Market Statistics which were issued by the Dairy Division, Consumer and Marketing Service, U.S. Department of Agriculture, Washington, D.C.

is now used under all Federal milk orders throughout the country, it would appear that any change in this butterfat differential factor should be considered simultaneously in all orders.

6. *Advance announcement of prices for surplus milk.* The proposals by handlers to announce order prices for surplus milk at the beginning of the month rather than at the end of the month in which the prices apply, or to use bracketed pricing, should not be adopted.

Under the present two-class orders, the Class II price is announced by either the fifth or the sixth day of each month. This price applies to producer milk delivered to handlers during the preceding month. The present Class II prices are based on prices paid to farmers in Minnesota and Wisconsin for manufacturing grade milk. The average Minnesota-Wisconsin price for a particular month is announced by the Department shortly after the end of such month. The current procedure for announcing the Class II price after the end of the month thus permits such price to reflect the corresponding manufacturing milk pay prices for the same month.

The national associations of fluid milk and ice cream processors proposed that the class prices to be applicable in a particular month to surplus milk be announced at least by the fifth day of such month, and preferably before the beginning of the month. Such prices necessarily would reflect the prices paid for manufacturing grade milk in the preceding month.

Another group of handlers proposed that the Class II price for the current month be based on the Class III price for the preceding month. The group indicated, though, that if the Class II price is based instead on the current basic formula price the Class II price should increase or decrease only in 12-cent increments.

Handlers maintained that under the present announcement procedure they are often disadvantaged by not knowing the cost 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.

The proposal as it concerned the announcement of the price for the proposed Class III classification was opposed by the principal cooperatives. They claimed that for handlers manufacturing the principal surplus products the Class III price should correspond as closely as possible with the prices being paid for manufacturing grade milk in the same month.

For the regulated handler processing producer milk into butter, nonfat dry milk and cheddar cheese, advance announcement of the applicable class price could place him at a competitive disadvantage on his sales of these manufactured products. The pay prices for manufacturing grade milk in Minnesota and Wisconsin are closely related to the market values of cheddar cheese, nonfat dry milk and butter, the principal uses for such 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 and 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.

Substantial quantities of milk are disposed of by regulated handlers in the seven markets in the form of butter, nonfat dry milk and cheese. In 1969, over 2 billion pounds of milk, or 57 percent of the total Class II use, were so disposed of by handlers in the Chicago Regional market. Southern Illinois handlers used 56 percent, or nearly 236 million pounds, of that market's total Class II milk that year in manufacturing these products. Although lesser quantities of milk were used in such products in the other five markets, such uses still represented 25 percent or more of the total Class II use for each market. Thus, handlers in the seven 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 for manufacturing grade milk if these handlers are to be competitive in the sale of the principal surplus products. Basing the Class III price for a particular month on the prices paid for manufacturing grade milk in the preceding month would not result in the price coordination necessary for those regulated handlers heavily engaged in the production of cheddar cheese, nonfat dry milk or butter.

The same considerations are involved in the case of an advance announcement of prices for milk used in the proposed Class II products, or in the case of bracketed pricing for such milk. 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 prices for Class III milk.

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.

A handler presented a motion at the hearing that proposals for establishing a new intermediate price class (Class II) be rejected and denied. The motion was presented for inclusion in the hearing record; a ruling by the presiding officer was not requested.

The motion, as restated in the handler's brief is as follows: "That the proposals for such intermediate classification should be rejected and denied, for the reasons that said proposals and the related Order provisions proposed would result in discriminatory regulation, capricious regulation, arbitrary regulation, special legislation and class legislation; would constitute the practice of classification among parties and the selection of regulated parties on an unnatural and unreasonable basis; and would, therefore, be unlawful if adopted."

The statutory authority for Federal milk orders specifies that an order shall classify milk purchased by regulated handlers from producers or associations of producers in accordance with the form in which or the purpose for which the milk is used. Such authority does not limit the number of use classes that may be established. The evidence of this record supports the adoption of three classes of utilization for producer milk under the seven subject orders.

As previously found, producers would represent in most circumstances the most economical source of milk for use in the intermediate-priced (Class II) milk uses. Nevertheless, handlers would not be precluded under the terms of each order from obtaining from alternative sources nonfluid other source milk for Class II use. As adopted herein, such alternative supplies could be allocated directly to such uses and no pool obligation would apply to such other source milk.

Under these circumstances, there is no basis for rejecting and denying the proposal by producers for three classes of utilization. The motion to do so is denied.

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 proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RECOMMENDED MARKETING AGREEMENT AND ORDER AMENDING THE ORDER

The recommended marketing agreements are not included in this decision because the regulatory provisions thereof would be the same as those contained in the orders, as hereby proposed to be amended. The following order amending the orders, as amended, regulating the handling of milk in the aforesaid marketing areas is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

PART 1030—MILK IN CHICAGO REGIONAL MARKETING AREA

Subpart—Order Regulating Handling

GENERAL PROVISIONS

Sec.
1030.1 General provisions.

DEFINITIONS

1030.2 Chicago Regional marketing area.
1030.3 Route disposition.
1030.4 Plant.
1030.5 Distributing plant.
1030.6 Supply plant.
1030.7 Pool plant.
1030.8 Nonpool plant.
1030.9 Handler.
1030.10 Producer-handler.
1030.11 [Reserved]
1030.12 Producer.
1030.13 Producer milk.
1030.14 Other source milk.
1030.15 Fluid milk product.
1030.16 Fluid cream product.
1030.17 Filled milk.
1030.18 Cooperative association.
1030.19 Exempt milk.

HANDLER REPORTS

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AUTHORITY: The provisions of this Part 1030 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1030.1 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

§ 1030.2 Chicago Regional marketing area.

"Chicago Regional marketing area," hereinafter called the "marketing area," means the territory within the boundaries of the following places, including piers, docks, and wharves and territory wholly or partly within such boundaries occupied by government (municipal, State, or Federal) reservations, installations, institutions or other similar establishments:

(a) In the State of Illinois:

(1) The counties of:

Boone.	Kendall.
Carroll.	Lake.
Cook.	Lee.
De Kalb.	McHenry.
Du Page.	Ogle.
Jo Daviess (except the city of East Dubuque).	Stephenson.
Kane.	Will.
	Winnebago.

(2) In Whiteside County:

(i) The townships of:

Caloma.	Jordan.
Hahnaman.	Montmorency.
Hopkins.	Sterling.
Hume.	Tampico.

(b) In the State of Wisconsin:

(1) The counties of:

Adams.	Menominee.
Brown.	Milwaukee.
Calumet.	Monroe.
Columbia.	Oconto.
Crawford.	Oneida.
Dane.	Outagamie.
Dodge.	Ozaukee.
Fond du Lac.	Portage.
Forest.	Racine.
Grant.	Richland.
Green.	Rock.
Green Lake.	Sauk.
Iowa.	Shawano.
Jefferson.	Sheboygan.
Juneau.	Vernon.
Kenosha.	Vilas.
Kewaunee.	Walworth.
La Crosse.	Washington.
Lafayette.	Waukesha.
Langlade.	Waupaca.
Lincoln.	Waushara.
Manitowoc.	Winnebago.
Marquette.	

(2) In Door County the city of Sturgeon Bay;

(3) In Marathon County:

(i) The towns of:

Bergen.	Marathon.
Berlin.	Mosinee.
Bevent.	Norrie.
Easton.	Plover.
Elderon.	Reid.
Franzen.	Rib Mountain.
Guenther.	Ringle.
Harrison.	Stettin.
Hewitt.	Texas.
Knowlton.	Wausau.
Kronenwetter.	Weston.
Maine.	

(ii) The vilages of:

Brokaw.	Marathon.
Elderon.	Rothschild.
Hatley.	

(iii) The cities of:

Mosinee.	Wausau.
Schofield.	

(4) In Wood County:

(i) The towns of:

Cranmoor.	Rudolph.
Grand Rapids.	Saratoga.
Port Edwards.	Seneca.

(ii) The villages of:

Biron.	Port Edwards.

(iii) The cities of:

Nekoosa.	Wisconsin Rapids.

§ 1030.3 Route disposition.

"Route disposition" means a delivery (including disposition from a retail plant store) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk plant. Disposition of a plant through a vendor or through a distribution point shall be considered a route delivery at the location of the wholesale or retail outlet to which delivery is made.

§ 1030.4 Plant.

"Plant" means a building together with its facilities and equipment, whether owned or operated by one or more per-

sons constituting a single operating unit or establishment: (a) that has facilities adequate for cleansing tank trucks, is approved by an appropriate health authority, and at which milk moved from the farm is transferred and commingled in another tank truck with other milk and is transshipped in such other tank truck to another plant; (b) at which milk is received from dairy farmers, or (c) at which milk is processed and packaged or manufactured. If a portion of the building is not approved by any health authority for the receiving, processing, or packaging of any fluid milk product for Grade A disposition and is physically separated from the approved portion, such unapproved portion shall not be considered as meeting the terms of this definition.

§ 1030.5 Distributing plant.

"Distributing plant" means a plant from which there is route disposition in the marketing area, either directly or through another plant, of a Grade A fluid milk product that is processed or packaged in such plant during the month.

§ 1030.6 Supply plant.

"Supply plant" means a plant from which a Grade A fluid milk product is shipped or transshipped during the month to another plant. Such supply plant shall be equipped with storage capacity sufficient to hold the largest quantity of fluid milk product either received in the plant or shipped from the plant as a single load during the month, except that no storage capacity shall be maintained in a plant described in § 1030.4(a). Any plant located on the premises of a pool distributing plant pursuant to § 1030.7(a) shall not be considered a supply plant unless it is located in a building that is entirely separate from the distributing plant.

§ 1030.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant pursuant to § 1030.4 that is specified in paragraph (a), (b), or (c) of this section. In determining the pool plant qualifications of plants pursuant to this section on milk subject to the conditions specified in § 1030.9(h), the receipts and disposition of the plant operated by the transferor-handler shall exclude the milk described in § 1030.9(h)(3) but shall include the milk described in §1030.9(h)(4).

(a) A distributing plant from which there is disposed of during the month not less than the percentages set forth in paragraph (a) (2) and (3) of this section of the receipts specified in paragraph (a)(1) of this section. Two or more distributing plants of a handler shall be considered a unit for the purpose of paragraph (a)(3) of this section in any month if the handler operating such plants has filed a written request with the market administrator prior to such month requesting that they be considered a unit.

(1) The total Grade A fluid milk products, except filled milk, received during the month at such plant, including producer milk diverted under § 1030.13, and milk received from a handler pursuant to § 1030.9(h), but excluding receipts of fluid milk products in exempt milk, packaged fluid milk products and bulk fluid milk products by agreement for Class II and Class III uses from other pool distributing plants, and receipts from other order plants and unregulated supply plants which are assigned pursuant to § 1030.44 (a)(8)(i)(a) and (ii) and the corresponding step of § 1030.44(b).

(2) Not less than 10 percent of such receipts is disposed of from such plant in the marketing area in the form of packaged fluid milk products, except filled milk, either as route disposition or moved to other plants from which it is disposed of in the marketing area as route disposition. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(3) Not less than 45 percent in each of the months of September, October, November, and December and 35 percent in each of the months of January, February, March, and August, and 30 percent in all other months of such receipts is disposed of in the form of packaged fluid milk products, except filled milk, either as route disposition or moved to other plants. Such disposition is to be exclusive of receipts of packaged fluid milk products from other pool distributing plants.

(b) A supply plant from which the quantity of fluid milk products (except filled milk) and condensed skim milk shipped or transshipped during the month in accordance with paragraph (b) (1) and (2) of this section is not less than the percentages specified in paragraph (b)(4) of this section subject to paragraph (b) (5), (6), (7), and (8) of this section of the volume of Grade A milk received from dairy farmers and handlers described in § 1030.9(c), including producer milk diverted under § 1030.13. Such receipts shall be reduced by the disposition of packaged fluid milk products described in paragraph (b)(3) of this section.

(1) Shipped or transshipped as fluid milk products to and physically unloaded into:

(i) Pool plants pursuant to paragraph (a) of this section to the extent of the quantity determined pursuant to paragraph (b)(5) of this section;

(ii) Plants of producer-handlers; and

(iii) Partially regulated distributing plants and assigned to Class I milk disposed of in the marketing area from such plants pursuant to § 1030.42(d)(2)(ii) (a) and (c).

(2) Moved as condensed skim milk to pool plants pursuant to paragraph (a) of this section to the extent it is used in a fluid milk product that is disposed of as a fluid milk product (except filled milk). Such use of condensed skim milk shall be prorated over receipts of condensed skim milk from all supply plants.

(3) The receipts of Grade A milk required to be included pursuant to this paragraph shall be reduced by the amount of packaged fluid milk products (except filled milk) that are disposed of from such plant as route disposition or moved to a nonpool plant from which they are disposed of as route disposition outside the marketing area.

(4) Such percentage shall be not less than 40 for each of the months of September, October, and November, and 30 for all other months, except that a plant that was a pool plant pursuant to this paragraph during each of the months of August through December, the percentage shall be not less than 20 for each of the following months of January, February, and March. A plant meeting such requirements for August through March shall be a pool plant for each of the following months of April through July, unless:

(i) The milk received at the plant does not continue to meet the Grade A milk requirements for use in fluid milk products distributed in the marketing area; or

(ii) Written application is filed with the market administrator by the plant operator on or before the first day of any such month (April–July) requesting the plant be designated a nonpool plant for such month and any subsequent month through July, provided it does not otherwise qualify as a pool plant.

(5) For the purpose of determining the percentages specified in paragraph (b) (4) and (7) of this section, the quantity of fluid milk products moved from a supply plant pursuant to paragraph (b)(1)(i) of this section shall be a net quantity assignable at pool distributing plants computed by subtracting from the quantity of fluid milk products received from a supply plant(s), but not to exceed such quantity, the amounts described in paragraph (b)(5) (i) and (ii) of this section (if fluid milk products are received from more than one supply plant, such net quantity assignable shall be prorated among supply plants in accordance with the total receipts from such plants).

(i) The quantity of fluid milk products in the form of bulk milk and skim milk transferred from the pool distributing plant to pool supply plants plus any such bulk shipments to nonpool plants as Class II milk, other than:

(a) Transfers classified pursuant to § 1030.40(b)(3); and

(b) Transfers on any Saturday or on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving, or Christmas, that no milk is received at the pool distributing plant from a supply plant, in an amount not in excess of 120 percent of the average daily receipts of producer milk pursuant to § 1030.13(a) at the plant during the prior month, less the quantity of producer milk diverted pursuant to § 1030.13(e) on such day. If no producer milk was received in the distributing plant during the prior month, the average daily receipts during the current month shall be used in lieu of the prior month for computing the transfers to be excepted by this subdivision; and

(ii) If milk is diverted from the pool distributing plant on the date of the receipt from the supply plant, the quan-

tity so diverted, except any diversion of milk (not to exceed 3 days' production of any individual producer) made because of an emergency situation such as a breakdown of trucking equipment or hazardous road conditions shall not be subtracted if such emergency is reported to the market administrator.

(6) The percentages specified in paragraph (b) (4) and/or in paragraph (b) (7) (iii) of this section applicable during the months August-March shall be increased or decreased by up to 10 percentage points by the Director of the Dairy Division if he finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments except that the percentages specified in paragraph (b) (7) (iii) of this section shall not exceed 50 percent of those specified in paragraph (b) (4) of this section. Before making such a finding the Director shall investigate the need for revision either on his own initiative or at the request of interested persons and if his investigation shows that a revision might be appropriate he shall issue a notice stating that revision is being considered and inviting data, views, and arguments with respect to the proposed revision: *Provided*, That if a plant which would not otherwise qualify as a pool plant during the month pursuant to paragraph (b) (4) or (7) (iii) of this section would qualify as a pool plant as a result of this subparagraph, such plant shall be a nonpool plant for such month upon filing by the operator of such plant a written request for nonpool status with the market administrator.

(7) Two or more plants shall be considered a unit for the purpose of this paragraph if the following conditions are met:

(i) The plants included in a unit are owned or fully leased and operated by the handler establishing the unit and such plants shall have been pool plants the month prior to being included in a unit. In the case of plants operated by cooperative associations two or more cooperative associations may establish a unit of designated plants by filing with the market administrator a written contractual agreement obligating each plant of the unit to ship milk as directed by such cooperatives;

(ii) The handler or cooperatives establishing a unit notify the market administrator in writing of the plants to be included therein prior to August 1 of each year and no additional plants shall be added to the unit prior to August 1 of the following year;

(iii) Each plant in a unit ships or transships to plants specified in paragraph (b) (1) of this section the following percentages of its producer milk: 20 in each of the months of September, October, and November; 15 in each of the months of August and December; and 10 in each of the months of January, February, and March. If for any month a plant does not meet the individual plant shipping percentage, that plant shall be excluded from the unit; and

(iv) The notification pursuant to paragraph (b) (7) (ii) of this section shall list the plants in the order in which they shall be excluded from the unit if the minimum shipping requirements are not met, such exclusion to be in sequence beginning with the first plant on the list and continuing until the remaining plants as a unit have met the minimum requirements.

(8) If a handler notifies the market administrator in writing that a plant is unable to meet the requirements set forth herein because of a work stoppage due to a labor dispute between employer and employees, the market administrator, upon verification of the handler's claim, shall not include the receipts and utilization of skim milk and butterfat at such plant for those days from the date of notification through the last day of the work stoppage in determining the percentage of skim milk and butterfat shipped pursuant to this paragraph. When the work stoppage includes an entire month, the plant shall be considered to have met the minimum percentage shipping requirements in that month for pool plant status pursuant to this paragraph, but such relief shall not be granted for more than 2 consecutive months.

(c) A plant which is operated by a cooperative association and which is not a pool plant pursuant to paragraph (a) or (b) of this section shall be a pool plant if at least 50 percent of the Grade A milk of producers of such cooperative association is received at pool distributing plants of other handlers during the month and written application for pool plant status is filed with the market administrator on or before the first day of such month.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant or exempt distributing plant; or

(2) A plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless it is qualified as a pool plant pursuant to paragraph (a), (b), or (c) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in this marketing area as route disposition and to pool plants qualified on the basis of route disposition in this marketing area than is so disposed of in the marketing area regulated pursuant to such other order.

§ 1030.8 Nonpool plant.

"Nonpool plant" means a plant (except a pool plant) which receives milk from dairy farmers or is a milk or filled milk manufacturing, processing or bottling plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant and from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing plant from which fluid milk products are shipped during the month to a pool plant.

(e) "Exempt distributing plant" means a distributing plant operated by a governmental agency.

§ 1030.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of one or more pool plants;

(b) Any cooperative association with respect to producer milk which it causes to be diverted from a pool plant of another handler pursuant to § 1030.13 for the account of such cooperative association;

(c) Any cooperative association with respect to milk of its producers which is received from the farm for delivery to the pool plant of another handler in a tank truck owned and operated by or under contract to such cooperative association;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person in his capacity as the operator of an other order plant that is either a distributing plant or a supply plant;

(g) Any person in his capacity as a broker negotiating a purchase or sale of fluid milk products from or to a person described in paragraph (a) or (d) of this section; or

(h) Any person who is a handler operating a pool distributing plant pursuant to paragraph (a) of this section may be the handler on producer milk delivered to pool distributing plants of other handlers, subject to the following conditions:

(1) Prior to the first month he becomes the handler pursuant to this paragraph such handler shall notify the market administrator in writing of his election to do so and he shall provide the name and address of each transferee-pool plant receiving the milk that is subject to the conditions of this paragraph.

(2) All of the producer milk on which he is the handler pursuant to this paragraph shall be considered a transfer from such handler's pool distributing plant to another pool distributing plant for the purposes of classification pursuant to §§ 1030.40 through 1030.45;

(3) If an entire tank truck load of milk is delivered to the pool plant of an other handler, it shall be considered a receipt by the transferor-handler pursuant to this paragraph for pricing purposes pursuant to §§ 1030.50 through 1030.53 and 1030.60 through 1030.77 at the location of the transferee-plant; and

(4) If less than an entire tank truck load of milk is delivered to the pool plant of another handler, a portion of the milk on the tank truck load must be physically received at the transferor-handler's pool

distributing plant. Such split load shall be considered a receipt of producer milk at the transferor-handler's plant for pricing purposes pursuant to §§ 1030.50 through 1030.53 and 1030.60 through 1030.77.

§ 1030.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant and who has route disposition in the marketing area of only fluid milk products of such person's own production or fluid milk products received from pool plants: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources necessary to produce the entire volume of fluid milk products handled (excluding receipts from pool plants) and the operation of the processing and packaging business are the personal enterprise and risk of such person.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is received at a pool plant or diverted pursuant to § 1030.13.

(b) "Producer" shall not include:

(1) A dairy farmer who is a government and has nonproducer status for the month pursuant to § 1030.19;

(2) A producer-handler as defined in any order (including this part) issued pursuant to the Act;

(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 § 1030.44(a)(8)(ii) and the corresponding step of § 1030.44(b);

(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; and

(5) A dairy farmer with respect to milk produced by him that is received at a handler's pool plant during the months of January through July if any milk from the same farm was a receipt of producer milk in any "payback" month during the preceding year under an other order that provided for a seasonal incentive payment plan whereby funds previously withheld in the computation of the uniform price to producers were paid back to producers through the uniform price computation in subsequent months of the year.

§ 1030.13 Producer milk.

"Producer milk" means milk produced by producers which is:

(a) Received at a pool plant directly from producers, by being physically unloaded into processing facilities or a storage tank (including another tank truck in the case of a reload facility), and the shrinkage of skim milk and butterfat in milk received from producers' farms which was not unloaded in a pool plant. Such direct receipts from producers shall include the portion of a tank truck load of milk unloaded in a pool plant in the case where a portion of such load was first unloaded at another pool plant or diverted to a nonpool plant. The quantity of milk so received at each such plant shall be prorated over the total quantity of milk picked up at each producer's farm.

(b) Received by a handler pursuant to § 1030.9(h).

(c) Received at a pool plant from a handler described in § 1030.9(c). The utilization value of such milk at class prices shall be included in computing the receiving handler's value of milk pursuant to § 1030.60.

(d) Received by a handler described in § 1030.9(c) to the extent of the shrinkage of skim milk and butterfat received from producers' farms which was not received in a pool plant under paragraph (c) of this section. In applying §§ 1030.52 and 1030.75 such skim milk and butterfat shall be deemed to be received at the location of the pool plant to which delivery is normally made.

(e) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, subject to the conditions specified in this paragraph. Milk shall be eligible for diversion as producer milk only if the person producing such milk had delivered milk as producer milk to a pool plant prior to the diversion. Milk picked up at a producer's farm in a tank truck, to the extent it is unloaded at a nonpool plant, shall be subject to the conditions specified in this paragraph; and if the tank truck contains milk from more than one producer, the quantity subject to the conditions specified in this paragraph shall be prorated over the total quantity of milk picked up at each producer's farm. In calculating the percentages specified in § 1030.7, milk so diverted shall be considered as received in the pool plant from which diverted. The location price adjustments pursuant to § 1030.75 shall be based on the zone location of the nonpool plant(s) where such milk is physically received, except that in the case of a distributing plant, diverted milk of a producer shall be priced at the location of such plant if during the month not more than 4 days' production of such producer is diverted, or if the diverted milk is part of a tank truck load of milk that exceeds the milk storage capacity of such distributing plant. Diverted milk shall be limited as follows:

(1) Milk of a producer diverted for the account of the operator of a pool plant or a handler described in § 1030.9(b) that during the months of April through December does not exceed the quantity of such producer's milk received in the pool plant from which diverted, and during the months of January, February and March does not exceed 70 percent of such producer's milk received in or diverted from such pool plant: *Provided*, That during the months of April through July such limits shall not apply for a producer who delivered to a pool plant any time during the prior August-December period and subsequently maintained producer status without interruption of more than 30 consecutive days;

(2) To the extent that milk diverted by a cooperative as a handler during any month would result in the plant failing to qualify as a pool plant under § 1030.7 such diverted milk shall not be producer milk; and

(3) Milk of a producer diverted by a handler who fails to report the information required pursuant to § 1030.32(a)(2) shall not be considered producer milk pursuant to this paragraph.

§ 1030.14 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 § 1030.40(b)(1) from any source other than producers, handlers described in § 1030.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1030.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1030.40(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 § 1030.40(b)(1)) for which the handler fails to establish a disposition.

§ 1030.15 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 § 1030.40 (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.

§ 1030.16 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.

§ 1030.17 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).

§ 1030.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines after application by the association:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and is engaged in making collective sales of or marketing milk or milk products for its members.

§ 1030.19 Exempt milk.

"Exempt milk" means milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer if:

(a) The dairy farmer is a government which is not engaged in the route disposition of any of the returned products; and

(b) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected nonproducer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

HANDLER REPORTS

§ 1030.30 Reports of receipts and utilization.

On or before the 10th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants (except that if a handler so requests and the request is approved by the market administrator, a single report may be filed), 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 § 1039.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from pool plants of other handlers (or other pool plants, as applicable), including a separate statement of the net receipts from each supply plant computed pursuant to § 1030.7(b)(5), except that during the months of April through July no such separate statement need be made if receipts from supply plants are from only plants that were pool plants during the prior months of August through March 9;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(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 § 1030.9(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.

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9(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 § 1030.76(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.

§ 1030.32 Other reports.

(a) Each handler pursuant to § 1030.9(a), (b), (g), and (h) shall report to the market administrator on or before the 10th day after the end of the month in detail and on forms prescribed by the market administrator as follows:

(1) Each handler pursuant to § 1030.9(g) shall report the quantities of skim milk and butterfat in fluid milk products moved for his account from each pool plant and received at each pool plant or partially regulated distributing plant during the month;

(2) Each handler pursuant to § 1030.9(a) and (b) shall report for each load of milk diverted for his account the quantity of each producer's milk included therein, the date(s) and times of pickup and delivery to the nonpool plant the name and location of that plant, and the plant from which diverted;

(3) Each handler pursuant to § 1030.9(h) shall report for each load of milk transferred for his account the quantity of each producer's milk included therein, the dates and times of pickup and delivery to the transferee-plant, the name and location of that plant and the plant from which transferred. Also, he shall report the quantities of skim milk and butterfat in his receipts of producer milk and delivery of such milk to each pool distributing plant during the month; and

(4) Each handler who, during the month, received milk from a dairy farmer from whom he had not received milk for at least 30 consecutive days, shall report the name and address of the dairy farmer and the plant to which each such person previously delivered milk. Each handler who discontinues receiving milk from a producer during the month shall report each such producer's name, address, and the plant to which such person transferred.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1030.30 and 1030.31, 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

§ 1030.40 Classes of utilization.

Except as provided in § 1030.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1030.30 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 § 1030.15; and

(6) In shrinkage assigned pursuant to § 1030.41(a) to the receipts specified in § 1030.41(a)(2) and in shrinkage specified in § 1030.41 (b) and (c).

§ 1030.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1030.30, the market administrator shall determine the following:

(a) The pro rata assignment of shrinkage of skim milk and butterfat, respectively, at each pool plant (or at all of the handler's pool plants combined if a single report is filed pursuant to § 1030.30) 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, excluding that received in the form of a packaged 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 § 1030.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1030.9(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 (or pool plants of other handlers, if applicable);

(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 pool plants (or pool plants of other handlers, if applicable) and to nonpool 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, respectivly, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1030.9 (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.

§ 1030.42 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 to the pool plant of another handler if a single report is filed pursuant to § 1030.30 by the transferor-handler) shall be classified as Class I milk unless the operators of both plants request the same classification in another class. 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 § 1030.44(a)(12) and the corresponding step of § 1030.44(b).

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1), (2), or (3) of this section:

(1) If transferred as packaged fluid milk products, classification shall be in the classes to which allocated as a fluid milk product under the other order;

(2) If transferred in bulk form, classification shall be in the classes to which allocated under the other order (including allocation under the conditions set forth in paragraph (b)(3) of this section);

(3) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers or diversions in bulk form shall be classified as Class II or Class III milk to the extent of such utilization available for such classification pursuant to the allocation provisions of the other order;

(4) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be as Class I, subject to adjustment when such information is available;

(5) For purposes of this paragraph, if the other order provides for a different number of classes of utilization than is provided for under this part, skim milk

or butterfat allocated to a class consisting primarily of fluid milk products shall be classified as Class I milk, and skim milk or butterfat allocated to the other classes shall be classified as Class III milk; and

(6) If the form in which any fluid milk product that is transferred to an other order plant is not defined as a fluid milk product under such other order, classification under this paragraph shall be in accordance with the provisions of § 1030.40.

(c) *Transfers to producer-handlers and diversions to exempt distributing plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order transferred or diverted from a pool plant to an exempt distributing plant shall be classified:

(1) As Class I milk, if so moved in the form of a fluid milk product; and

(2) In accordance with the utilization assigned to it by the market administrator, if transferred in the form of a bulk fluid cream product. For this purpose, the transferee's utilization of skim milk and butterfat in each class, in series beginning with Class III, shall be assigned to the extent possible to its receipts of skim milk and butterfat, respectively, in bulk fluid cream products, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not an other order plant, a producer-handler plant, or an exempt distributing 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 § 1030.30 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.

§ 1030.43 General classification rules.

In determining the classification of producer milk pursuant to § 1030.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1030.30 and shall compute separately for each pool plant (or for all of a handler's pool plants combined if paragraph (d) of this section applies) and for each cooperative association with respect to milk for which it is the handler pursuant to § 1030.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1030.40, 1030.41, and 1030.42;

(b) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by a handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids;

(c) The classification of producer milk for which a cooperative association is the handler pursuant to § 1030.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative; and

(d) If a handler operates two or more pool plants, the classification of producer milk shall be determined on the basis of all of his pool plants combined if he files a single report pursuant to § 1030.30 or has received skim milk or butterfat that would be allocated pursuant to § 1030.44 (a) (11) or (12) or the corresponding steps of § 1030.44(b).

§ 1030.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1030.9(a) for each of his pool plants separately (or for all of his pool plants combined if § 1030.43(d) applies) and of each handler described in § 1030.9 (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 § 1030.41(b);

(2) Subtract from the total pounds of skim milk in Class I the pounds of skim milk in:

(i) 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) Receipts of exempt milk;

(3) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in fluid milk products re-

ceived 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 § 1030.40(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 § 1030.40(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 § 1030.40(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 § 1030.40(b)(1) that was not subtracted pursuant to paragraph (a)(4), (5), and (6) of this section;

(ii) Receipts of fluid milk products (except filled milk) for which Grade A certification is not established;

(iii) Receipts of fluid milk products from unidentified sources;

(iv) Receipts of fluid milk products from a producer-handler as defined under this or any other Federal milk order and from an exempt distributing plant;

(v) Receipts of reconstituted skim milk in filled milk from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) 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;

(vii) Receipts of fluid milk products (other than exempt milk) from a government which has elected nonproducer status for the month pursuant to § 1030.19; and

(viii) Receipts of fluid milk products from persons described in § 1030.12(b)(5);

(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, but not in excess of such quantities, the pounds of skim milk in each of the following;

(i) Receipts of fluid milk products from an unregulated supply plant that were not subtracted pursuant to paragraph (a)(2)(i) and (7)(v) of this section:

(*a*) For which the handler requests a classification other than Class I; or

(*b*) Which are in excess of the pounds of skim milk determined by multiplying the pounds of skim milk remaining in Class I by 1.25 and subtracting the sum of the pounds of skim milk in receipts of producer milk, fluid milk products from other pool plants (or from pool plants of other handlers if § 1030.43(d) applies), and bulk fluid milk products from other order plants that were not subtracted pursuant to paragraph (a)7(vi) of this section; and

(ii) 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;

(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 § 1030.40(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) Subtract from the pounds of skim milk remaining in each class, pro rata to such quantities 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, 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)(i), (7)(v), and (8)(i) 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;

(12) Subtract in the order 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)(ii) of this section:

(i) From each class, in series beginning with Class III, the pounds determined by multiplying the pounds of such net receipts by the larger of the percentage of estimated combined Class II and Class III utilization of skim milk announced for the month by the market administrator pursuant to § 1030.45(a) or the percentage that the combined Class II and Class III utilization remaining is of the total remaining utilization of skim milk of the handler; and

(ii) From Class I, the remainder of such receipts;

(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 other pool plants (or from pool plants of other handlers if § 1030.43(d) applies) according to the classification of such products pursuant to § 1030.42(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 § 1030.44(a)(14) and the corresponding step of § 1030.44(b).

§ 1030.45 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 § 1030.44(a)(12) and the corresponding step of § 1030.44(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 § 1030.44 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 receiv-

ing handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 17th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association for its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1030.50 Class prices.

Subject to the provisions of § 1030.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.*—The Class I price shall be the basic formula price for the second preceding month plus $1.26.

(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.

§ 1030.51 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.

§ 1030.52 Plant location adjustments for handlers.

A location adjustment for each handler shall be computed by the market administrator as follows:

(a) The market administrator shall determine the location adjustment rate for each plant at which milk is to be priced under this part on the following basis:

(1) Zone 1—adjustment rate—none. Zone 1 shall consist of the territory within 40 miles of the city hall in Chicago.

(2) Zone 2—adjustment rate—minus 2 cents per hundredweight of milk. Zone 2 shall consist of the territory beyond Zone 1 but within 55 miles of the city hall in Chicago.

(3) Zone 3—adjustment rate—minus 4 cents per hundredweight of milk. Zone 3 shall consist of the territory beyond Zone 2 but within 70 miles of the city hall in Chicago.

(4) Zone 4—adjustment rate—minus 6 cents per hundredweight of milk. Zone 4 shall consist of the territory beyond Zone 3 but within 85 miles of the city hall in Chicago, plus Milwaukee County, Wis., and Winnebago County, Ill.

(5) For plants located beyond Zone 4 the adjustment rate shall be an additional 2 cents per hundredweight of milk for each 15 miles or fraction thereof over 85 miles. The territory beyond 85 miles, but not to exceed 100 miles, shall be Zone 5 and each successive 15-mile area shall be an additional zone.

(b) (1) The mileages applicable pursuant to this section and § 1030.75 shall be determined by the market administrator on the basis of the shortest highway distance between the handler's plant and the city hall in Chicago.

(2) The market administrator shall notify each handler of the zone or mileage determination.

(3) Mileage shall be subject to redetermination at all times. In the event, a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of his findings within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any period prior to the redetermination announced by the market administrator.

(c) A handler who operates a pool distributing plant (or plants) shall receive a location adjustment computed as follows:

(1) Determine the aggregate quantity of Class I milk at such plant (or all pool plants of such handler for which a single report is filed pursuant to § 1030.30 after eliminating duplication for transfer between such plants);

(2) Subtract the receipts of exempt milk and the quantity of packaged fluid milk products received at the handler's pool plant(s) from the pool plants of other handlers (or other pool plants, if applicable) and from nonpool plants if assigned to Class I milk;

(3) Subtract the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to pool plants of other handlers (or other pool plants, if applicable) and to nonpool plants that are classified as Class I;

(4) Subtract the Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants;

(5) Subtract the quantity of bulk fluid milk products received at the handler's pool plant(s) from other order plants and unregulated supply plants that are assigned to Class I pursuant to § 1030.44;

(6) Assign the remaining quantity pro rata to receipts during the month from each source as specified in paragraph (c) (6) (i) and (ii) of this section:

(i) Receipts at the handler's pool distributing plant(s) of producer milk, except that if the quantity prorated to any distributing plant exceeds the Class I disposition from such plant, such quantity shall be reduced to the amount of such Class I disposition and the quantity of milk represented in such reduction shall be prorated to receipts of producer milk at other distributing plants of the handler (limited in each instance to the amount of Class I disposition at each such plant) and receipts of bulk fluid milk products at such distributing plants from other pool plants; and

(ii) Receipts of bulk fluid milk products at such distributing plants from each other pool plant according to the quantity of such receipts from each such source;

(7) If receipts during the month at such distributing plants of producer milk and bulk fluid milk products from other pool plants are less than the quantity to be assigned pursuant to paragraph (c) (6) of this section, prorate the amount of such excess in the same manner over such receipts in the next prior month in which there were receipts in excess of those assigned in that month pursuant to this subparagraph;

(8) Multiply by the location adjustment rates applicable at the transferor plants, the quantity assigned to receipts of producer milk at such distributing plants pursuant to paragraph (c) (6) (i) and (7) of this section;

(9) Multiply by the location adjustment rates applicable at the transferor plants, the lesser of:

(i) 110 percent of the quantities assigned to receipts from each other pool plant pursuant to paragraph (c) (6) (ii) of this section; or

(ii) Receipts specified in paragraph (c) (6) (ii) of this section;

(10) Multiply by the location adjustment rates applicable at the transferor plants, the quantities assigned pursuant to paragraph (c) (7) of this section to receipts from other pool plants in prior months;

(11) Multiply the quantity of bulk fluid milk products shipped from the handler's pool plant(s) to nonpool plants and classified as Class I by the location adjustment rates applicable at the shipping plant;

(12) Multiply the quantity of Class I milk packaged by pool supply plants and disposed of as route disposition or to other plants by the location adjustment rates applicable at the pool supply plants from which disposition is made; and

(13) Add together the minus amounts obtained pursuant to paragraph (c) (8), (9), (10), (11), and (12) of this section.

(d) A handler (other than one described in paragraph (c) of this section) who operates a pool supply plant shall receive a location adjustment credit on producer milk at such plant classified as Class I that is not shipped as a bulk fluid milk product to a pool distributing plant.

(e) The Class I price applicable to other source milk shall be reduced 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.

§ 1030.53 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.

§ 1030.54 Equivalent price.

If for any reason a price quotation or other pricing factor required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price quotation or price factor determined by the Secretary to be equivalent to that required.

UNIFORM PRICE

§ 1030.60 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 described in § 1030.9 (a), (b), (c), and (h) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1030.44 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 § 1030.44(a)(14) and the corresponding step of § 1030.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1030.74, 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 § 1030.44 (a)(9) and the corresponding step of § 1030.44(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 § 1030.44(a)(7) (i) through (iv), (vii), and (viii) and the corresponding step of § 1030.44(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 § 1030.44(a)(7) (v) and (vi) and the corresponding step of § 1030.44 (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 § 1030.44(a)(11) and the corresponding step of § 1030.44(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) Subtract an amount equal to the minus location adjustment computed pursuant to § 1030.52(c)(13) or (d).

§ 1030.61 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of producer milk, of 3.5 percent butterfat content at plants in Zone I, as follows:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers, except those of handlers who failed to make payments required pursuant to § 1030.71 for the preceding month;

(b) Add an amount equal to the total value of the minus location adjustments computed pursuant to § 1030.75(a);

(c) Add an amount representing not less than one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(f); and

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight.

§ 1030.62 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 14th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1030.70 Producer-settlement fund.

The market administrator shall maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments into such fund and from which he shall make all payments from such fund pursuant to §§ 1030.71, 1030.72, 1030.76, and 1030.77: *Provided*, That the market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1030.71 Payments to the producer-settlement fund.

(a) On or before the 16th 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 § 1030.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1030.75, 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 § 1030.60(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.

§ 1030.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.71(a)(2) exceeds the amount computed pursuant to § 1030.71 (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 become available.

§ 1030.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment for producer milk received during the month as follows:

(1) On or before the 18th day of the following month to each producer, not less than the uniform price, as adjusted pursuant to §§ 1030.74 and 1030.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less deductions for marketing services made pursuant to § 1030.86;

(ii) Plus or minus adjustments for errors in previous payments made to such producer; and

(iii) Less proper deductions authorized in writing by such producer; and

(2) If by such date for final payment, such handler has not received full payment from the market administrator pursuant to § 1030.72 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) Payments required in paragraph (a) of this section shall be made to a cooperative association, qualified under § 1030.18, or its duly authorized agent, with respect to milk of producers which the market administrator determines have authorized such cooperative association to collect payment for their milk and the cooperative association has presented the handler with a written request for such payments. Payments to the cooperative association under this paragraph shall be made subject to the condition 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; and

(c) On or before the 18th day of the following month, each handler, in his capacity as operator of a pool plant, who receives milk for which a cooperative association is the handler during the month as described in § 1030.9(c) shall pay such cooperative association for such milk at the uniform price, as adjusted pursuant to §§ 1030.74 and 1030.75.

§ 1030.74 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.

§ 1030.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price pursuant to § 1030.61 for producer milk received at a plant shall be adjusted according to the location of the plant at the rates set forth in § 1030.52(a).

(b) The uniform price applicable to other source milk shall be reduced at the rates set forth in § 1030.52(a), except that the adjusted uniform price shall not be less than the Class III price.

§ 1030.76 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 §§ 1030.30(b) and 1030.31(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 § 1030.60 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 § 1030.60 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 § 1030.60 for such handler shall include, in lieu of the value of other source milk specified in § 1030.60(f) less the value of such other source milk specified in § 1030.71(a)(2)(ii), a value of milk determined pursuant to § 1030.60 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 § 1030.7(b), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1030.30(b) and 1030.31(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 § 1030.60 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 § 1030.74, 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 § 1030.74, 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.

§ 1030.77 Adjustment of accounts.

When verification by the market administrator of reports or payment of any handler discloses errors resulting in monies due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1030.85 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 18th day after the end of each 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 farm production and including for a handler described in § 1030.9(c) producer milk described in § 1030.13(d));

(b) Other source milk allocated to Class I pursuant to § 1030.44(a) (7) and (11) and the corresponding steps of § 1030.44(b), except such other source milk that is excluded from the computations pursuant to § 1030.60 (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 § 1030.76(a)(2).

§ 1030.86 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 § 1030.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 18th day after the end of the month. Such monies shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of member producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section such deductions as are authorized by such producers and, on or before the 18th day after the end of each month, pay over such deductions to the association rendering such services.

ADVERTISING AND PROMOTION PROGRAM

§ 1030.122 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 § 1030.70.

NOTE.—An order terminating certain provisions in Order No. 30, 38 FR 11339, May 7, 1973, reads in part as follows:

"It is hereby found and determined that the following provisions no longer tend to effectuate the declared policy of the Act: * * * Sections 1030.100 through 1030.112. * * *

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated * * * Effective dates * * * September 30, 1973, with respect to § 1030.112."

(Section 1030.112 has been renumbered as § 1030.122 under this proposed amended order.)

PART 1032—MILK IN SOUTHERN ILLINOIS MARKETING AREA

Subpart—Order Regulation Handling

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1032.1 General provisions.

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ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1032.85 Assessment for order administration.
1032.86 Deduction for marketing services.

ADVERTISING AND PROMOTION PROGRAM

1032.121 Duties of the market administrator.
1032.122 Liquidation.

AUTHORITY: The provisions of this Part 1032 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1032.1 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

§ 1032.2 Southern Illinois marketing area.

"Southern Illinois marketing area", hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

BASE ZONE

Bond.
Calhoun.
Christian.
Clark.
Clay.
Clinton.
Coles.
Crawford.
Cumberland.
Edwards.
Effingham.
Fayette.
Greene.
Jasper.
Jefferson.
Jersey.
Lawrence.
Macoupin.
Madison.
Marion.
Monroe.
Montgomery.
Richland.
St. Clair (except Scott Military Reservation, East St. Louis, Centreville, Canteen, and Stites Townships and the city of Belleville).
Shelby.
Wabash.
Washington.
Wayne.

NORTHERN ZONE

Champaign.
De Witt.
Douglas.
Edgar.
Logan.
Macon.
McLean.
Menard.
Morgan.
Moultrie.
Piatt.
Sangamon.
Vermilion.

SOUTHERN ZONE

Franklin.	Randolph.
Hamilton.	Saline.
Jackson.	White.
Perry.	Williamson.

§ 1032.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distributing point and distribution by a vendor or vending machine) to a retail or wholesale outlet, other than a plant, of any fluid milk product classified as Class I milk.

§ 1032.4 [Reserved]

§ 1032.5 Distributing plant.

"Distributing plant" means any plant at which fluid milk products are processed and packaged and from which there is route disposition of Grade A fluid milk products in the marketing area during the month.

§ 1032.6 Supply plant.

"Supply plant" means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1032.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section. For purposes of determining pool plant status pursuant to this section, Grade A receipts from dairy farmers shall include all quantities of milk diverted pursuant to § 1032.13(b) (1), (2), and (3) by an operator of a pool plant.

(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 its Grade A receipts from dairy farmers and handlers described in § 1032.9(c), or an average of not less than 7,000 pounds per day of route disposition, except filled milk, in the marketing area; and

(2) Total route disposition, except filled milk, equal to 50 percent or more of its Grade A receipts from diary farmers and handlers described in § 1032.9(c) during the months of August through February and 40 percent during all other months.

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from dairy farmers and handlers described in § 1032.9(c) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 50 percent Class I use (not including filled milk) of the total of such supply plan milk and producer milk receipts in the months of August through February and 40 percent in other months.

(c) Any supply plant which qualified pursuant to paragraph (b) of this section in each of the immediately preceding months of September through January shall be a pool plant for the months of February through August unless the operator of such plant notifies the market administrator in writing before the first day of such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in paragraph (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in the Southern Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this subparagraph;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the Southern Illinois marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater such route disposition in the marketing area of the Southern Illinois order; and

(4) Any plant qualified pursuant to paragraph (c) of this section for any portion of the period of February through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1032.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

§ 1032.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of its members diverted for its account pursuant to § 1032.13;

(c) Any cooperative association with respect to the milk of its 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. The cooperative association, prior to the first day of the month of delivery, shall notify in writing the market administrator and the handler to whose plant the milk is delivered, that it will be the handler for the milk. For purposes of location adjustments to producers, milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1032.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1032.10 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a distributing plant and processes milk from his own farm production and who disposes of all or a portion of such milk as route disposition in the marketing area but who receives no milk from other dairy farmers or fluid milk products from nonpool plants: *Provided*, That the skim milk and butterfat disposed of in the form of fluid milk products designated as Class I milk pursuant to § 1032.40(a) does not exceed the skim milk and butterfat, respectively, in the form of milk from his own farm production, and in the form of fluid milk products from pool plants of other handlers, allowing for inventory derived from such sources; and

(b) Assumes as his personal enterprise and risk the processing and distribution of fluid milk products and the maintenance, care, and management of dairy animals and other resources necessary to produce his own farm milk production.

§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is received at a pool plant or diverted as producer milk pursuant to § 1032.13.

(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 § 1032.44(a)(8)(iii) and the corresponding step of § 1032.44(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.

§ 1032.13 Producer milk.

"Producer milk" means all skim milk and butterfat produced by producers which is:

(a) Received during the month:

(1) At a pool plant from producers or from a handler described in § 1032.9(c); and

(2) By a handler described in § 1032.9(c) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1032.41(c) or Class I shrinkage; or

(b) Diverted by a handler who is the operator of a pool plant or by a cooperative association pursuant to the following conditions:

(1) Milk of a producer diverted 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;

(2) Milk of a producer diverted from a pool plant to a nonpool plant that is not a producer-handler plant or an other order plant, on any day during the months of May, June, and July, during the months of August and December for not more than 12 days of production of producer milk by such producer, and in any other month for not more than 8 days of production of producer milk by such producer;

(3) Milk of a producer diverted during the month from a pool plant to a nonpool plant that is an other order plant, for not more days of production of producer milk, by such producer than is received at a pool plant(s) pursuant to paragraph (a) of this section;

(4) For pricing purposes, milk diverted pursuant to paragraph (b) (2) and (3) of this section shall be deemed to be received by the diverting handler at the location of the plant to which diverted: *Provided*, That milk diverted pursuant to paragraph (b)(2) of this section to a plant located less than 50 miles (by the shortest highway distance as determined by the market administrator) from the pool plant from which diverted, shall be deemed to be received by the diverting handler at the location of the plant from which diverted; and

(5) For pricing purposes, milk diverted pursuant to paragraph (b)(1) of this section shall be deemed to be received by the diverting handler at the location of the plant to which diverted.

§ 1032.14 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 § 1032.40(b)(1) from any source other than producers, handlers described in § 1032.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1032.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1032.40(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 § 1032.40(b)(1)) for which the handler fails to establish a disposition.

§ 1032.15 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 § 1032.40(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.

§ 1032.16 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.

§ 1032.17 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).

§ 1032.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 1032.19 Reload point.

"Reload point" means a location at which facilities approved by a duly constituted health authority, only for the transfer of milk from one tank truck to another and for the washing of tank trucks and at which milk moved from the farm in a tank truck is commingled in a tank truck with milk from other tank trucks before entering a milk plant: *Provided*, That reloading facilities on the premises of a plant having equipment for the receiving, cooling, storing, and processing of milk, which equipment is in current use during the month, shall be considered a supply plant rather than a reload point.

HANDLER REPORTS

§ 1032.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1032.9(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 § 1032.40(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 § 1032.9(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.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1032.9 (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 § 1032.76(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.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31, 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

§ 1032.40 Classes of utilization.

Except as provided in § 1032.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1032.30 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 § 1032.15; and

(6) In shrinkage assigned pursuant to § 1032.41(a) to the receipts specified in § 1032.41(a)(2) and in shrinkage specified in § 1032.41(b) and (c).

§ 1032.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1032.30, 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 bulk fluid form;

(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 § 1032.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1032.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1032.9 (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.

§ 1032.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1032.44(a)(12) and the corresponding step of § 1032.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1032.44(a)(7) or the corresponding step of § 1032.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1032.44(a) (11) or (12) or the corresponding steps of § 1032.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1032.40.

(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 § 1032.30 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 plans 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.

§ 1032.43 General classification rules.

In determining the classification of producer milk pursuant to § 1032.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1032.30 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 § 1032.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1032.40, 1032.41, and 1032.42;

(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 § 1032.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1032.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1032.9(a) for each of his pool plants separately and of each handler described in § 1032.9 (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 § 1032.41 (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 § 1032.40(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 § 1032.40(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 § 1032.40(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 § 1032.40(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 § 1032.40(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 § 1032.45(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 plant 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 § 1032.42(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 § 1032.44(a)(14) and the corresponding step of § 1032.44(b).

§ 1032.45 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 § 1032.44(a)(12) and the corresponding step of § 1032.44(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 § 1032.44 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 class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

Class Prices

§ 1032.50 Class prices.

Subject to the provisions of § 1032.52, 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 Class I price pursuant to Part 1062 of this chapter (St. Louis-Ozarks) minus 7 cents.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

§ 1032.51 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.

§ 1032.52 Plant location adjustments for handlers.

(a) For producer milk received at a pool plant which is classified as Class I milk, the price specified in § 1032.50(a) shall be adjusted for the location of such plant by the following amount:

(1) At a plant in the southern zone, plus 7 cents;

(2) At a plant in the northern zone, minus 7 cents;

(3) At a plant outside the marketing area, minus 15 cents if such plant is 100 or more miles from the city or village limits of Alton, Robinson, or Vandalia,

Ill., whichever is nearest, and minus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 110 miles: *Provided*, That the adjustment at a plant outside the marketing area and in the State of Illinois south of the northernmost boundaries of the Illinois counties of Adams and Schuyler and at a plant in the Indiana counties of Fountain, Parke, Vermillion, and Warren shall be the same as for a pool plant located in the northern zone; and

(4) In determining location adjustments, mileage shall be based on the shortest hard-surfaced highway distance as determined by the market administrator.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1032.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the 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.

§ 1032.53 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.

§ 1032.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1032.60 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 § 1032.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1032.44 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 § 1032.44(a)(14) and the corresponding step of § 1032.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1032.74, 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 § 1032.44 (a)(9) and the corresponding step of § 1032.44(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 § 1032.44(a)(7) (i) through (iv) and the corresponding step of § 1032.44 (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 § 1032.44(a)(7) (v) and (vi) and the corresponding step of § 1032.44 (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 § 1032.44(a)(11) and the corresponding step of § 1032.44 (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 § 1032.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1032.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers at plants located in the "base zone" as follows:

(a) Combined into one total the values computed pursuant to § 1032.60 for all handlers who filed the reports prescribed by § 1032.30 for the month and who made the payments pursuant to §§ 1032.71 and 1032.73 for the preceding month;

(b) Add an amount equal to the value of the net location and zone adjustments (reductions minus increases) applicable to the uniform price pursuant to § 1032.75;

(c) Add an amount equal to 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 § 1032.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(g) Subtract in the case of milk delivered during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of producer milk specified in paragraph (d)(1) of this section;

(h) Add in the case of milk delivered during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (g) of this section;

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) 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.

§ 1032.62 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

§ 1032.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1032.71, 1032.76, and 1032.77 shall be deposited in such fund and out of which shall be made all payments pursuant to §§ 1032.72 and 1032.77: *Provided*, That any payments

due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1032.61(g) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1032.73 in accordance with the requirements of § 1032.61(h).

§ 1032.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1032.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1032.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1032.60(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.

§ 1032.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1032.71(a)(2) exceeds the amount computed pursuant to § 1032.71(a)(1). The market administrator shall offset any payment due any handler against any payments due from such handler.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b), (c), and (d) of this section, each handler shall make payment for milk received during the month as follows:

(1) On or before the last day of each month to each producer who did not discontinue shipping milk to such handler before the 25th day of the month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this subparagraph:

(2) On or before the 20th day of the following month to each producer, an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1032.74 and 1032.75, 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 § 1032.86;

(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 § 1032.72 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) Payments required in paragraph (a) of this section shall be made to a cooperative association, qualified under § 1032.18 or its duly authorized agent, 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 18th day of the following month pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the amount due such producer-members as determined pursuant to paragraph (a) of this section, 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;

(c) On or before the 18th day after the end of each month, each handler shall pay to each cooperative association for milk the handler receives at his pool plant from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1032.74, that are applicable at the location of the handler's pool plant;

(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 § 1032.9(c) shall pay such cooperative association for such milk at the uniform price as adjusted pursuant to §§ 1032.74 and 1032.75;

(e) None of the provisions of this section shall be construed to restrict any cooperative association qualified under section 8c(5)(F) of the Act from making payment for milk to its producers in accordance with such provision of the Act, and

(f) 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 for each such producer on forms approved by the market administrator as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day after the end of the month, the total pounds of milk received from each producer, together with the butterfat content of such milk, and the amount or rate and nature of any deductions authorized by the cooperative association.

§ 1032.74 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.

§ 1032.75 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 § 1032.52(a); and

(b) The weighted average 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 weighted average price shall not be less than the Class III price.

§ 1032.76 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 §§ 1032.30(b) and 1032.31(b) the information necessary for making the computations, such handler

may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1032.60 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 § 1032.60 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 § 1032.60 for such handler shall include, in lieu of the value of other source milk specified in § 1032.60(f) less the value of such other source milk specified in § 1032.71(a)(2)(ii), a value of milk determined pursuant to § 1032.60 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 § 1032.7 (b) and (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1032.30(b) and 1032.31(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 § 1032.60 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 § 1032.74, 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 § 1032.74, 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.

§ 1032.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator, from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1032.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1032.71, 1032.85, or 1032.86 shall be increased one-half of 1 percent for each month or portion thereof that such payment is overdue.

Administrative Assessment and Marketing Service Deduction

§ 1032.85 Assessment for order administration.

As his pro rata share of the expense of administering the order, each handler (excluding a handler described in § 1032.9 (c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th day after the end of the month 5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) His producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1032.44(a)(7) and (11) and the corresponding steps of § 1032.44(b), except such other source milk that is excluded from the computations pursuant to § 1032.60 (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 § 1032.76(a)(2).

§ 1032.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers pursuant to § 1032.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them 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 association.* In the case of producers for whom a cooperative association is actually performing as determined by the Secretary,

the services set forth in paragraph (a) of this section each handler, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

ADVERTISING AND PROMOTION PROGRAM

§ 1032.121 Duties of the market administrator.

Except as specified in § 1032.116, 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 § 1032.113(c);

(b) Set aside the amounts subtracted under § 1032.71(c–1) 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 § 1032.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1032.120. 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 § 1032.71(c–1) 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 (§§ 1032.110 through 1032.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1032.122 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 § 1032.70.

(NOTE: An order terminating certain provisions in Order No. 32, 38 FR 15728, June 15, 1973, reads in part as follows:

"It is hereby determined that termination of the following provisions * * * is favored by * * * producers * * *. Sections 1032.110 through 1032.122 in their entirety. * * *

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated. * * * *Effective dates* * * * Midnight, September 30, 1973, for §§ 1032.121, 1032.122.")

PART 1046—MILK IN LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

Subpart—Order Regulating Handling

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1046.78 Charges on overdue accounts.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

1046.85 Assessment for order administration.
1046.86 Deduction for marketing services.

AUTHORITY: The provisions of this Part 1046. issued under secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1046.1 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

§ 1046.2 Louisville-Lexington-Evansville marketing area.

The "Louisville-Lexington-Evansville marketing area", hereinafter called the "marketing area", means all the territory geographically within the counties listed below and all territory wholly or partly therein occupied by municipal corporations and institutions owned or operated by Federal, State or local governments:

INDIANA COUNTIES

Clark.
Crawford.
Daviess.
Dubois.
Floyd.
Gibson.
Harrison.
Knox.
Martin.
Orange.
Perry.
Pike.
Posey.
Spencer.
Vanderburgh.
Warrick.
Washington.

KENTUCKY COUNTIES

Adair.
Anderson.
Bourbon.
Boyle.
Breckinridge.
Bullit.
Butler.
Casey.
Clark.
Clinton.
Cumberland.
Daviess.
Edmonson.
Fayette.
Franklin.
Garrard.
Grayson.
Green.
Hancock.
Hardin.
Hart.
Henderson.
Henry.
Hopkins.
Jefferson.
Jessamine.
Larue.
Lincoln.
Logan.
Madison.
Marion.
McLean.
Meade.
Mercer.
Muhlenberg.
Nelson.
Ohio.
Oldham.
Pulaski.
Russell.
Scott.
Shelby.
Spencer.
Taylor.
Union.
Washington.
Wayne.
Webster.
Woodford.

§ 1046.3 Route disposition.

"Route disposition" means delivery (including disposition from a plant store or from a distribution point and distribu-

tion by a vendor) of a fluid milk product(s) classified as Class I milk to a wholesale or retail outlet(s) other than to a milk or filled milk plant(s). A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets without intermediate movement to another milk or filled milk plant.

§ 1046.4 [Reserved]

§ 1046.5 City plant.

"City plant" means a plant where milk is processed or packaged and from which there is route disposition in the marketing area of fluid milk products permitted to be labeled as "Grade A" by a duly constituted health authority.

§ 1046.6 Country plant.

"Country plant" means a milk plant, other than a city plant, which is approved by a duly constituted health authority to supply milk or skim milk to a city plant(s) for disposition as "Grade A" milk and at which milk is received during the month from persons described in § 1046.12(a) or from a handler described in § 1046.9(c).

§ 1046.7 Pool plant.

Except as provided in paragraph (e) of this section, "pool plant" means:

(a) A city plant which meets the following requirements:

(1) For each of the Months of May through October not less than 30 percent and for each of the months of November through April not less than 50 percent of the fluid milk products, except filled milk, received during the 2 months immediately preceding from persons described in § 1046.12(a), from a handler described in § 1046.9(c), from country plants and from pool plants in containers not larger than a gallon is disposed of as Class I milk, except filled milk, from such plant during such 2-month period to all outlets except such disposition to pool plants in containers larger than a gallon: *Provided*, That, if such utilization percentage for the 2 preceding months cannot be ascertained by the market administrator, the respective percentages shall apply to receipts and sales during the current month; and

(2) There is an amount of route disposition in the marketing area, except filled milk, equal to not less than an average of 13,500 pounds per day or not less than 10 percent of the fluid milk products, except filled milk, received during the current month from persons described in § 1046.12(a), from a handler described in § 1046.9(c), and from country plants.

(b) A country plant during any of the months of October through March from which not less than 50 percent, and during other months not less than 40 percent, of the receipts of milk at such plant from persons described in § 1046.12(a) and from a handler described in § 1046.9 (c) is moved to and received at a city plant in the form of milk or skim milk.

(c) A country plant during the months of April through September from which not less than 50 percent of the combined receipts of milk from persons described in § 1046.12(a) and from a handler described in § 1046.9(c) during the preceding period of October through March was moved to and received at a city plant(s) in the form of milk or skim milk, unless the operator of such plant notifies the market administrator in writing on or before March 15 of withdrawal of the plant from the pool for the months of April through September next following.

(d) A country plant which is operated by a cooperative association if (1) two-thirds or more of the milk from persons described in § 1046.12(a) who are members of such association is delivered during the month from farms to the pool plant(s) of other handlers or transferred by such association from its plant to the pool plant(s) of other handlers or (2) such plant qualified as a pool plant pursuant to paragraph (d)(1) of this section during each of the immediately preceding consecutive months of October through February.

(e) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant; and

(2) Unless determined otherwise by the Secretary, a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to paragraph (a), (b), (c) or (d) of this section and a greater volume of fluid milk products, except filled milk, is disposed of from such plant in the Louisville-Lexington-Evansville marketing area to other pool plants and to retail or wholesale outlets than in the marketing area regulated pursuant to such other order during the current month.

§ 1046.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant other than a producer-handler plant or an other order plant, from which fluid milk products are shipped to a pool plant.

§ 1046.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 1046.13;

(c) Any cooperative association with respect to the milk of its producer members which is delivered for the account of the cooperative association from the farm to the pool plant(s) of another handler in a tank truck owned by, operated by, or under contract to such cooperative association if the cooperative association has notified in writing prior to delivery both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received by the cooperative association at the location of the plant to which it was delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; and

(f) Any person who operates an other order plant described in § 1046.7(e).

§ 1046.10 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, distributes any portion of such milk as route disposition in the marketing area and receives no fluid milk products from other dairy farmers or nonpool plants and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such persons provides proof satisfactory to the market administrator that (a) the care and management of all of the dairy animals and other resources necessary to produce the entire amount of fluid milk handled (excluding transfers from pool plants) is the personal enterprise of and at the personal risk of such person, and (b) the operation of the processing and distributing business is the personal enterprise of and at the personal risk of such person.

§ 1046.11 [Reserved]

§ 1046.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person:

(1) Who produces milk on a dairy farm which is approved by a duly constituted health authority for the production of milk for fluid disposition (this definition shall include approval of milk by the authority to administer the regulations governing the quality of milk acceptable to agencies of the United States Government for fluid consumption in its institutions or bases located in the marketing area during any month in which such milk is disposed of to such institutions or bases); and

(2) Whose milk so produced pursuant to paragraph (a)(1) of this section is received at a pool plant or by a handler

described in § 1046.9(c) or diverted in accordance with the conditions set forth in § 1046.13.

(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 § 1046.44(a)(8)(iii) and the corresponding step of § 1046.44(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.

§ 1046.13 Producer milk.

"Producer milk" means that skim milk and butterfat contained in milk of a producer which is:

(a) Received from producers at a pool plant for the account of the person operating such plant. When milk is withdrawn at more than one pool plant from the same load delivered by a farm tank pickup truck, the entire load shall be deemed to have been received at the first pool plant at which any of such milk was withdrawn unless:

(1) There is an agreement among the operators of the pool plants receiving such milk providing for other receiving handler(s) to report and pay for all or a portion of such milk; or

(2) The milk involved is that which is delivered to pool plants for the account of a handler described in § 1046.9(c).

(b) Diverted by a handler from a pool plant to another pool plant for any number of days of the month. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the pool plant from which it is diverted.

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, for the account of the operator of the pool plant or a cooperative association, subject to the following conditions:

(1) Milk so diverted shall be deemed to have been received at the pool plant from which it is diverted; and

(2) Producer milk pursuant to this paragraph shall not include the milk of any person during any of the months of October, November, January and February on days on which it is diverted by a handler to a nonpool plant in excess of 22 days (11 days in the case of every-other-day delivery) during the month.

(d) Received by a handler described in § 1046.9(c).

§ 1046.14 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 § 1046.40(b)(1) from any source other than producers, handlers described in § 1046.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1046.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1046.40(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 § 1046.40(b)(1)) for which the handler fails to establish a disposition.

§ 1046.15 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 § 1046.40 (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.

§ 1046.16 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.

§ 1046.17 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skim milk (whether fresh, cultured, reconstituted, of nonmilk fat (or oil) with skim milk 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).

§ 1046.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To 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

§ 1046.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1046.9(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 § 1046.40(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 § 1046.9(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.

§ 1046.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described § 1046.9(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 § 1046.76 (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.

§ 1046.32 Other reports.

(a) Each handler shall report to the market administrator, as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such milk was received.

(b) On or before the 10th day after the request of the market administrator, each handler shall submit a schedule of rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Changes in such schedule of rates and the effective dates thereof shall be reported to the market administrator within 10 days.

(c) In addition to the reports required pursuant to paragraphs (a) and (b) of this section and §§ 1046.30 and 1046.31, 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

§ 1046.40 Classes of utilization.

Except as provided in § 1046.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1046.30 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 § 1046.15; and

(6) In shrinkage assigned pursuant to § 1046.41(a) to the receipts specified in § 1046.41(a)(2) and in shrinkage specified in § 1046.41 (b) and (c).

§ 1046.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1046.30, the market administrator shall determine the following:

(a) The total shrinkage of skim milk and butterfat, respectively, at each pool plant, which shall be assigned pro rata to:

(1) The quantity of skim milk and butterfat, respectively, that is equal to 50 times the maximum amount that may be computed pursuant to paragraph (b) of this section; and

(2) The quantity of skim milk and butterfat, respectively, in other source milk received in bulk form as fluid milk products, excluding any such receipts used in the computations pursuant to paragraph (b) (5) and (6) of this section;

(b) The shrinkage of skim milk and butterfat, respectively, assigned pursuant to paragraph (a) of this section to the receipts specified in paragraph (b)(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 § 1046.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b)(1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1046.9 (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.

§ 1046.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant or by a handler described in § 1046.9(c) to another handler's pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1046.44(a)(12) and the corresponding step of § 1046.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1046.44(a)(7) or the corresponding step of § 1046.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk;

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1046.44(a) (11) or (12) or the corresponding steps of § 1046.44(b), the skim milk or butterfat, so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant; and

(4) If a specified classification is not claimed by both handlers in the case of transfers or diversions by such a cooperative association, such skim milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the transferee- or divertee-handler after making the assignments pursuant to § 1046.44(a)(12) and the corresponding step of § 1046.44(b), and after the assignment of milk for which a specified classification has been claimed pursuant to this paragraph.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1046.40.

(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 § 1046.30 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 deter-

mines 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.

§ 1046.43 General classification rules.

In determining the classification of producer milk pursuant to § 1046.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1046.30 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 § 1046.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1046.40, 1046.41, and 1046.42;

(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 § 1046.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1046.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1046.9(a) for each of his pool plants separately and of each handler described in § 1046.9 (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 § 1046.41 (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 § 1046.40(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 § 1046.40(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 § 1046.40(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 § 1046.40(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 § 1046.9(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 § 1046.40(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 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 slim 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)(1) (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 § 1046.45(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 computation pursuant to paragraph (a)(12) (i) or (ii) of this section result in a quantity of skim milk to be subtracted from any class that exceeds the pounds of skim milk remaining in such class, the pounds of skim milk in such class shall be increased by an amount equal to such quantity to be subtracted and the pounds of skim milk in the other classes (beginning with the higher-priced class) shall be decreased by a like amount. In such case, the pounds of skim milk remaining in each class at this allocation step at other pool plants of the handler shall be adjusted to the extent possible in the reverse direction by a like amount. Such adjustment shall be made at the other plants in sequence beginning with the plant having the least minus location adjustment;

(13) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant or a handler described in § 1046.9(c) according to the classification of such products pursuant to § 1046.42(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 § 1046.44(a)(14) and the corresponding step of § 1046.44(b).

§ 1046.45 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 § 1046.44(a)(12) and the corresponding step of § 1046.44(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 § 1046.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 15th day after the end of each month, report to each cooperative association, which so requests, with respect to milk delivered by such association or by its members to each handler during the month: (1) The percentage of such receipts classified in each class; and (2) 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 received from such association shall be treated on a pro rata basis of the total producer milk received by such handler during the month.

Class Prices

§ 1046.50 Class prices.

Subject to the provisions of § 1046.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.49.

(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.

§ 1046.51 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.

§ 1046.52 Plant location adjustments for handlers.

(a) For that milk received from producers or from a handler described in § 1046.9(c) at a pool plant located at any point which is 85 miles or more from the City Hall in Evansville, Indiana, or Louisville, Lexington, Danville, Elizabethtown, or Madisonville, Kentucky, whichever is nearer, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk subject to the limitations pursuant to paragraph (b) of this section, the price specified in § 1046.50(a) shall be reduced at the rate set forth in the following schedule according to the location of the plant where such milk is received:

Distance from City Hall:	*Rate per hundredweight (cents)*
85 miles but less than 95 miles	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 to that Class I disposition at the transferee-plant which is in excess of the sum of receipts at such plant from producers and handlers described in § 1046.9(c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the 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.

§ 1046.53 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.

§ 1046.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1046.60 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 § 1046.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1046.44 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 § 1046.44(a)(14) and the corresponding step of § 1046.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1046.74, 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 § 1046.44(a)(9) and the corresponding step of § 1046.44(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 § 1046.44(a)(7)(i) through (iv) and the corresponding step of § 1046.44(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 § 1046.44(a)(7)(v) and (vi) and the corresponding step of § 1046.44(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 § 1046.44(a)(11) and the corresponding step of § 1046.44(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.

§ 1046.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1046.60 for all handlers who filed the reports prescribed by § 1046.30 for the month and who are not in default of payments pursuant to § 1046.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1046.75;

(c) Add an amount equal to 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 § 1046.60(f);

(e) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(g) Subtract for each month of April through July the amount obtained by multiplying the hundredweight of producer milk included in these computations by a rate that is equal to 10 percent of the average basic formula price (computed to the nearest cent) for the preceding calendar year but that is not more than 40 cents;

(h) Add during each of the months of September, October, November and December one-fourth of the total amount subtracted pursuant to paragraph (g) of this section;

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "uniform price" per hundredweight for milk of 3.5 percent butterfat received from producers.

§ 1046.62 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.

§ 1046.70 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 §§ 1046.71, 1046.76, and 1046.77 and from which he shall make all payments pursuant to §§ 1046.72 and 1046.77: *Provided*, That payments due any handler shall be offset by payments due from such handler.

§ 1046.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1046.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1046.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1046.60(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.

§ 1046.72 Payments from the producer-settlement fund.

On or before the 16th 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 § 1046.71(a)(2) exceeds the amount computed pursuant to § 1046.71(a)(1): *Provided*, That the market administrator shall offset any payment due any handler against payments due from such handler, and 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.

§ 1046.73 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 from such producer who has not discontinued delivery of milk to such handler, an amount computed at not less than the Class III price for the preceding month without deduction for hauling.

(b) On or before the 17th day after the end of each month for milk received from such producer during such month, an amount computed at not less than the uniform price per hundredweight for the month, as adjusted pursuant to §§ 1046.74 and 1046.75, and plus or minus adjustments for errors made in previous payments to such producer and less (1) the payment made pursuant to paragraph (a) of this section, (2) deductions for marketing services pursuant to § 1046.86, and (3) proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing the producer's milk, by such association.

(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 in lieu of payments pursuant to paragraphs (a) and (b) of this section, each handler shall pay to the cooperative association on or before the second day prior to the dates specified in paragraphs (a) and (b), respectively, of this section, an amount equal to the sum of the individual payments otherwise payable to such producers without the deductions provided by paragraphs (b)(2) and (3) of this section: *Provided*, That deductions for supplies authorized by such producer may be made. 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 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 the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer a supporting statement which shall show for each month the following:

(1) 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 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) In making payments to a cooperative association pursuant to paragraph (c) of this section, each handler shall report to such cooperative association for each such producer on forms approved by the market administrator as follows:

(1) On or before the 20th day of the month, the total pounds of milk received during the first 15 days of such month, and

(2) On or before the 7th day of the following month, the total pounds of milk received each month, together with the butterfat content of such milk and the amount of deductions claimed by such handler.

(f) Each handler shall pay to the cooperative association on or before the 10th day of the following month for milk received from it as a handler described in § 1046.9(c) an amount computed at not less than the value of such milk at the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1046.74, that are applicable at the location of the receiving handler's pool plant.

§ 1046.74 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.

§ 1046.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1046.52; and

(b) For purposes of computations pursuant to §§ 1046.71 and 1046.72 the weighted average price shall be reduced at the rates set forth in § 1046.52 applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1046.76 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 §§ 1046.30(b) and 1046.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1046.60 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 plants;

(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 § 1046.60 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 § 1046.60 for such handler shall include, in lieu of the value of other source milk specified in § 1046.60(f) less the value of such other source milk specified in § 1046.71(a)(2)(ii), a value of milk determined pursuant to § 1046.60 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 § 1046.7 (b) and (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1046.30 (b) and 1046.31(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 § 1046.60 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 § 1046.74, 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 § 1046.74, 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.

§ 1046.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, 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 such verification discloses that payment is due from the market administrator to any handler, pursuant to § 1046.72, 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 for milk received by such handler discloses payment of less than is required by § 1046.73, the handler shall pay any amount so due not later than the time of making payment to producers next following such disclosure.

§ 1046.78 Charges on overdue accounts.

Any unpaid obligation of a handler or of the market administrator pursuant to §§ 1046.71, 1046.72, 1046.73, 1046.76, 1046.77, 1046.85, or 1046.86 shall be increased one-half of one percent on the first of the month next following the due date of such obligation and on the first day of each month thereafter until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1046.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler, excluding a handler described in § 1046.9(c), shall pay to the market administrator on or before the 15th day after the end of the month three 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 § 1046.9(c);

(b) Other source milk allocated to Class I pursuant to § 1046.44(a) (7) and (11) and the corresponding steps of § 1046.44(b), except such other source milk that is excluded from the computations pursuant to § 1046.60 (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 § 1046.76(a)(2).

§ 1046.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 1046.73(b), shall deduct 5 cents per

hundredweight, or such amount not in excess thereof as the Secretary may prescribe, with respect to all milk received by such handler from producers (other than such handler's own farm production) during the month and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers 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) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unterminated membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, deductions in accordance with the association's claim and shall pay the amount deducted to the association within 15 days after the end of the month.

PART 1049—MILK IN INDIANA MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY.—The provisions of this Part 1049 issued under secs. 1–19, 48 Stat. 31, as amended; (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1049.1 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

§ 1049.2 Indiana marketing area.

"Indiana marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of each of the Indiana counties listed below, including territory wholly or partly within such boundaries occupied by Government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments:

Adams.	La Porte.
Allen.	Lawrence.
Bartholomew.	Madison.
Blackford.	Marion.
Boone.	Marshall.
Brown.	Miami.
Cass.	Monroe.
Clay.	Montgomery.
Clinton.	Morgan.
Decatur.	Noble.
De Kalb.	Owen.
Delaware.	Parke.
Elkhart.	Porter.
Fayette.	Putnam.
Fountain.	Randolph.
Franklin.	Rush.
Fulton.	Shelby.
Grant.	Steuben.
Hamilton.	St. Joseph.
Hancock.	Starke.
Hendricks.	Tippecanoe.
Henry.	Tipton.
Howard.	Union.
Huntington.	Vermillion.
Jackson.	Vigo.
Jay.	Wabash.
Johnson.	Warren.
Kosciusko.	Wayne.
Lagrange.	Wells.
Lake.	Whitley.

§ 1049.3 Route disposition.

"Route disposition" means a delivery (including that custom-packaged for another person, disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk other than a delivery in bulk form to any milk or filled milk processing plant.

§ 1049.4 [Reserved]

§ 1049.5 Distributing plant.

"Distributing plant" means a plant approved by any duly constituted health authority for the processing or packaging of milk for fluid consumption in the marketing area and from which there is route disposition during the month in the marketing area.

§ 1049.6 Supply plant.

"Supply plant" means a plant in which some milk approved by any duly constituted health authority for fluid consumption in the marketing area is assembled and shipped in bulk as milk or skim milk to a distributing plant during the month.

§ 1049.7 Pool plant.

Except as provided in paragraph (c) of this section, "pool plant" means:

(a) A distributing plant with:

(1) Total route disposition, exclusive of packaged fluid milk products received from other plants and filled milk, in an amount not less than 50 percent of Grade A milk received at such plant during the month from dairy farmers (excluding receipts of producer milk by diversion pursuant to § 1049.13) and supply plants, except that a plant meeting such percentage requirement for the preceding month may remain qualified under this subparagraph in the current month; and

(2) Route disposition within the marketing area during the month of at least 10 percent of such receipts, such route disposition to be exclusive of packaged fluid milk products received from other plants and filled milk: *Provided*, That any plant meeting the requirements of this paragraph in each of the months of September through May, inclusive, shall continue to have pool plant status in the months of June, July, and August, immediately following if there is route disposition, except filled milk, from the plant in the marketing area during such month.

(b) A supply plant from which not less than 50 percent of the Grade A milk received from dairy farmers at such plant during the month is shipped to plants qualifying for the month pursuant to paragraph (a) of this section. A plant qualified pursuant to this paragraph in each of the immediately preceding months of September through February shall remain so qualified for the months of April through August unless written application is filed with the market administrator on or before the first day of any such month to designate such plant as a nonpool plant for such month and for each subsequent month through August during which it would otherwise not qualify under this paragraph.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant from which the Secretary determines there is a greater proportion of route disposition (except filled milk) in another marketing area regulated by another order issued pursuant to the Act and such plant is fully subject to regulation of such other order: *Provided*, That a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which it has a greater proportion of its route disposition (except filled milk) in such other marketing area, unless, notwithstanding the provisions of this subparagraph, it is regulated by such other order;

(3) A distributing plant which meets the requirements of paragraph (a) of this section which also meets the requirements of another order on the basis of its 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 nevertheless fully regulated under such other order;

(4) A supply plant which during the month is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act, unless such plant is qualified as a pool plant pursuant to paragraph (b) of this section and a greater volume of fluid milk products (except filled milk) is moved to pool distributing plants qualified on the basis of route disposition in this marketing area; and

(5) That portion of a plant that is physically separated from the Grade A portion of such plant, is operated separately and is not approved by any health authority for the receiving, processing or packaging of any fluid milk product for Grade A disposition.

§ 1049.8 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 supply plant that is not an other order plant or a producer-handler plant, from which fluid milk products are shipped during the month to a pool plant.

§ 1049.9 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 for the account of such association pursuant to § 1049.13;

(c) [Reserved]

(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 § 1049.7(c).

§ 1049.10 Producer-handler.

"Producer-handler" means a person who operates a dairy farm and a distributing plant and who receives no fluid milk products from other dairy farmers or from sources other than pool plants, and no milk products other than fluid milk products for reconstitution into fluid milk products: *Provided*, That such person provides proof satisfactory to the market administrator that the care and management of all dairy animals and other resources used in his own farm production and the operation of the processing and distributing business are at the personal enterprise and risk of such person.

§ 1049.11 [Reserved]

§ 1049.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who in compliance with Grade A inspection requirements of a duly constituted health authority, produces milk for distribution as fluid milk products within the marketing area or produces milk acceptable for fluid consumption at Federal, State, or municipal institutions, which milk is received at a pool plant or diverted pursuant to § 1049.13.

(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 § 1049.44(a)(8)(iii) and the corresponding step of § 1049.44(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.

§ 1049.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any producer which is:

(a) Received at one or more pool plants during the month (milk may be diverted during the month by a handler from a pool distributing plant to another pool plant(s) for not more days of production of producer milk than is physically received at the diverting pool plant).

(b) Received at a pool plant at least one day during the month and then diverted by the operator of a pool plant or by a cooperative association to a nonpool plant that is not a producer-handler plant during the month under any of the following conditions:

(1) During April through August the operator of a pool plant or a cooperative association may divert the milk production of a producer from a pool plant to a nonpool plant on any number of days during the month.

(2) During September through March the milk of a producer diverted by the operator of a pool plant or a cooperative association to a nonpool plant shall be limited to the amounts specified in paragraph (b)(2)(i) and (ii) of this section:

(i) The operator of a pool plant may divert the milk of producers (except producer members of a cooperative association which is diverting milk under the percentage limit of paragraph (b)(2)(ii) of this section) for not more days of production of producer milk than is physically received at the diverting pool plant or he may divert an aggregate quantity not exceeding 40 percent of the milk of all such producers.

(ii) A cooperative association may divert the milk of its individual member producers for not more days of production of producer milk than is physically received at a pool plant or it may divert an aggregate quantity of the milk of member producers not exceeding 40 percent of all such milk either caused to be delivered to pool plants or diverted to nonpool plants by the cooperative association.

(3) When milk is diverted in excess of the limit by a handler who elects to divert on the basis of days-of-production, only that milk of the individual producer which was received at a pool plant or

which was diverted to a nonpool plant for not more days of production than is physically received at a pool plant shall be considered producer milk.

(4) When milk is diverted in excess of the percentage limit by a handler who elects to divert on a percentage basis, eligibility as producer milk shall be forfeited on a quantity of milk equal to such excess. In such instances the diverting handler shall specify the dairy farmers whose milk is ineligible as producer milk. If the handler fails to designate such dairy farmers whose milk is ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler.

(c) Diverted milk shall be deemed to be received by the handler at the pool plant or nonpool plant to which the milk is diverted, unless diverted to a plant located in any part of the marketing area or to a plant at which no location adjustment would apply pursuant to § 1049.52, in which case such diverted milk shall be deemed to be received at the pool plant from which diverted.

§ 1049.14 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 § 1049.40(b)(1) from any source other than producers, pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1049.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1049.40(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 § 1049.40(b)(1)) for which the handler fails to establish a disposition.

§ 1049.15 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 § 1049.40 (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.

§ 1049.16 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.

§ 1049.17 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).

§ 1049.18 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 is engaged in making collective sales of or marketing milk or milk products for its members; and

(c) To have all of its activities under the control of its members.

Handler Reports

§ 1049.30 Reports of receipts and utilization.

On or before the 8th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) [Reserved]

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1049.40 (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 § 1049.9 (b) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to his receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

§ 1049.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1049.9 (a) and (b) shall report to the market administrator his producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) His name and address;

(2) The total pounds of milk received from such producer;

(3) The average butterfat content of such milk; and

(4) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1049.76(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.

§ 1049.32 Other reports.

(a) On or before the day prior to diverting milk pursuant to § 1049.13, each handler shall notify the market administrator of his intention to divert such milk, the date or dates of such diversion, and the plant to which such milk is to be diverted.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1049.30 and 1049.31, 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

§ 1049.40 Classes of utilization.

Except as provided in § 1049.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1049.30 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 § 1049.15; and

(6) In shrinkage assigned pursuant to § 1049.41(a) to the receipts specified in § 1049.41(a)(2) and in shrinkage specified in § 1049.41 (b) and (c).

§ 1049.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1049.30, 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 bulk fluid form;

(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 diverted to such plant from another pool 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 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 § 1049.9(b) but not in excess of 0.5 percent of the skim milk and butterfat, respectively, in such milk. If the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this paragraph for the cooperative association shall be zero.

§ 1049.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1049.44(a)(12) and the corresponding step of § 1049.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1049.44(a)(7) or the corresponding step of § 1049.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1049.44(a) (11) or (12) or the corresponding steps of § 1049.44 (b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the

pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 utlization 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 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 § 1049.40.

(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 § 1049.30 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.

§ 1049.43 General classification rules.

In determining the classification of producer milk pursuant to § 1049.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1049.30 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 § 1049.9(b) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1049.40, 1049.41, and 1049.42;

(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 § 1049.9(b) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1049.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1049.9(a) for each of his pool plants separately and of each handler described in § 1049.9(b) by allocating the handler's receipts of skim milk and butterfat to his utilization as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the total pounds of skim milk in Class III the pounds of skim milk in shrinkage specified in § 1049.41(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 § 1049.40(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 § 1049.40(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 § 1049.40(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 § 1049.40(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 § 1049.40(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 § 1049.45(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 § 1049.42(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 § 1049.44(a)(14) and the corresponding step of § 1049.44(b).

§ 1049.45 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 § 1049.44(a)(12) and the corresponding step of § 1049.44(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 § 1049.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report.

(c) Furnish to each handler operating a pool plant who has shipped fluid milk products or bulk fluid cream products to an other order plant the class to which such shipments were allocated by the market administrator of the other order on the basis of the report by the receiving handler, and, as necessary, any changes in such allocation arising from the verification of such report.

(d) On or before the 14th day after the end of each month, report to each cooperative association, upon request by such association, the percentage of the milk caused to be delivered by the cooperative association or its members which was utilized in each class at each pool plant receiving such milk. For the purpose of this report, the milk so received shall be allocated to each class at each pool plant in the same ratio as all producer milk received at such plant during the month.

CLASS PRICES

§ 1049.50 Class prices.

Subject to the provisions of § 1049.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.47.

(b) *Class II price.* The Class II price shall be the basic formula price for the month plus 10 cents.

(c) *Class III price.* The class III price shall be the basic formula price for the month.

§ 1049.51 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.

§ 1049.52 Plant location adjustments for handlers.

(a) For producer milk which is received at a pool plant located outside the area for which zero location adjustment is specified in paragraph (a)(1)(i) of this section, which milk is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1049.50(a) shall be reduced on the basis of the applicable amount or rate for the location of such plant pursuant to paragraph (a) (1) or (2) of this section, respectively. For the purpose of this section and § 1049.75, the distances to be computed shall be on the basis of the shortest hard-surfaced highway distances as determined by the market administrator:

(1) At any plant located within:

	Rate of adjustment per hundredweight (Cents)
(i) The State of Ohio or any Indiana county not specifically named in subdivisions (ii) through (iv) of this subparagraph	0
(ii) Any of the Indiana counties of: Adams, Allen, Blackford, Cass, Carroll, De Kalb, Huntington, Jay, La Grange, Miami, Noble, Steuben, Wabash, Wells, White, Whitley	4
(iii) Any of the Indiana counties of: Benton, Elkhart, Fulton, Jasper, Kosciusko, Marshall, Newton, Pulaski, St. Joseph, and Berrien and Cass Counties, Mich	8
(iv) Any of the Indiana counties of: Lake, La Porte, Porter, Starke	12

(2) For any plant at a location outside the territory specified in the preceding paragraph (a)(1) of this section, the applicable adjustment rate per hundredweight shall be based on the shortest highway distance between the plant and the nearest of the Monument Circle, Indianapolis, Ind., or the main post offices of Fort Wayne, South Bend, or Valparaiso, Ind., and shall be 1.5 cents for each 10 miles or fraction thereof from such point plus the amount of the location adjustment pursuant to paragraph (a)(1) of this section applicable at the respective point.

(b) For the purpose of calculating adjustments pursuant to this section, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the receipts at such plant from producers and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment 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.

§ 1049.53 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.

§ 1049.54 Equivalent price.

If for any reason a price quotation or factor required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price or factor determined by the Secretary to be equivalent to the price or factor which is required.

UNIFORM PRICE

§ 1049.60 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 §1049.9(b) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1049.44 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 § 1049.44(a)(14) and the corresponding step of § 1049.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1049.74, 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 § 1049.44 (a)(9) and the corresponding step of § 1049.44(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 § 1049.44(a)(7) (i) through (iv) and the corresponding step of § 1049.44 (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 § 1049.44(a)(7) (v) and (vi) and the corresponding step of § 1049.44 (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 § 1049.44(a)(11) and the corresponding step of § 1049.44(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.

§ 1049.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1049.60 for all handlers who filed the reports prescribed by § 1049.30 for the month and who made the payments pursuant to § 1049.71 for the preceding month;

(b) Add an amount equal to the total value of the location adjustments computed pursuant to § 1049.75;

(c) Subtract an amount computed by multiplying the total hundredweight of producer milk included pursuant to paragraph (a) of this section by 5 cents;

(d) Add an amount equal to one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1049.60(f);

(f) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) Subtract for each month of April through July the amount obtained by multiplying the hundredweight of producer milk included in these computations by 20 cents. The amount so subtracted, and the interest subsequently earned thereon (less any money not available for crediting under this paragraph because of insufficient payment by a handler to the producer-settlement fund) shall be credited to the producer settlement fund and remain as an obligated amount until disbursed pursuant to paragraph (i) of this section;

(i) Add for the month of September one-fourth of the total money that has been credited to the producer-settlement fund pursuant to paragraph (h) of this section as of the eighth day of the following month. Similarly, for the months of October and November, add one-third and one-half, respectively, of the remainder that has been so credited. For the month of December, add the remainder of the money credited to the producer-settlement fund pursuant to paragraph (h) of this section;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(k) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1049.62 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 14th day after the end of each month the uniform price for such month.

PAYMENTS FOR MILK

§ 1049.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1049.71, 1049.76, 1049.77, and 1049.78 shall be deposited in such fund and from which shall be made all payments pursuant to §§ 1049.72, 1049.77, and 1049.78, except that any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1049.61(h) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1049.73 in accordance with the requirements of § 1049.61(i).

§ 1049.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1049.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1049.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1049.60(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 (a)(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.

§ 1049.72 Payments from the producer-settlement fund.

On or before the 16th 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 § 1049.71(a)(2) exceeds the amount computed pursuant to § 1049.71(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 become available.

§ 1049.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) On or before the last day of each month, for producer milk received during the first 15 days of the month at not less than the Class III price for the preceding month; and

(2) On or before the 18th day after the end of each month, for each hundredweight of producer milk received during such month, an amount computed at not less than the uniform price as adjusted pursuant to §§ 1049.74, 1049.75 and 1049.86, less any payment made pursuant to paragraph (a)(1) of this section. If by such date the handler has not received full payment from the market administrator pursuant to § 1049.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) Each handler shall make payment to the cooperative association for producer milk which it caused to be delivered to such handler, if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk, as follows:

(1) On or before the 26th day of each month for producer milk received during the first 15 days of the month; and

(2) On or before the 16th day after the end of each month for milk received during such month.

(c) Each handler shall pay to each cooperative association, on or before the 10th day of the following month, for milk the handler receives during the month from a pool plant operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1049.74, that are applicable at the location of the handler's pool plant.

(d) In making payments for producer milk pursuant to this section, each handler shall furnish each producer or cooperative association from whom he has received milk a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month and identity of the producer;

(2) The daily and total pounds and the average butterfat content of producer milk;

(3) The minimum rate or rates at which payment to the producer is required pursuant to 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 or cooperative association.

§ 1049.74 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.

§ 1049.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received or which is deemed to have been received at a pool plant shall be reduced according to the location of the pool plant at the rates set forth in § 1049.52(a); and

(b) For purposes of computations pursuant to §§ 1049.71 and 1049.72 the weighted average price shall be adjusted at the rates set forth in § 1049.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price plus 5 cents shall not be less than the Class III price.

§ 1049.76 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 §§ 1049.30(b) and 1049.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1049.60 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 subparagraph (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 § 1049.60 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 § 1049.60 for such handler shall include, in lieu of the value of other source milk specified in § 1049.60(f) less the value of such other source milk specified in § 1049.71(a)(2)(ii), a value of milk determined pursuant to § 1049.60 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 § 1049.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1049.30(b) and 1049.31(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 § 1049.60 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 § 1049.74, 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 § 1049.74, 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.

§ 1049.77 Adjustment of accounts.

Whenever verification by the market administrator of reports or payments of any handler discloses errors resulting in money due (a) the market administrator from such handler (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made not later than the date for making payment next following such disclosure.

§ 1049.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to § 1049.71, 1049.76, 1049.77(a), 1049.78, 1049.85, or 1049.86(a) shall be increased three-fourths of 1 percent on the sixth day following the date such obligation is due and on the same day of each succeeding month until such obligation is paid.

Administrative Assessment and Marketing Service Deduction

§ 1049.85 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 farm production;

(b) Other source milk allocated to Class I pursuant to § 1049.44(a)(7) and (11) and the corresponding steps of § 1049.44(b), except such other source milk that is excluded from the computations pursuant to § 1049.60(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 § 1049.76(a)(2).

§ 1049.86 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 § 1049.73 shall deduct 5 cents per hundredweight or such lesser amount as the Secretary may prescribe with respect to producer milk received by such handler (except such handler's own farm production) during the month, and shall pay such deductions to the market administrator not later than the 15th day after the end of the month. Such money shall be used by the market administrator to verify or establish weights, samples, and tests of producer milk and to provide producers with market information. Such services shall be performed by the market administrator or by an agent engaged by and responsible to him.

(b) In the case of producers for whom a cooperative association is performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make, in lieu of the deductions specified in paragraph (a) of this section, such deductions as are authorized by such producers and, on or before the 15th day after the end of each month, pay over such deductions to the association rendering such services.

Advertising and Promotion Program

§ 1049.110 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 § 1049.121(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.

§ 1049.111 Composition of the Agency.

Each cooperative association or combination of cooperative associations as provided for under § 1049.113(b) with 3 percent or more of the total participating producers (producers who have not requested refunds for the most recent quarter) is authorized one Agency representative plus one additional Agency representative for each additional full 10 percent of the participating member producers it represents. Cooperative associations with less than 3 percent of the total participating producers that have elected not to combine pursuant to § 1049.113(b), and participating producers who are not members of cooperatives are authorized to select from such group, in total, one Agency representative for the first full 3 percent plus one additional Agency representative for each additional full 10 percent that such producers constitute of the total participating producers. For the purpose of the Agency's initial organization, all persons defined as producers shall be considered as participating producers.

§ 1049.112 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.

§ 1049.113 Selection of Agency members.

The selection of Agency members shall be made pursuant to paragraphs (a), (b), and (c) of this section. Each per-

son selected shall qualify by filing with the market administrator a written acceptance promptly after being notified of such selection.

(a) Each cooperative association authorized one or more respresentatives 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 3 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 § 1049.111 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 3 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. 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.

§ 1049.114 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, unless the Agency determines that more than a simple majority shall be required.

§ 1049.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions within the scope of Agency authority pursuant to § 1049.110.

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the 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 §§ 1049.110 and 1049.117.

§ 1049.116 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 §§ 1049.110 and 1049.117;

(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.

§ 1049.117 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.

§ 1049.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1049.121(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.

§ 1049.119 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.

§ 1049.120 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.

§ 1049.121 Duties of the market administrator.

Except as specified in § 1049.116, 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 § 1049.113(c);

(b) Set aside the amounts subtracted under § 1049.61(c) 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 § 1049.61(c).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1049.120. 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 § 1049.61(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 (§§ 1049.110 through 1049.122).

(d) Audit the Agency's records of receipts and disbursements.

§ 1049.122 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 § 1049.70.

PART 1050—MILK IN CENTRAL ILLINOIS MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY: The provisions of this Part 1050 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1050.1 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

§ 1050.2 Central Illinois marketing area.

The "Central Illinois marketing area", hereinafter called the "marketing area", means all the territory within the following counties, all of which are in the State of Illinois, together with all municipal corporations therein and all institutions owned or operated by the Federal, State, county, or municipal governments located wholly or partially within such counties:

ZONE I

Cass.	McDonough.
Ford.	Peoria.
Fulton.	Stark.
Knox.	Tazewell.
Livingston.	Warren.
Marshall.	Woodford.
Mason.	

ZONE II

Bureau.	Kankakee.
Grundy.	La Salle.
Iroquois.	Putnam.

§ 1050.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a pool plant or a nonpool plant.

§ 1050.4 [Reserved]

§ 1050.5 Distributing plant.

"Distributing plant" means any plant at which fluid milk products are processed and packaged and from which there is route disposition of Grade A fluid milk products in the marketing area during the month.

§ 1050.6 Supply plant.

"Supply plant" means any plant at which Grade A milk is received from dairy farmers and from which fluid milk products are moved to a distributing plant.

§ 1050.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means a plant specified in paragraph (a), (b), or (c) of this section. For purposes of determining pool plant status pursuant to this section, Grade A receipts from dairy farmers shall include all quantities of milk diverted pursuant to § 1050.13 (b) and (c) by an operator of a pool plant.

(a) A distributing plant from which during the month there is:

(1) Route disposition of fluid milk products, except filled milk, in the marketing area equal to 10 percent or more of its Grade A receipts from dairy farmers and handlers described in § 1050.9(c), or from which there is an average of not less than 7,000 pounds per day of route disposition, except filled milk, in the marketing area; and

(2) Total route disposition of fluid milk products, except filled milk, equal to 50 percent or more of its Grade A receipts from dairy farmers and handlers described in § 1050.9(c) during the months of August through February and 40 percent during all other months.

(b) A supply plant from which during the month an amount equal to 50 percent or more of its receipts of Grade A milk from diary farmers and handlers described in § 1050.9(c) is moved to and received at a pool plant(s) described in paragraph (a) of this section which have at least 5 percent Class I use (not in-

cluding filled milk) of the total of such supply plant milk and producer milk receipts in the months of August through February and 40 percent in other months.

(c) Any supply plant which qualified pursuant to paragraph (b) of this section in each of the immediately preceding months of September through January shall be a pool plant for the months of February through August unless the operator of such plant notifies the market administrator in writing before the first day of any such month of his intention to withdraw such plant as a pool plant, in which case such plant shall thereafter be a nonpool plant until it again meets the shipping requirements set forth in paragraph (b) of this section.

(d) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area regulated by the other order than in the Central Illinois marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this subparagraph;

(3) A distributing plant qualified pursuant to paragraph (a) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the Central Illinois marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater route disposition in the marketing area of the Central Illinois order; and

(4) Any plant qualified pursuant to paragraph (c) of this section for any portion of the period of Februry through August, inclusive, that the milk at such plant is subject to the classification and pricing provisions of another order issued pursuant to the Act.

§ 1050.8 Nonpool plant.

"Nonpool plant" means any milk or filled milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) "Other order plant" means a plant that is fully subject to the pricing and pooling provisions of another order issued pursuant to the Act.

(b) "Producer-handler plant" means a plant operated by a producer-handler as defined in any order (including this part) issued pursuant to the Act.

(c) "Partially regulated distributing plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which there is route disposition in consumer-type packages or dispenser units in the marketing area during the month.

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant nor a producer-handler plant, from which fluid milk products are shipped to a pool plant.

§ 1050.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) Any cooperative association with respect to milk of its members diverted for its account pursuant to § 1050.13;

(c) Any cooperative association with respect to the milk of its 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. The cooperative association, prior to the 1st day of the month of delivery, shall notify in writing the market administrator and the handler to whose plant the milk is delivered, that it will be the handler for the milk. For purposes of location adjustments to producers, milk so delivered shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant to which it is delivered;

(d) Any person in his capacity as the operator of a partially regulated distributing plant;

(e) A producer-handler;

(f) Any person who operates an other order plant described in § 1050.7(d); and

(g) Any person in his capacity as the operator of an unregulated supply plant.

§ 1050.10 Producer-handler.

"Producer-handler" means a person who:

(a) Operates a distributing plant and processes milk from his own farm production and who disposes of all or a portion of such milk as route disposition in the marketing area but who receives no milk from other dairy farmers or fluid milk products from nonpool plants: *Provided*, That the skim milk and butterfat disposed of in the form of fluid milk products designated as Class I milk pursuant to § 1050.40(a) does not exceed the skim milk and butterfat, respectively, in the form of milk from his own farm production, and in the form of fluid milk products from pool plants of other handlers, allowing for inventory derived from such sources; and

(b) Assumes as his personal enterprise and risk the processing and distributing of fluid milk products and the maintenance, care and management of dairy animals and other resources necessary to produce his own farm milk production.

§ 1050.11 [Reserved]

§ 1050.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority, and whose milk is (1) received at a pool plant, or (2) diverted pursuant to § 1050.13.

(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 § 1050.44(a)(8)(iii) and the corresponding step of § 1050.44(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.

§ 1050.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk of any producer which is:

(a) Received during the month:

(1) At a pool plant from producers or from a handler described in § 1050.9(c); and

(2) By a handler described in § 1050.9(c) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1050.41(c) or Class I shrinkage;

(b) 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; or

(c) Diverted from a pool plant to a nonpool plant that is not a producer-handler plant, 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 (c)(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;

(3) Subject to the conditions set forth in paragraph (c)(4) of this section, during the months of August through April a cooperative association may divert the milk of its individual member 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 diverted does not exceed 35 percent of its member milk physically received at pool plants 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 (c)(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 (c)(2) of this section; and

(5) When milk is diverted in excess of the limits specified in paragraph (c)(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.

§ 1050.14 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 § 1050.40(b)(1) from any source other than producers, handlers described in § 1050.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1050.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1050.40(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 § 1050.40(b)(1)) for which the handler fails to establish a disposition.

§ 1050.15 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 § 1050.40 (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.

§ 1050.16 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.

§ 1050.17 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).

§ 1050.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

§ 1050.19 Reload point.

"Reload point" means a location at which facilities approved by a duly constituted health authority, only for the transfer of milk from one tank truck to another and for the washing of tank trucks and at which milk moved from the farm in a tank truck is commingled in a tank truck with milk from other tank trucks before entering a milk plant: *Provided*, That reloading facilities on the premises of a plant having equipment for the receiving, cooling, storing and processing of milk, which equipment is in current use during the month, shall be considered a supply plant rather than a reload point.

HANDLER REPORTS

§ 1050.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1050.9(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 § 1050.40(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 § 1050.9(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.

§ 1050.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1050.9 (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 § 1050.76 (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.

§ 1050.32 Other reports.

(a) Not later than the 7th day after the end of the month, each handler operating a pool plant shall report to the market administrator, for each of his pool plants separately, the name and address of each producer from whom milk was received during the month with statements showing dates on which such producer started shipping and the date on which milk shipments stopped.

(b) In addition to the reports required pursuant to §§ 1050.30 and 1050.31 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

§ 1050.40 Classes of utilization.

Except as provided in § 1050.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1050.30 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 § 1050.15; and

(6) In shrinkage assigned pursuant to § 1050.41(a) to the receipts specified in § 1050.41(a) (2) and in shrinkage specified in § 1050.41 (b) and (c).

§ 1050.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1050.30, 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 bulk fluid form;

(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 § 1050.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1050.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1050.9 (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.

§ 1050.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid

milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1050.44(a)(12) and the corresponding step of § 1050.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1050.44(a)(7) or the corresponding step of § 1050.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1050.44(a)(11) or (12) or the corresponding steps of § 1050.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 § 1050.40.

(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 § 1050.30 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.

§ 1050.43 General classification rules.

In determining the classification of producer milk pursuant to § 1050.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1050.30 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 § 1050.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1050.40, 1050.41, and 1050.42;

(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 § 1050.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1050.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1050.9(a) for each of his pool plants separately and of each handler described in § 1050.9 (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 § 1050.41 (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 § 1050.40(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 § 1050.40(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 § 1050.40(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 § 1050.40(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 § 1050.40(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 § 1050.45(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 § 1050.42(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 § 1050.44(a) (14) and the corresponding step of § 1050.44(b).

§ 1050.45 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 § 1050.44(a) (12) and the corresponding step of § 1050.44(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 § 1050.44 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 class utilization of producer milk received by each handler from a cooperative association or from members of the association. For the purpose of this report, the milk caused to be so delivered by an association shall be prorated to each class in the proportion that the total receipts of milk received from producers by such handler were used in each class.

CLASS PRICES

§ 1050.50 Class prices.

Subject to the provisions of § 1050.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.39.

(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.

§ 1050.51 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.

§ 1050.52 Plant location adjustments for handlers.

(a) The Class I price for producer milk at a plant that is outside Zone I shall be adjusted as follows:

(1) At a plant in Zone II or in the Illinois counties of Henry and Mercer, the Class I price shall be decreased 5 cents; and

(2) At a plant located outside the State of Illinois, or in the State of Illinois but north of the northernmost boundaries of the counties of Mercer, Henry, Bureau, La Salle, Grundy, and Kankakee the Class I price shall be reduced 7.5 cents if such plant is 50 or more miles by the shortest highway distance, as determined by the market administrator from the City Hall in Peoria, Ill., plus an additional 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 60 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposi-

tion at the transferee-plant only to the extent that 105 percent of Class I disposition at the transferee-plant exceeds the sum of receipts at such plant from producers and handlers described in § 1050.9 (c), and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the 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.

§ 1050.53 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.

§ 1050.54 Equivalent price.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1050.60 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 § 1050.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1050.44 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 § 1050.44(a)(14) and the corresponding step of § 1050.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1050.74, 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 § 1050.44(a)(9) and the corresponding step of § 1050.44(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 § 1050.44(a)(7) (i) through (iv) and the corresponding step of § 1050.44 (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 § 1050.44(a)(7) (v) and (vi) and the corresponding step of § 1050.44(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 § 1050.44(a)(11) and the corresponding step of § 1050.44(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 § 1050.40 (b) that was in the plant's inventory at the end of the preceding month and classified as Class I milk.

§ 1050.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content which is received from producers at plants at which no location adjustment pursuant to § 1050.52 is applicable as follows:

(a) Combine into one total the values computed pursuant to § 1050.60 for all handlers who filed the reports prescribed by § 1050.30 for the month and who made the payments pursuant to § 1050.71 for the preceding month;

(b) Add an amount equal to the sum of the location and zone adjustments computed pursuant to § 1050.75;

(c) Add an amount equal to 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 § 1050.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted averaged price;

(g) Subtract in the case of milk delivered during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of producer milk specified in paragraph (d)(1) of this section;

(h) Add in the case of milk delivered during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (g) of this section;

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) 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.

§ 1050.62 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

§ 1050.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund," which shall function as follows:

(a) All payments made by handlers pursuant to §§ 1050.71, 1050.76, and 1050.77 shall be deposited in such fund and from which shall be made all payments pursuant to §§ 1050.72 and 1050.77: *Provided*, That any payments due to any handler shall be offset by any payments due from such handler; and

(b) All amounts subtracted pursuant to § 1050.61(g) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1050.73 in accordance with the requirements of § 1050.61(h).

§ 1050.71 Payments to the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in 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 § 1050.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1050.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1050.60(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.

§ 1050.72 Payments from the producer-settlement fund.

On or before the 17th day after the end of each month the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1050.71(a)(2) exceeds the amount computed pursuant to § 1050.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler.

§ 1050.73 Payments to producers and to cooperative associations.

(a) On or before the 20th day of the following month, each handler shall make payment to each producer for milk received from such producer during such month:

(1) An amount equal to not less than the uniform price, as adjusted pursuant to §§ 1050.74 and 1050.75, multiplied by the hundredweight of milk received from such producer during the month, subject to the following adjustments:

(i) Less deductions for marketing services made pursuant to § 1050.86;

(ii) Plus or minus adjustments for errors made in previous payments made to such producer; and

(iii) 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 § 1050.72 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) Payments required in paragraph (a) of this section shall be made to a cooperative association, qualified under § 1050.18 or its duly authorized agent, 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 18th day of the following month, pay the cooperative association for milk received during the month from the producer-members of such association as determined by the market administrator an amount equal to not less than the amount due such producer-members as determined pursuant to paragraph (a) of this section, 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;

(c) On or before the 18th day after the end of each month, each handler shall pay to each cooperative association for milk the handler received at his pool plant from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1050.74, that are applicable at the location of the handler's pool plant;

(d) On or before the 18th day of the following month, each handler, in his capacity as operator of a pool plant, who receives milk for which a cooperative association is the handler pursuant to § 1050.9(c) shall pay such cooperative association for such milk at the uniform price as adjusted pursuant to §§ 1050.74 and 1050.75; and

(e) Each handler who received 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 on or before the 7th day after the end of the month to such cooperative association for each such producer on forms approved by the market administrator:

(1) The total pounds of milk received from each producer together with the butterfat content of such milk; and

(2) The amount or rate and nature of any deductions authorized by a cooperative association.

§ 1050.74 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.

§ 1050.75 Plant location adjustments for producers and on nonpool milk.

(a) In making payments pursuant to § 1050.73, the uniform price per hundredweight for producer milk received at a plant outside Zone I shall be adjusted according to the location of the plant at the rates set forth in § 1050.52.

(b) For purposes of computation pursuant to §§ 1050.71 and 1050.72, the weighted average price shall be adjusted in the same manner as the uniform price is adjusted pursuant to paragraph (a) of this section for the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1050.76 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 §§ 1050.30(b) and 1050.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1050.60 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 § 1050.60 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 § 1050.60 for such handler shall include, in lieu of the value of other source milk specified in § 1050.60(f) less the value of such other source milk specified in § 1050.71(a)(2)(ii), a value of milk determined pursuant to § 1050.60 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 § 1050.7 (b) and (c), subject to the following conditions:

(*a*) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1050.30 (b) and 1050.31(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 § 1050.60 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 § 1050.74, 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 § 1050.74, 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.

§ 1050.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts discloses errors resulting in moneys due (a) the market administrator from such handler, (b) such handler from the market administrator, or (c) any producer or cooperative association from such handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which such error occurred.

§ 1050.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1050.71, 1050.85, or 1050.86 shall be increased one-half of 1 percent for each month or portion thereof that such payment is overdue.

Administrative Assessment and Marketing Service Deduction

§ 1050.85 Assessment for order administration.

As his pro rata share of the expense of administration of the order, each handler (excluding a handler described in § 1050.9(c) with respect to milk delivered to pool plants) shall pay to the market administrator on or before the 20th 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 § 1050.44(a) (7) and (11) and the corresponding steps of § 1050.44(b), except such other source milk that is excluded from the computations pursuant to § 1050.60 (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 § 1050.76(a)(2).

§ 1050.86 Deduction for marketing services.

(a) *Deduction for marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers, pursuant to § 1050.73, shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to all milk received by such handler from producers (excluding such handler's own production) during the month, and shall pay such deductions to the market administrator on or before the 20th day after the end of such month. Such monies shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide them 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 association.* In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section each handler, in lieu of the deduction specified in paragraph (a) of this section, shall make such marketing service deductions as are authorized by producer-members, and pay the money so deducted to the cooperative association on or before the 20th day after the end of the month.

Advertising and Promotion Program

§ 1050.121 Duties of the market administrator.

Except as specified in § 1050.116, 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 § 1050.113(c);

(b) Set aside the amounts subtracted under § 1050.71(c-1) 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 § 1050.71(c–1).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1050.120. 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 § 1050.71(c–1) 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 (§§ 1050.110 through 1050.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1050.122 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 § 1050.70.

(NOTE: An order terminating certain provisions in Order No. 50, 38 FR 15728, June 15, 1973 reads in part as follows:

"It is hereby determined that termination of the following provisions * * * is favored by * * * producers * * * Sections 1050.110 through 1050.122 in their entirety. * * *

It is therefore ordered, That the aforesaid provisions of the order are hereby terminated. * * * *Effective dates* * * * Midnight, September 30, 1973, for §§ 1050.121 and 1050.122.")

PART 1062—MILK IN ST. LOUIS-OZARKS MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY.—The provisions of this Part 1062 issued under secs. 1–19, 48 Stat. 81, as amended; (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1062.1 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

§ 1062.2 St. Louis-Ozarks marketing area.

"St. Louis-Ozarks marketing area", hereinafter called the marketing area, means all the territory within the designated military reservations, the corporate limits of the cities and the counties enumerated below:

ZONE I

(MISSOURI COUNTIES)

Barry.	Ozark.
Christian.	St. Charles.
Crawford.	St. Louis.
Douglas.	Stone.
Franklin.	Taney.
Greene.	Warren.
Howell.	Webster.
Jefferson.	Washington.
Laclede.	Wright.
Lawrence.	

and the city of St. Louis, Mo., Fort Leonard Wood Military Reservation in Missouri, and the territory within Scott Military Reservation, East St. Louis, Centerville, Canteen, and Stites Townships, and the city of Belleville, all in St. Clair County, Ill.

ZONE II

(MISSOURI COUNTIES)

Cape Girardeau.	Perry.
Bollinger.	Ste. Genevieve.
St. Francois.	

ZONE III

(ARKANSAS COUNTIES)

Benton.	Marion.
Boone.	Washington.

§ 1062.3 Route disposition.

"Route disposition" means any delivery of a fluid milk product classified as Class I milk to a retail or wholesale outlet (including any delivery through a vendor, or a sale in packaged form from a plant or plant store) except a delivery to another plant.

§ 1062.4 [Reserved]

§ 1062.5 Distributing plant.

"Distributing plant" means a plant which is approved by a duly constituted health authority for the processing or packaging of Grade A milk and from which during the month route disposition is made in the marketing area.

§ 1062.6 Supply plant.

"Supply plant" means a plant which qualifies as a pool plant pursuant to § 1062.7(c) or from which fluid milk products, acceptable to a duly constituted health authority for distribution under a Grade A label, are shipped during the month to and physically received at a distributing plant.

§ 1062.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) Any distributing plant which:

(1) Has during the month route disposition and disposition of packaged fluid milk products to pool distributing plants, excluding in either case filled milk, which, after subtraction of the quantity of packaged fluid milk products, except filled milk, received from other pool plants, is equal to at least 50 percent of such plant's total receipts of Grade A fluid milk products from dairy farmers (including milk diverted by the plant operator), supply plants and handlers described in § 1062.9(c), exclusive of packaged fluid milk products, except filled milk, received from other pool

plants, and has route disposition in the marketing area in an amount equal to 10 percent or more of such receipts or an average of not less than 7,000 pounds per day, whichever is less; or

(2) Qualified as a pool plant in the immediately preceding month on the basis of the performance standards described in paragraph (a)(1) of this section.

(b) Any supply plant from which during the month 50 percent or more of the Grade A milk received from dairy farmers and handlers described in § 1062.9(c) is shipped to a plant(s) described in paragraph (a) of this section. Any supply plant which has shipped to a plant(s) described in paragraph (a) of this section the required percentages of its receipts during each of the months of September through February shall be designated a pool plant in each of the following months of March through August unless the plant operator requests the market administrator in writing that such plant not be a pool plant. Such nonpool plant status shall be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of shipments.

(c) Any plant which is operated by or under contract to a cooperative association, or a federation of cooperatives, if:

(1) the operator of such plant(s) requests pool status, and 50 percent or more of all the Grade A milk from farms of the member producers of such cooperative or federation including milk delivered by it as a handler described in § 1062.9(c) has been shipped to and physically received at pool distributing plants during the current month or the previous 12-month period ending with the current month, either directly from producer member farms or by transfer from such association plant(s);

(2) Such a plant does not qualify during the month as a "pool plant" under another market pool order issued pursuant to the Act by making shipments of milk to plants which qualify as "pool plants" under such other order; or

(3) Such plant meets the requirements of paragraph (c)(2) of this section and met the requirements of paragraph (c)(1) of this section in the preceding month.

(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 which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in such other Federal order marketing area is greater than 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 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 regulated under such other order;

(3) A distributing plant which meets the pooling requirements of another Federal order and from which route disposition, except filled milk, during the month in this marketing area is greater than in such other Federal order marketing area but which plant is, nevertheless, fully regulated under such other Federal order; and

(4) A supply plant meeting the requirements of paragraph (b) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made during the month to plants regulated under such other order than are made to plants regulated under this part, except during the months of March through August if such plant retains automatic pooling status under this part.

§ 1062.8 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 producer-handler plant, nor a governmental agency plant, which has route disposition of fluid milk products in consumer-type packages or dispenser units in the marketing area during the month;

(d) "Unregulated supply plant" means a nonpool plant that is neither an other order plant, a producer-handler plant, nor a governmental agency plant, from which fluid milk products are shipped to a pool plant; and

(e) "Governmental agency plant" means a plant operated by a government agency.

§ 1062.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any cooperative association with respect to milk of its member producers which is diverted from a pool plant of another handler pursuant to § 1062.13 for the account of such association;

(c) Any cooperative association with respect to producer milk transferred from the producer's farm tank to a tank truck owned and operated by or under contract to such association for delivery to a pool plant if prior to delivery the operator of the pool plant gives notice in writing to both the market administrator and the association of his intention to purchase such milk on a basis of weights and butterfat tests other than as determined from farm tank measurements and farm tank samples;

(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 § 1062.7(d).

§ 1062.10 Producer-handler.

"Producer-handler" means any person who is both a dairy farmer and the operator of a distributing plant, and who meets the qualifications specified in paragraphs (a) and (b) of this section:

(a) Receipts of fluid milk products at his plant are solely milk of his own production, fluid milk products from pool plants of other handlers, packaged fluid milk products from other order plants, and receipts of nonfluid milk products are used only to fortify fluid milk products; and

(b) The maintenance, care and management of the dairy animals and other resources necessary to produce the milk and the processing, packaging and distribution of the milk are the personal enterprise and the personal risk of such person.

§ 1062.11 [Reserved]

§ 1062.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk in compliance with the Grade A inspection requirements of a duly constituted health authority and whose milk is:

(1) Received at a pool plant; or

(2) Diverted as producer milk pursuant to § 1062.13.

(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 § 1062.44(a)(8)(iii) and the corresponding step of § 1062.44(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.

§ 1062.13 Producer milk.

"Producer milk" means milk produced by producers which is received and accounted for as follows:

(a) By the operator of a pool plant (including a cooperative association) with respect to milk:

(1) Received at the pool plant from producers or from a handler described in § 1062.9(c); and

(2) Diverted by the operator of the pool plant, subject to the conditions of paragraph (c) of this section;

(b) By a cooperative association with respect to milk:

(1) Which it received from producers as a handler described in § 1062.9(b), subject to the conditions of paragraph (c) of this section; and

(2) Which it received from producers as a handler described in § 1062.9(c) and which:

(i) Is delivered to a pool plant of another handler; or

(ii) Is not so delivered and constitutes shrinkage pursuant to § 1062.41(c) or Class I shrinkage; and

(c) Milk may be diverted by the operator of a pool plant or by a cooperative association pursuant to the following conditions with respect to each producer:

(1) By the operator of a pool plant to another pool plant(s) for not more days of production of producer milk than is physically received at the pool plant from which diverted.

(2) By the operator of a pool plant or by a handler described in § 1062.9(b) to a nonpool plant that is not a producer-handler plant on any day during each of the months of March through August and for not more days of production of producer milk than is physically received at pool plants during each of the months of September through February.

(3) For pricing purposes, milk diverted pursuant to paragraph (c)(2) of this section to a plant located more than 120 miles from the city hall in St. Louis or the city hall in Springfield, Mo., whichever is nearer (by the shortest highway distance as determined by the market administrator using the most current issue of the Household Carriers Guide) or milk diverted pursuant to paragraph (c)(1) of this section, shall be deemed to be received by the diverting handler at the location of the plant to which diverted.

(4) For pricing purposes, milk diverted pursuant to paragraph (c)(2) or (3) of this section to a plant located 120 miles or less from the city hall in St. Louis or the city hall in Springfield, Mo., whichever is nearer (by the shortest highway distance as determined by the market administrator using the most current issue of the Household Carriers Guide), shall be deemed to be received at the location of the plant from which diverted.

§ 1062.14 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 § 1062.40(b)(1) from any source other than producers, handlers described in § 1062.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1062.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1062.40 (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 § 1062.40(b)(1)) for which the handler fails to establish a disposition.

§ 1062.15 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 § 1062.40 (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.

§ 1062.16 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.

§ 1062.17 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).

§ 1062.18 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To be engaged in making collective sales, or marketing milk or its products for its members.

Handler Reports

§ 1062.30 Reports of receipts and utilization.

On or before the 7th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler, with respect to each of his pool plants, shall report the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the handler from the pool plant to other plants;

(2) Receipts of milk from handlers described in § 1062.9(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 § 1062.40 (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 § 1062.9 (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.

§ 1062.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1062.9 (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 § 1062.76 (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.

§ 1062.32 Other reports.

In addition to the reports required pursuant to §§ 1062.30 and 1062.31, 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

§ 1062.40 Classes of utilization.

Except as provided in § 1062.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1062.30 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 § 1062.15; and

(6) In shrinkage assigned pursuant to § 1062.41(a) to the receipts specified in § 1062.41(a)(2) and in shrinkage specified in § 1062.41 (b) and (c).

§ 1062.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1062.30, 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 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 § 1062.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1062.9(c) and in milk diverted to such plant from another pool plant, except that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be 2 percent;

(3) Plus 0.5 percent of the skim milk and butterfat, respectively, in producer milk diverted from such plant by the plant operator to another plant, except that if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage under this subparagraph shall be zero;

(4) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other pool plants;

(5) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received by transfer from other order plants, excluding the quantity for which Class II or Class III classification is requested by the operators of both plants;

(6) Plus 1.5 percent of the skim milk and butterfat, respectively, in bulk fluid milk products received from unregulated supply plants, excluding the quantity for which Class II or Class III classification is requested by the handler; and

(7) Less 1.5 percent of the skim milk and butterfat, respectively, in bulk milk transferred to other plants that is not in excess of the respective amounts of skim milk and butterfat to which percentages are applied in paragraph (b) (1), (2), (4), (5), and (6) of this section; and

(c) The quantity of skim milk and butterfat, respectively, in shrinkage of milk from producers for which a cooperative association is the handler pursuant to § 1062.9 (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.

§ 1062.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless the operators of both plants request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divertee-plant after the computations pursuant to § 1062.44(a)(12) and the corresponding step of § 1062.44(b);

(2) If the transferor-plant or divertor-plant received during the month other source milk to be allocated pursuant to § 1062.44(a)(7) or the corresponding step of § 1062.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divertor-handler received during the month other source milk to be allocated pursuant to § 1062.44(a) (11) or (12) or the corresponding steps of § 1062.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the transferee-plant or divertee-plant.

(b) *Transfers and diversions to other order plants.* Skim milk or butterfat

transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to an other order plant shall be classified in the following manner. Such classification shall apply only to the skim milk or butterfat that is in excess of any receipts at the pool plant from the other order plant of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in 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 an 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 § 1062.40.

(c) *Transfers to producer-handlers and transfers and diversions to governmental agency plants.* Skim milk or butterfat in the following forms that is transferred from a pool plant to a producer-handler under this or any other Federal order or transferred or diverted from a pool plant to 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 buterfat, 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 divertor-handler claims such classification in his report of receipts and utilization filed pursuant to § 1062.30 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.

§ 1062.43 General classification rules.

In determining the classification of producer milk pursuant to § 1062.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1062.30 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 § 1062.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1062.40, 1062.41, and 1062.42;

(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 1062.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1062.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1062.9(a) for each of his pool plants separately and of each handler described in § 1062.9 (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 § 1062.41(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 § 1062.40(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 § 1062.40(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 § 1062.40(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 § 1062.40(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 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 § 1062.40(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 § 1062.45(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; and

(iv) The quantity of skim milk subtracted from each class pursuant to this subparagraph shall be assigned pro rata to the receipts from other order plants under market pool orders and under handler pool orders;

(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 § 1062.42(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 § 1062.44(a) (14) and the corresponding step of § 1062.44(b).

§ 1062.45 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 § 1062.44(a) (12) and the corresponding step of § 1062.44(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 § 1062.44 on the basis of such report, and, thereafter, any change in such allocation required to correct errors disclosed in the verification of such report. In the case of milk received from an other order market pool plant the classification of such milk shall be the quantities assigned to Class I milk, Class II milk, and Class III milk pursuant to § 1062.44. In the case of milk received from an other order handler pool plant, the market administrator shall report the allocation of skim milk and butterfat in the same percentage as the market-wide estimate for all handlers pursuant to paragraph (a) of this section.

(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 of each month report to each cooperative association, which so requests, the percentage utilization of milk received from producers or from handlers described in § 1062.9(c) in each class by each handler who in the previous month received milk from members of such cooperative association.

Class Prices

§ 1062.50 Class prices.

Subject to the provisions of § 1062.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.60.

(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.

§ 1062.51 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.

§ 1062.52 Plant location adjustments for handlers.

For milk received from producers or a handler described in § 1062.9(c) at a pool plant and which is classified as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (f) of this section, the price at such pool plant located:

(a) In Zone I of the marketing area, shall be the price computed pursuant to § 1062.50(a) except as provided in paragraph (d) of this section.

(b) In Zone II of the marketing area, shall be the Zone I price plus a location adjustment of 7 cents.

(c) In Zone III of the marketing area, shall be the Zone I price plus a location adjustment of 17 cents.

(d) In Zone A (the Missouri counties of Barry, Christian, Douglas, Green, Howell, Laclede, Lawrence, Ozark, Stone, Taney, Webster, Wright, and Texas), for any plant which does not dispose of fluid milk products in consumer-type packages and which is qualified as a pool plant pursuant to § 1062.7 (b) or (c) shall be the price pursuant to § 1062.50(a) less 27 cents.

(e) Outside the marketing area and Texas County, Mo., and more than 30 miles from the City Hall, St. Louis, Mo., or the city hall in Springfield, Mo., whichever is nearer, shall be the Class I price applicable in Zone I, less a location adjustment of 1.5 cents for each 10 miles or fraction thereof that such plant is located from the City Hall, St. Louis, Mo., or the city hall in Springfield, Mo., whichever is nearer (the distance to be by shortest hard-surfaced highway as determined by the market administrator).

(f) In the case of transfers between plants, location adjustment shall apply at the transferor-plant with respect to a quantity of the transfer calculated as follows: From total Class I milk utiliza-

tion at the transferee-plant subtract Class I milk assigned to receipts from other order plants and unregulated supply plants, and 95 percent of the receipts from producers and handlers described in § 1062.9(c), and assign the remaining Class I milk to receipts from other pool plants with plus location adjustment, then to receipts from plants with no location adjustment, and then in sequence to receipts from plants at which the smallest minus adjustments apply.

(g) The Class I price applicable to other source milk shall be adjusted at the rates set forth in paragraphs (a) through (e) of this section, except that the adjusted Class I price shall not be less than the Class III price.

§ 1062.53 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.

§ 1062.54 Equivalent price.

If for any reason a price quotation required by this order for computing class prices or for other purposes is not available in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

UNIFORM PRICE

§ 1062.60 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 § 1062.9(b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1062.44 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 § 1062.44(a)(14) and the corresponding step of § 1062.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1062.74, 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 § 1062.44 (a)(9) and the corresponding step of § 1062.44(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 § 1062.44(a)(7) (i) through (iv) and the corresponding step of § 1062.44(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 § 1062.44(a)(7) (v) and (vi) and the corresponding step of § 1062.44 (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 § 1062.44(a)(11) and the corresponding step of § 1062.44(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) Add the amounts obtained from multiplying the pounds of skim milk and butterfat in each class that were prorated to receipts of fluid milk products from handler pool other order plants pursuant to § 1062.44(a)(12)(iv) and the corresponding step of § 1062.44(b) by the respective class prices specified in § 1062.50 that are applicable at the location of the plant from which received.

§ 1062.61 Computation of uniform price (including weighted average price).

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1062.60 for all handlers who filed the reports prescribed by § 1062.30 for the month and who made the payments pursuant to §§ 1062.71 and 1062.73 for the preceding month;

(b) Deduct the amount of the plus adjustments and add the amount of the minus adjustments, which are applicable pursuant to § 1062.75;

(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 § 1062.60 (f) and (g);

(f) Subtract not less than four cents nor more than 5 cents per hundredweight. The result shall be the "weighted average price", and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(g) For the months specified in paragraphs (h) and (i) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (d) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (e)(2) of this section by the weighted average price;

(h) From the remainder subtract during each of the months of March and July an amount equal to 15 cents per hundredweight and during each of the months of April, May, and June an amount equal to 25 cents per hundredweight of the total amount of producer milk included in these computations. This amount shall be retained in the producer-settlement fund and disbursed according to the provisions of paragraph (i) of this section;

(i) Add during each of the months of September and December 20 percent and during each of the months of October and November 30 percent of the total amount subtracted pursuant to paragraph (h) of this section;

(j) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(k) Subtract not less than four cents nor more than five cents per hundredweight. The result shall be the "uniform price" for milk received from producers.

§ 1062.62 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

§ 1062.70 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 §§ 1062.71, 1062.76, and 1062.77 and from which he shall make all payments to handlers pursuant to §§ 1062.72 and 1062.77. The market administrator shall offset the payment due to a handler against payments due from such handler.

§ 1062.71 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 § 1032.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1062.75, of such handler's receipts of producer milk, excluding in the case of a handler de-

scribed in § 1062.9(c) milk it delivered to a pool plant; and

(ii) The value at the weighted average price applicable at the location of the plant from which received plus 5 cents of other source milk for which a value is computed pursuant to § 1062.60 (f) and (g) plus in the case of milk received from a handler pool market the amount of the location adjustment at the location of the plant from which received applied to the quantity of Class II and Class III milk reported pursuant to § 1062.45(b) which is in excess of the Class II and Class III milk pursuant to § 1062.60(g), except that for milk received from a handler pool market the value applicable pursuant to this subdivision shall not exceed the value for such quantity calculated pursuant to § 1062.60(g).

(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.

§ 1062.72 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 (for each pool plant, if applicable), by which the amount computed pursuant to § 1062.71(a)(2) exceeds the amount computed pursuant to § 1062.71(a)(1). The market administrator shall offset any payment due any handler against payments due from such handler pursuant to §§ 1062.71, 1062.77, 1062.85, and 1062.86. 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.

§ 1062.73 Payments to producers and to cooperative associations.

Each handler shall make payment as follows:

(a) On or before the 17th day after the end of the month during which the milk was received, to each producer for whom payment is not made pursuant to paragraph (c) of this section, at not less than the uniform price computed pursuant to § 1062.61 for such producer's deliveries of milk, as adjusted pursuant to §§ 1062.74 and 1062.75, and less the amount of the payment made pursuant to paragraph (b) of this section. If by such date such handler has not received full payment pursuant to § 1062.72, he may reduce his total payments uniformly to all producers by not more than the amount of the reduction in payment by the market administrator. He shall, however, complete such payments pursuant to this paragraph not later than the date for making such payments next following receipt of the balance from the market administrator:

(b) On or before the last day of each month, to each producer to whom payment is not made pursuant to paragraph (c) of this section and who is still delivering Grade A milk to such handler, a partial payment with respect to milk received from him during the first 15 days of such month computed at not less than the Class III price for the preceding month, without deduction for hauling;

(c) On or before the 14th day after the end of each month and on or before the 25th day of each month, in lieu of payments pursuant to paragraphs (a) and (b), respectively, of this section, to a cooperative association which so requests, for milk which is received from members, and for which such association is determined by the market administrator to be authorized to collect payment, an amount equal to the sum of the individual payments otherwise payable to such producers;

(d) Each handler who receives milk for which a cooperative association is the handler described in § 1062.9(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:

(1) A partial payment for milk received during the first 15 days of the month at not less than the amount prescribed in paragraph (b) of this section; and

(2) In making final settlement, the value of such milk at the uniform price as adjusted pursuant to §§ 1062.74 and 1062.75, less payment made pursuant to paragraph (d)(1) of this section;

(e) On or before the 14th day after the end of each month, each handler shall pay to each cooperative association for milk the handler receives from a pool plant(s) operated by such association, not less than the minimum prices for milk in each class, as adjusted by the butterfat differential specified in § 1062.74, that are applicable at the location of the handler's pool plant; and

(f) Each handler who receives milk from producers, payment for which is to be made to a cooperative association pursuant to paragraph (c) of this section, shall report to such cooperative association with respect to each such producer, on forms approved by the market administrator, as follows:

(1) On or before the 25th of the month, the total pounds of milk received during the first 15 days of the month;

(2) On or before the seventh day after the end of the month:

(i) The total pounds of milk and the average butterfat test of milk received from such producer during the month;

(ii) The amount or rate and nature of any deductions; and

(iii) The amount of any payments due such producer pursuant to § 1062.77(c) and (d).

§ 1062.74 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.

§ 1062.75 Plant location adjustments for producers and on nonpool milk.

(a) For producer milk received at pool plants located outside Zone I and more than 30 miles from the St. Louis city hall or the city hall in Springfield, Mo., whichever is nearer, there shall be added or deducted, as the case may be, an adjustment for each such plant for all milk at the rates specified in § 1062.52 (b), (c), and (e); and

(b) For purposes of computations pursuant to §§ 1062.71(a)(2)(ii) and 1062.72, the "weighted averaged price" shall be adjusted at the rates set forth in § 1062.52 (b), (c), and (e) applicable at the location of the nonpool plant(s) from which the milk was received, except that the adjusted weighted average price plus 5 cents shall not be less than the Class III price.

§ 1062.76 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 §§ 1062.30(b) and 1062.31(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 weighted average price plus 5 cents, both prices to be applicable at the location of the partially regulated distributing plant (except that the Class I price and the weighted average price plus 5 cents shall not be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1062.60 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 for which a value is computed for the handler operating the partially regulated distributing plant pursuant to § 1062.60 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 § 1062.60 for such handler shall include, in lieu of the value of other source milk specified in § 1062.60(f) less the value of such other source milk specified in § 1062.71(a)(2)(ii), a value of milk determined pursuant to § 1062.60 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 § 1062.7(b), subject to the following conditions:

(a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1062.30(b) and 1062.31(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 § 1062.60 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 § 1062.74, 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 § 1062.74, 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.

§ 1062.77 Adjustment of accounts.

(a) Whenever verification by the market administrator of reports or payments of any handler discloses error in payments to the producer-settlement fund made pursuant to § 1062.71, the market administrator shall promptly bill such handler for any unpaid amount and such handler shall within 30 days of the date of such billing, make payment to the market administrator of the amount so billed;

(b) Whenever verification discloses that payment is due from the market administrator to any handler pursuant to § 1062.72, the market administrator shall promptly make payment to such handler;

(c) Whenever verification by the market administrator of the payment by a handler to any producer discloses payment to such producer of an amount which is less than is required by this part, the handler shall make up such payment to the producer not later than the time of making payment to producers next following the disclosure; and

(d) Whenever verification by the market administrator of the payment by a handler to any producer discloses that solely through error in computation, payment to such producer was in an amount more than was required to be paid pursuant to § 1062.73, no handler shall be deemed to be in violation of § 1062.73 if he reduces his next payment to such producer following discovery of such error by not more than such overpayment.

§ 1062.78 Charges on overdue accounts.

Any unpaid obligation of a handler pursuant to §§ 1062.71, 1062.77(a), 1062.85, or 1062.86(a) shall be increased one-half of one percent on the first day of the month following after the date such obligation is due and on the first day of each succeeding month until such obligation is paid. Any remittance received by the market administrator postmarked prior to the first of the month shall be considered to have been received when postmarked.

Administrative Assessment and Marketing Service Deduction

§ 1062.85 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 2.5 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to:

(a) Producer milk (including that received from a handler described in § 1062.9(c)) and the handler's own production;

(b) Other source milk allocated to Class I pursuant to § 1062.44(a)(7) and (11) and the corresponding steps of § 1062.44(b), except such other source milk that is excluded from the computations pursuant to § 1062.60 (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 § 1062.76(a)(2).

§ 1062.86 Deduction for marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe, from the payments made to each producer other than himself pursuant to § 1062.73(a) with respect to all milk of such producer received by such handler during the month and shall pay

such deductions to the market administrator on or before the 15th day after the end of such month. Such money shall be used by the market administrator to verify weights, samples and tests of milk received from, and to provide market information to such producers. The market administrator may contract with a cooperative association or cooperative associations for the furnishing of the whole or any part of such services; and

(b) In the case of producers for whom a cooperative association is actually performing, as determined by the Secretary, the services set forth in paragraph (a) of this section, each handler shall make such deductions from the payments to be made directly to producers pursuant to § 1062.73(a) as are authorized by such producers, and on or before the 15th day after the end of each month, pay over such deductions to the association of which such producers are members. When requested by the cooperative association a statement shall be supplied the cooperative association showing for each producer for whom such deduction is made the amount of such deduction, the total delivery of milk, and, unless otherwise previously provided, the butterfat test.

ADVERTISING AND PROMOTION PROGRAM

§ 1062.110 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 § 1062.121(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.

§ 1062.111 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 § 1062.113(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 that have elected not to combine pursuant to § 1062.113(b), and participating producers who are not members of cooperatives are authorized to select from such group of participating producers, in total, pursuant to § 1062.113(c), 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 but not less than 1 percent of the total participating producers 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 § 1062.113(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, but not less than five.

§ 1062.112 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.

§ 1062.113 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 association 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 § 1062.111 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 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 producers as 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 participating producers eligible to vote. 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.

§ 1062.114 Agency operating procedure.

A majority of the Agency members shall constitute a quorum. Any action of the Agency shall require a majority of concurring votes of those present and voting, unless the Agency determines that more than a simple majority shall be required.

§ 1062.115 Powers of the Agency.

The Agency is empowered to:

(a) Administer the terms and provisions of the program within the scope of Agency authority pursuant to § 1062.110;

(b) Make rules and regulations to effectuate the purposes of Public Law 91-670;

(c) Recommend amendments to the Secretary; and

(d) With the 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 §§ 1062.110 and 1062.117.

§ 1062.116 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 §§ 1062.110 and 1062.117;

(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.

§ 1062.117 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.

§ 1062.118 Limitation of expenditures by the Agency.

(a) Not more than 5 percent of the funds received by the Agency pursuant to § 1062.121(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.

§ 1062.119 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.

§ 1062.120 Procedure for requesting refunds.

Any producer may apply for refund subject to the applicable conditions set forth in this section.

(a) Refund shall be accomplished only through application filed with, and in the manner 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 end of the ensuing calendar quarter 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 calendar quarter pursuant to § 1062.61(d): *Provided:* That, such eligibility for refund shall not apply to a dairy farmer who during the first 15 days of such December, March, June, or September, respectively, was a producer under an order where the same refund notification period applied and such dairy farmer did not appropriately submit refund application during such period. 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.

(d) A dairy farmer who, with respect to any calendar quarter, has appropriately filed request for refund of program assessments on his marketings of milk under another order that provides for an advertising and promotion program will be eligible (on the basis of his request filed under the other order) for refund with respect to his producer milk marketed under this order during such quarter for which deductions were made pursuant to § 1062.61(d).

§ 1062.121 Duties of the market administrator.

Except as specified in § 1062.116, 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 § 1062.113(c);

(b) Set aside the amounts subtracted under § 1062.61(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 § 1062.61(d).

(3) After the end of each calendar quarter, make a refund to each producer who has made application for such refund pursuant to § 1062.120. 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 § 1062.61(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 (§§ 1062.110 through 1062.122).

(d) Make necessary audits to establish that all agency funds are used only for authorized purposes.

§ 1062.122 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 § 1062.70.

PART 1099—MILK IN PADUCAH, KENTUCKY, MARKETING AREA

Subpart—Order Regulating Handling

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AUTHORITY.—The provisions of this Part 1099 issued under secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674).

GENERAL PROVISIONS

§ 1099.1 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

§ 1099.2 Paducah, Kentucky, marketing area.

The "Paducah, Ky., marketing area," hereinafter called the "marketing area," means all the territory within the counties listed below (except that portion of any of these counties contained in the Fort Campbell military reservation):

KENTUCKY COUNTIES

Ballard.	Hickman.
Caldwell.	Livingston.
Calloway.	Lyon.
Carlisle.	Marshall.
Christian.	McCracken.
Fulton.	Todd.
Graves.	Trigg.

MISSOURI COUNTIES

Mississippi.	Pemiscot.
New Madrid.	Scott.

§ 1099.3 Route disposition.

"Route disposition" means a delivery (including disposition from a plant store or from a distribution point and distribution by a vendor or vending machine) of any fluid milk product classified as Class I milk to a retail or wholesale outlet other than a milk or filled milk plant. A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets.

§ 1099.4 [Reserved]

§ 1095.5 Distributing plant.

"Distributing plant" means a plant in which milk is processed and packaged and from which there is route disposition during the month in the marketing area.

§ 1099.6 Supply plant.

"Supply plant" means a plant (except a distributing plant) which is qualified as a pool plant pursuant to the proviso in § 1099.7(b) or a plant from which milk or skim milk which may be distributed in the marketing area under a Grade A label is supplied during the month to a plant qualified pursuant to § 1099.7(a).

§ 1099.7 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 45 percent or more of its receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmer diverted by the plant operator), from handlers described in § 1099.9(c), and fluid milk products, except filled milk, from other plants during the month and from which there is route disposition, except filled milk, in the marketing area in an amount equal to a daily average of 3,000 pounds or more per day, or 10 percent or more of such receipts, whichever is less: *Provided*, That a plant which qualifies as a pool plant by complying with the foregoing requirements during any month shall be a pool plant during the following month.

(b) A distributing plant or supply plant from which the volume of milk and skim milk shipped to pool plants qualified pursuant to paragraph (a) of this section, or disposed of as route disposition (excluding filled milk) is equal to not less than 50 percent of the receipts of milk from dairy farmers producing milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority (including milk of such dairy farmers diverted by the plant operator), from handlers described in § 1099.9(c), and fluid milk products, except filled milk, received from other plants: *Provided*, That if a supply plant ships to pool plants qualified pursuant to paragraph (a) of this section milk and skim milk equal to at least 75 percent of its receipts of milk from such dairy farmers and handlers described in § 1099.9(c) in October and November and 35 percent of such milk in three additional months during the period from August through January, such plant shall, upon written application to the market administrator on or before the end of such period, be designated as a pool plant until the end of any month during the succeeding August through January period in which the milk of such plant is disposed of in such a way that it becomes impossible for the plant to reestablish its qualification under the term of this proviso, *And provided further*, That in the case of a supply plant operated by a cooperative association which supplies to other pool plants at least two-thirds of the producer milk of its producer members (including both the milk delivered directly from the farms of member producers and that delivered from the plant of the association) delivered to all plants during the current month or during the immediately preceding 12-month period, the milk which such association causes to be delivered to the pool plants of other handlers in its capacity as a handler described in § 1099.9 (c), shall be considered as having been received first at the plant of such cooperative association for the purpose of qualifying such plant as a pool plant pursuant to this paragraph.

(c) The term "pool plant" shall not apply to the following plants:

(1) A producer-handler plant;

(2) A distributing plant qualified pursuant to paragraph (a) or (b) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another order issued pursuant to the Act and from which a greater quantity of fluid milk products, except filled milk, is disposed of during the month from such plant as route disposition in the marketing area regulated by the other order than in the Paducah, Ky., marketing area: *Provided*, That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its qualifying as a pool plant under this order subject to the proviso of this subparagraph: *And provided further*, on the basis of a written application made either by the plant operator or by the cooperative association supplying milk to such operator's plant, at least 15 days prior to the date for which a determination of the Secretary is to be effective, the Secretary may determine that the route 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) or (b) of this section which meets the requirements of a fully regulated plant pursuant to the provisions of another Federal order and from which a greater quantity of Class I milk, except filled milk, is disposed of during the month as route disposition in the Paducah marketing area than in the other marketing area, and such other order which fully regulates the plant does not contain provisions to exempt the plant from regulation even though such plant has greater route disposition in the marketing area of the Paducah, Ky., order; and

(4) Any supply plant which would be subject to the classification and pricing provisions of another order issued pursuant to the Act unless such plant qualified as a pool plant pursuant to the proviso of paragraph (b) of this section during the preceding August through January period.

§ 1099.8 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 (other than a producer-handler plant or an other order plant) from which fluid milk products are shipped to a pool plant.

§ 1099.9 Handler.

"Handler" means:

(a) Any person in his capacity as the operator of a pool plant;

(b) A cooperative association qualified pursuant to § 1099.18 with respect to milk of producers diverted pursuant to § 1099.13 for the account of such association;

(c) A cooperative association which chooses to report as a handler with respect to milk which is delivered from the farm to a pool plant(s) of another handler in a tank truck owned or operated by, or under contract to, such cooperative association for the account of such cooperative association. The milk so delivered shall be considered to have been received by such cooperative association at a pool plant at the location of the pool plant to which it is delivered;

(d) Any person who operates a partially regulated distributing plant;

(e) A producer-handler; or

(f) Any person who operates an other order plant described in § 1099.7(c).

§ 1099.10 Producer-handler.

"Producer-handler" means any person who operates a dairy farm and a distributing plant, from which there is route disposition within the marketing area but which receives no other source milk or milk from other dairy farmers.

§ 1099.11 [Reserved]

§ 1099.12 Producer.

(a) Except as provided in paragraph (b) of this section, "producer" means any person who produces milk under a Grade A dairy farm permit or rating issued by a duly constituted health authority, which milk is received at a pool plant or by a handler described in § 1099.9(c).

(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 § 1099.44(a)(8)(iii) and the corresponding step of § 1099.44(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.

§ 1099.13 Producer milk.

"Producer milk" means all skim milk and butterfat contained in milk produced by a producer which is:

(a) Received during the month at a pool plant from producers or from a handler described in § 1099.9(c);

(b) Received by a handler described in § 1099.9(c) but which is not delivered to a pool plant of another handler and constitutes shrinkage pursuant to § 1099.41(c) or Class I shrinkage; or

(c) Diverted by the operator of a pool plant or by a handler described in § 1099.9(b) to a nonpool plant that is not a producer-handler plant, subject to the following conditions:

(1) Not less than 5 days' production of any producer whose milk is diverted is physically received at a pool plant;

(2) If diverted by a cooperative association for its account as milk of its members to nonpool plants which does not exceed 25 percent of the milk physically received from member producers of such cooperative association at pool plants during the month in any of the months of April through August and 15 percent in other months, except that if milk of members is diverted by the cooperative association in excess of the specified percentages, no milk diverted by the cooperative association during the month shall be producer milk unless the cooperative association designates the dairy farmers whose milk is not producer milk;

(3) If diverted by a handler in his capacity as the operator of a pool plant, as milk of a producer who is not a member of a cooperative association diverting milk pursuant to paragraph (c)(2) of this section, which does not exceed 25 percent of the aggregate quantity of milk received at such plant from such nonmember producers during the month in any of the months of April through August and 15 percent in other months, except that if milk of nonmember producers is diverted by the handler in excess of the specified percentages, no milk diverted by the handler during the month shall be producer milk unless the handler designates the dairy farmers whose milk is not producer milk; and

(4) Milk diverted for the account of a handler in his capacity as an operator of a pool plant shall be deemed to have been received at the pool plant from which diverted and milk diverted for the account of a cooperative association shall be deemed to have been received by the cooperative association at a pool plant at a location identical with that of the pool plant from which diverted.

§ 1099.14 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 § 1099.40(b)(1) from any source other than producers, handlers described in § 1099.9(c), pool plants, or inventory at the beginning of the month;

(b) Receipts in packaged form from other plants of products specified in § 1099.40(b)(1);

(c) Products (other than fluid milk products, products specified in § 1099.40(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 § 1099.40(b)(1) for which the handler fails to establish a disposition.

§ 1099.15 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 § 1099.40 (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.

§ 1099.16 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.

§ 1099.17 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).

§ 1099.18 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

§ 1099.30 Reports of receipts and utilization.

On or before the 6th 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 § 1099.9(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 § 1099.40(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 § 1099.9 (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.

§ 1099.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1099.9 (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 § 1099.76(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.

§ 1099.32 Other reports.

(a) On or before the 6th day after the end of each month, each handler shall report to the market administrator, in the detail and on forms prescribed by the market administrator, as follows:

(1) The name and address of each producer from whom milk was not received during the previous months and the date on which milk was first received from such producer; and

(2) The name and address of each producer who discontinues deliveries of milk and the date on which milk was last received from such producer.

(b) In addition to the reports required pursuant to paragraph (a) of this section and §§ 1099.30 and 1099.31, 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

§ 1099.40 Classes of utilization.

Except as provided in § 1099.42, all skim milk and butterfat required to be reported by a handler pursuant to § 1099.30 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 § 1099.15; and

(6) In shrinkage assigned pursuant to § 1099.41(a) to the receipts specified in § 1099.41(a)(2) and in shrinkage specified in § 1099.41 (b) and (c).

§ 1099.41 Shrinkage.

For purposes of classifying all skim milk and butterfat to be reported by a handler pursuant to § 1099.30, 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 § 1099.9(c));

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1099.9(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 § 1099.9 (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.

§ 1099.42 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 § 1099.44(a)(12) and the corresponding step of § 1099.44(b);

(2) If the transferor-plant received during the month other source milk to be allocated pursuant to § 1099.44(a)(7) or the corresponding step of § 1099.44(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 § 1099.44(a) (11) or (12) or the corresponding steps of § 1099.44(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 § 1099.40.

(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 § 1099.30 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 there-

under 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.

§ 1099.43 General classification rules.

In determining the classification of producer milk pursuant to § 1099.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § 1099.30 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 § 1099.9 (b) or (c) the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1099.40, 1099.41, and 1099.42;

(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 § 1099.9 (b) or (c) shall be determined separately from the operations of any pool plant operated by such cooperative association.

§ 1099.44 Classification of producer milk.

For each month the market administrator shall determine the classification of producer milk of each handler described in § 1099.9(a) for each of his pool plants separately and of each handler described in § 1099.9 (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 § 1099.41(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 another 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 § 1099.40(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 § 1099.40(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 § 1099.40(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 § 1099.40(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 § 1099.40(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 § 1099.45(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 § 10.99.42(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 § 1099.44(a)(14) and the corresponding step of § 1099.44(b).

§ 1099.45 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 § 1099.44(a)(12) and the corresponding step of § 1099.44(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 § 1099.44 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) Upon request, report, on or before the 25th day after the end of each month, to each cooperative association described in § 1099.86(b) the percentage of milk which was caused to be delivered by such association or by its members and which was used in each class by each handler receiving any 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 milk from producers by such handler were used in each class.

CLASS PRICES

§ 1099.50 Class prices.

Subject to the provisions of § 1099.52, the class prices for the month per hundredweight of milk containing 3.5 percent butterfat shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $1.70.

(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.

§ 1099.51 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.

§ 1099.52 Plant location adjustments for handlers.

(a) For milk received from producers at a pool plant located more than 40 miles by shortest highway distance as measured by the market administrator, from the nearest County Courthouse in any of the counties included in the marketing area and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (b) of this section, the price computed pursuant to § 1099.50(a) shall be reduced by 7.5 cents, plus 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 50 miles.

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of 95 percent of the receipts at such plant from producers and handlers described in § 1099.9(c), and the volume assigned as Class I to receipts from other order plants (and unregulated supply plants) such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

(c) The Class I price applicable to other source milk shall be adjusted at the 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.

§ 1099.53 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.

UNIFORM PRICE

§ 1099.60 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 § 1099.9 (b) and (c) as follows:

(a) Multiply the pounds of producer milk in each class as determined pursuant to § 1099.44 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 § 1099.44(a)(14) and the corresponding step of § 1099.44(b) by the respective class prices, as adjusted by the butterfat differential specified in § 1099.74, 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 § 1099.44(a)(9) and the corresponding step of § 1099.44(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 § 1099.44(a)(7) (i) through (iv) and the corresponding step of § 1099.44(b), excluding receipts of bulk fluid cream products from another 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 § 1099.44(a)(7) (v) and (vi) and the corresponding step of § 1099.44(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 § 1099.44(a)(11) and the corresponding step of § 1099.44(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.

§ 1099.61 Computation of uniform price (including weighted average price).

For each month, the market administrator shall compute the uniform price per hundredweight of milk of 3.5 percent butterfat content, f.o.b. market, received from producers as follows:

(a) Combine into one total the values computed pursuant to § 1099.60 for all handlers who filed the reports prescribed by § 1099.30 for the month and who made the payments pursuant to §§ 1099.71 and 1099.73 for the preceding month;

(b) Add an amount equivalent to the sum of the net deductions (reductions less increases) for location adjustments to be made from producer payments pursuant to § 1099.75;

(c) Add an amount equivalent to one-half the unobligated balance in the producer-settlement fund;

(d) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1099.60(f);

(e) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (d) of this section. The resulting figure shall be the "weighted average price," and, except for the months specified below, shall be the "uniform price" for milk received from producers;

(f) For the months specified in paragraphs (g) and (h) of this section, subtract from the amount resulting from the computations pursuant to paragraphs (a) through (c) of this section an amount computed by multiplying the hundredweight of milk specified in paragraph (d)(2) of this section by the weighted average price;

(g) For each of the months of April, May, June, and July, subtract an amount equal to 50 cents per hundredweight on the total amount of producer milk in these computations, which amount is to be retained in the producer-settlement fund and disbursed according to the provisions of paragraph (h) of this section;

(h) For each of the months of October, November, December, and January add one-fourth of the total amount subtracted pursuant to paragraph (g) of this section;

(i) Divide the resulting sum by the total hundredweight of producer milk included in these computations; and

(j) 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.

§ 1099.62 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

§ 1099.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund, known as the "producer-settlement fund", which shall function as follows:

(a) All payments made by handlers, pursuant to §§ 1099.71, 1099.76, and 1099.77 shall be deposited in this fund, and all payments made pursuant to §§ 1099.72 and 1099.77 shall be made from this fund: *Provided,* That payments due to any handler shall be offset by payments due from such handler; and

(b) All amounts subtracted pursuant to § 1099.61(g) shall be deposited in this fund and set aside as an obligated balance until withdrawn to effectuate § 1099.73 in accordance with the requirements of § 1099.61(h).

§ 1099.71 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 § 1099.60.

(2) The sum of:

(i) The value at the uniform price, as adjusted pursuant to § 1099.75, of such handler's receipts of producer milk; and

(ii) The value at the weighted average price applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1099.60(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 (a)(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.

§ 1099.72 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 § 1099.71(a)(2) exceeds the amount computed pursuant to § 1099.71(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.

§ 1099.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler operating a pool plant 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 such producer who did not discontinue shipping milk to such handler before the 25th day of the month, an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized by such producer to be made from payments due pursuant to this subparagraph;

(2) On or before the 17th day of the following month, an amount equal to not less than the uniform price, as adjusted pursuant to §§ 1099.74 and 1099.75, 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 § 1099.86, (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 § 1099.72 from the market administrator 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 qualified pursuant to § 1099.18 which has so requested any handler in writing, such handler shall on or before the third day prior to the date on which payments are due individual producers pursuant to paragraph (a) of this section pay the cooperative association for milk received during the month from the producer members of such association an amount equal to not less than the amount due such producer members pursuant to paragraph (a) of this section: *Provided,* That the proper deductions referred to in paragraphs (a)(1) and (2)(iv) of this section shall be valid in the case of cooperative members only if authorized in writing by such cooperative;

(c) Each handler shall also make payment to a cooperative association delivering milk to such handler pursuant to § 1099.9(c) for milk so delivered as follows:

(1) On or before the 28th day of the month an amount equal to not less than the Class III price for the preceding month multiplied by the hundredweight of milk so received from such cooperative association during the first 15 days of the month, less proper deductions authorized in writing by the cooperative association;

(2) On or before the 14th day of the following month not less than the uniform price, as adjusted pursuant to §§ 1099.74 and 1099.75, multiplied by the hundredweight of milk so received from the cooperative association during the month, subject to the following adjustment: (i) less payments made to such cooperative association pursuant to paragraph (c)(1) of this section and (ii) less proper deductions authorized in writing by such cooperative association: *Provided,* That if by such date the handler has not received full payment pursuant to § 1099.72 from the market administrator for such month, he may reduce pro rata his payments on such milk as in the case of payments to producers pursuant to paragraph (a) of this section, and payments hereunder shall be completed not later than the date for making payments pursuant to this subparagraph next following the receipt of the balance due from the market administrator;

(d) On or before the 14th day of the following month each handler shall pay to a cooperative association, with respect to such milk as was received from the association in its capacity as a handler operating a pool plant during the month not less than the value of such milk at the class prices, as adjusted by the butterfat differential specified in § 1099.74, that are applicable at the location of the handler's pool plant; and

(e) Each handler who receives producer milk for which payment is to be made to a cooperative association pursuant to paragraph (b) of this section shall report to such cooperative association with respect to each such producer as follows:

(1) On or before the 25th day of the month, the total pounds of milk received during the first 15 days of such month; and

(2) On or before the 7th day of the following month (i) the pounds of milk received each day and the total for the month together with the butterfat content of such milk, (ii) the amount or rate

and nature of any deductions, and (iii) the amount and nature of payments due pursuant to § 1099.77.

§ 1099.74 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.

§ 1099.75 Plant location adjustments for producers and on nonpool milk.

(a) The uniform price for producer milk received at a pool plant shall be reduced according to the location of the pool plant, and the uniform price for producer milk diverted to a nonpool plant shall be reduced according to the location of the pool plant from which it is diverted at the rates set forth in § 1099.52.

(b) For purposes of computations pursuant to §§ 1099.71 and 1099.72 the weighted average price shall be adjusted at the rates set forth in § 1099.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

§ 1099.76 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 §§ 1099.30(b) and 1099.31(b) the information necessary for making the computations, such handler may elect to pay in lieu of such payment the amount computed pursuant to paragraph (b) of this section:

(a) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the pounds of route disposition in the marketing area from the partially regulated distributing plant;

(2) Subtract the pounds of fluid milk products received at the partially regulated distributing plant:

(i) As Class I milk from pool plants and other order plants, except that subtracted under a similar provision of another Federal milk order; and

(ii) From another nonpool plant that is not an other order plant to the extent that an equivalent amount of fluid milk products disposed of to such nonpool plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(3) Subtract the pounds of reconstituted skim milk in route disposition in the marketing area from the partially regulated distributing plant;

(4) Multiply the remaining pounds by the difference between the Class I price and the weighted average price, both prices to be applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price); and

(5) Add the amount obtained from multiplying the pounds of reconstituted skim milk specified in paragraph (a)(3) of this section by the difference between the Class I price applicable at the location of the partially regulated distributing plant (but not to be less than the Class III price) and the Class III price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § 1099.60 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 § 1099.60 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 § 1099.60 for such handler shall include, in lieu of the value of other source milk specified in § 1099.60(f) less the value of such other source milk specified in § 1099.71(a)(2)(ii), a value of milk determined pursuant to § 1099.60 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 § 1099.7(b), subject to the following conditions:

a) The operator of the partially regulated distributing plant submits with his reports filed pursuant to §§ 1099.30(b) and 1099.31(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 § 1099.60 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 § 1099.74, 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 § 1099.74, 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.

§ 1099.77 Adjustment of accounts.

Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund, 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, 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 § 1099.73, the handler shall make up the difference of such payment not later than the next time for making payments as set forth in the provisions relating to payments which were in error.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1099.85 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 five 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 § 1099.9(c);

(b) Other source milk allocated to Class I pursuant to § 1099.44(a) (7) and (11) and the corresponding steps of § 1099.44(b), except such other source milk that is excluded from the computations pursuant to § 1099.60 (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 § 1099.76(a)(2).

§ 1099.86 Deduction for marketing services.

(a) *Deductions for marketing services.* Except as set forth in paragraph (b) of this section, each handler in making payments to producers pursuant to § 1099.73 with respect to milk received from producers (excluding such handler's own farm production), shall deduct 6 cents per hundredweight, or such lesser amount as the Secretary may prescribe; and, on or before the 20th day after the end of the month, shall pay such deductions to the market administrator. Such moneys shall be expended by the market administrator to verify weights, samples, and tests of the milk of such producers 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) *Cooperative associations.* 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 and which is not receiving payment for its producer members, 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 pursuant to § 1099.73(b) as may be authorized by the membership agreement or marketing contract between such cooperative association and such producers, and on or before the 20th day after the end of each month, pay over such deductions to the association rendering such services.

Signed at Washington, D.C., on August 27, 1973.

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

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DEPARTMENT OF LABOR

Employment Standards Administration

■

Minimum Wages for Federal and Federally Assisted Construction

Modifications and Supersedeas Decisions to General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

Modifications and Supersedeas Decisions to General Wage Determination Decisions

General wage determination decisions.—General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended (40 U.S.C. 276a)), and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determinations by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138), and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in (5 U.S.C. 553) and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determinations frequently and in large volume causes these procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and supersedeas decisions to general wage determination decisions.—Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended (40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70 containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138), and of Secretary of Labor's Orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR, Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

New general wage determination decisions.—New General Wage Determination Decision No. AQ–1034 for the Pacific Island of Guam; and AQ–2019 for Puerto Rico; Decision No. AQ–1033 for the State of Montana; and AQ–1037 for the State of South Dakota respectively.

Modifications to general wage determination decisions.—Modifications to General Wage Determination Decisions for the following States (the numbers of the decisions being modified and their dates of publication in the FEDERAL REGISTER are listed with each State):

Alabama:	
AP–1105; AP–1106	June 22, 1973
California:	
AQ–1007; AQ–1008	Aug. 3, 1973
Georgia:	
AQ–4000	July 20, 1973
Michigan:	
AP–82	Dec. 29, 1972
New Mexico:	
AP–740	July 6, 1973
North Dakota:	
AQ–1011	Aug. 10, 1973
Oklahoma:	
AQ–23	Aug. 31, 1973

Supersedeas decisions to general wage determination decisions.—Supersedeas Decisions to General Wage Determination Decisions for the following States (the numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State; Supersedeas Decision numbers are in parenthesis following the number of the decision being superseded):

Arizona:	
AP–297(AQ–1027)	Apr. 27, 1973
AP–901(AQ–1026)	May 11, 1973
Montana:	
AP–913(AQ–1032)	June 29, 1973
AQ–1018(AQ–1035)	Aug. 31, 1973
Nevada:	
AP–907(AQ–1036)	May 25, 1973

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

RAY J. DOLAN,
Assistant Administrator,
Wage & Hour Division.

NEW DECISION

STATE: Montana
DECISION NUMBER: AQ-1,033
COUNTIES: Flathead and Sanders
DATE: Date of Publication
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
ASBESTOS WORKERS	$7.96	.44	.72		
BOILERMAKERS	8.25	.30	1.00		.02
BRICKLAYERS	6.65	.30	.25		
CARPENTERS:					
Flathead and Sanders (Northern area including the City of Thompson Falls)Cos.					
Carpenters	6.15	.30	.45		.02
Sawmen; Filers; Piledrivers;					
Carpenters working burned, charred, creosoted or similar treated material	6.35	.30	.45		.02
Millwrights and machine erectors	6.50	.30	.45		.02
Sanders (Remaining area) County					
Carpenters	5.97	.30	.35		.01
Millwrights; Piledriver; Power saw; Saw filer	6.22	.30	.35		.01
CEMENT MASONS:					
Flathead and Sanders (Northern area, excluding the City of Plains) Counties	6.15	.20			
Sanders (Remaining area) County	6.40	.35			
ELECTRICIANS:					
Electricians	7.00	.20	1%		1/2%
Cable splicers	7.40	.20	1%		1/2%
ELEVATOR CONSTRUCTORS	6.74	.345	.23	2%+a	
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.345	.23	2%+a	
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				
IRONWORKERS:					
Reinforcing	7.56	.48	.65		.05
Ornamental; Structural	7.56	.48	.65		.05
LATHERS	5.95				
MARBLE MASONS	6.65	.30	.25		
PAINTERS:					
Sanders County (Southern area, excluding the City of Thompson Falls)					
Brush and Spray	6.11	.30	.15		
PLASTERERS:					
Flathead and Sanders (North of the City of Plains) Counties	6.45	.20			
Sanders (Remaining Area) County	6.65	.35			

NEW DECISION

STATE: Puerto Rico
DECISION NO.: AQ-2,019
COUNTY: Island Wide
DATE: Date of Publication
DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Carpenters	$2.40				
Carpenters' helpers	1.97				
Cement masons	2.30				
Ironworkers	2.05				
Laborers:					
Laborers	1.60				
Asphalt rakers	2.20				
Truck drivers:					
3/4 to 3 ton	2.27				
3 ton and over	2.65				
Euclid	3.65				
Welder	2.75				
Bulldozer	2.58				
Cranes, derricks, draglines	3.28				
Digger op.	3.25				
Drilling machine	2.40				
Front end loader	3.02				
Grader	3.35				
Mechanic	3.15				
Mechanics' helpers	2.55				
Oiler, greaser	2.65				
Roller	2.56				
Scraper	3.55				
Shovels	3.57				
Tractors	3.65				

NEW DECISION

STATE: Guam
DECISION NUMBER: AQ-1,034 DATE: Date of Publication
DESCRIPTION OF WORK: Building, Residential, Heavy and Highway Construction.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Refrigeration and Air Conditioning	$3.14				
Machinist	3.11				
Heavy Equipment Repairman	3.06				
Heavy Equipment Operator	2.99				
Electrician	2.96				
Plumber	2.95				
Welders	2.93				
Sheet Metal Worker	2.90				
Mason	2.83				
Lt. Equipment and General Truck Driver	2.81				
Carpenter	2.81				
Painter	2.69				
Structural Ironworker	2.68				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
PLUMBERS:					
Flathead and Sanders (Northern Area, including the City of Thompson Falls)	5.90	.36	.30		.02
Sanders (Remaining Area) Counties	6.58	.30	.30		.05
ROOFERS	5.60				
SHEET METAL WORKERS	6.88	.22	.10		.01
SPRINKLER FITTERS	7.20	.30	.50		.05
TERRAZZO WORKERS	6.65	.30	.25		
TILE SETTERS	6.65	.30	.25		

FOOTNOTES:

a. Employer contributes 4% basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Flathead and Sanders (Northern area) Counties					
Laborers	$5.405	.37	.27		
Nozzlemen (air and water); Sandblast tail hoseman; Powderman helper; Powerdriven wheelbarrow; Rodder and spreader; Form setters (paving); Bucketman	5.555	.37	.27		
Small air tool operator incl. blow pipes, small power tools; Chuck tenders; Asphalt rakers; Dumpman; Rip rapping; Pipe wrapper; Pot tender	5.585	.37	.27		
Jackhammer; Pavement breaker; Vibrator; Mechanical tamper and other air tools; Cement handlers (sack or bulk)	5.64	.37	.27		
Remaining area of Sanders County					
Laborers	5.455	.37	.27		.03
All power tools, creosote workers; Jackhammer; Marble and tile setters' tenders; Pipelayers; Pipewrappers; Pot tenders; Small concrete mixers; Vibrators	5.705	.37	.27		.03
Cement masons and plasterer's tenders; Mason tenders; Pumpcrete, gunnite and plasterer pump	5.855	.37	.27		.03

MONT-1-PEO-2-3-b (1-4)

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
A-Frame Truck Crane, Winch Truck and similar	$6.86	.45	.45		.03
Air Compressor, Single	6.55	.45	.45		.03
Air Compressor, two or more	6.72	.45	.45		.03
Air Doctor	7.02	.45	.45		.03
Asphalt Paving Machine	7.02	.45	.45		.03
Asphalt Paving Machine Screed	7.02	.45	.45		.03
Automatic Finegrader, Curries and other similar types	7.15	.45	.45		.03
Belt Finish Machine	6.72	.45	.45		.03
Bit Grinder	7.02	.45	.45		.03
Bituminous Mixer Paving, Travel Plant	7.02	.45	.45		.03
Boring Machine (small), jeep, pickup or farm tractor mounted	6.61	.45	.45		.03
Boring Machine (large)	7.02	.45	.45		.03
Broom, self-propelled	6.89	.45	.45		.03
Cableway Highline	7.53	.45	.45		.03
Cement Silo	6.81	.45	.45		.03
Central Mixing Plants, Concrete dam & stationary	7.27	.45	.45		.03
Chain Bucket Loader	6.74	.45	.45		.03
Chip or Gravel Spreader, self-propelled	6.74	.45	.45		.03
Concrete Batch Plant, one & two mixers	7.02	.45	.45		.03
Concrete Batch Plant, three and four mixers	7.22	.45	.45		.03
Concrete Batch Plant, five mixers & over	7.42	.45	.45		.03
Concrete Batch Plant Oiler, up to & incl. two mixers	6.54	.45	.45		.03
Concrete Batch Plant Oiler, three mixers and over	6.85	.45	.45		.03
Concrete Bucket Dispatcher	7.02	.45	.45		.03
Concrete Curing Machine	7.02	.45	.45		.03
Concrete Finish Machine Paving	7.02	.45	.45		.03
Concrete Float-Spreader	7.02	.45	.45		.03
Concrete Mixer, three bags & under	6.61	.45	.45		.03
Concrete Mixer, four bags and over	6.78	.45	.45		.03
Concrete Power Saw, self-propelled	7.02	.45	.45		.03
Concrete Travel Batcher	7.02	.45	.45		.03
Conveyor Loader, up to & incl. 42" belt	6.60	.45	.45		.03
Conveyor Loader, over 42 inch belt	6.72	.45	.45		.03
Crane, to & incl. 80' boom with jib	7.18	.45	.45		.03
Crane, 81' to 130' boom	7.33	.45	.45		.03

MONT-1-PEO-2-3-b (2-4)

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
Crane, 131' to 150' boom	$7.38	.45	.45		.03
Crane, 151' boom & over	7.43	.45	.45		.03
Crane Oiler	6.59	.45	.45		.03
Crusher	7.02	.45	.45		.03
Crusher Oiler & Helper	6.51	.45	.45		.03
Crusher Conveyor, when required	6.48	.45	.45		.03
Distributor	7.02	.45	.45		.03
DW 10, 15, or 20 Tractor pulling roller	6.74	.45	.45		.03
Electric Overhead Cranes	7.20	.45	.45		.03
Elevating Grader	7.02	.45	.45		.03
Farm Type Tractor, up to & incl. 50 HP Engine	6.48	.45	.45		.03
Farm Type Tractor, over 50HP Engine	6.56	.45	.45		.03
Field Equipment Serviceman	6.94	.45	.45		.03
Field Equipment Serviceman Helper	6.51	.45	.45		.03
Fireman	6.61	.45	.45		.03
Forklift, on construction job site	6.83	.45	.45		.03
Form Grader	6.79	.45	.45		.03
Gradall	7.02	.45	.45		.03
Grade Setter	6.48	.45	.45		.03
Heavy Duty Drill, all types	7.02	.45	.45		.03
Heavy Duty Driller Helper	6.61	.45	.45		.03
Herman-Nelson Heaters & similar type	6.56	.45	.45		.03
Hoist, Single drum	6.79	.45	.45		.03
Hoist, two or more drums	7.02	.45	.45		.03
Helicopter Hoist	7.52	.45	.45		.03
Hot Plant	7.02	.45	.45		.03
Hot Plant Fireman, when in Operation	7.02	.45	.45		.03
Hot Plant Oiler, 100 ton per hour or over	6.51	.45	.45		.03
Hydra lift and similar types	6.92	.45	.45		.03
Industrial Locomotive all classes	7.02	.45	.45		.03
Mechanic and/or Welder on job	7.12	.45	.45		.03
Mechanic and/or Welder Helper on job	6.51	.45	.45		.03
Mixermobile	7.10	.45	.45		.03
Motor Patrol	7.15	.45	.45		.03
Mountain Logger or smilar type	7.02	.45	.45		.03
Mucking Machine	7.02	.45	.45		.03
Oiler-Driver, Tubber Tired Cranes	6.59	.45	.45		.03
Oilers, other than Shovels & Cranes	6.51	.45	.45		.03
Oiler, hoist house, dams	6.92	.45	.45		.03
Pavement Breaker, Ensco & similar	7.02	.45	.45		.03
Paving & Mixing Machine	7.15	.45	.45		.03
Power Auger, Large Truck or Tractor Mounted	7.02	.45	.45		.03
Power Mixer, single or double drum	7.02	.45	.45		.03
Power Saw, Multiple cut, self-propelled	7.02	.45	.45		.03
Pumpcrete or Grout Machine	7.02	.45	.45		.03
Pumpman	6.55	.45	.45		.03

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Push Tractor	$7.02	.45	.45		.03
Quad Cat	7.32	.45	.45		.03
Refrigerator Plant	7.02	.45	.45		.03
Retort	6.61	.45	.45		.03
Roller, on blade or hot mix oil paving	7.02	.45	.45		.03
Roller, on other blade or hot mix paving	6.72	.45	.45		.03
Roller, 25 ton or over	7.02	.45	.45		.03
Ross & similar type carriers, on construction site	7.02	.45	.45		.03
Rubber-tired Dozer	7.02	.45	.45		.03
Rubber-tired Front End Loader, 1 yd. & under	6.73	.45	.45		.03
Rubber-tired Front End Loader, 1 yd. to and incl. 3 yds.	7.02	.45	.45		.03
Rubber-tired Front End Loader, over 3 yds. to and incl. 5 yds.	7.14	.45	.45		.03
Rubber-tired Front End Loader, over 5 yds. to and incl. 10 yds.	7.24	.45	.45		.03
Rubber-tired Front End Loader, over 10 yds. to and incl. 15 yds.	7.34	.45	.45		.03
Rubber-tired Front End Loader, over 15 yds.	7.44	.45	.45		.03
Scraper, DW 15, 20, 21 & similar type if power unit is not used	7.02	.45	.45		.03
Scraper, single or twin engine pulling belly dump trailer	7.40	.45	.45		.03
Scraper, single engine	7.15	.45	.45		.03
Scraper, twin engine	7.25	.45	.45		.03
Scraper, tandem engine	7.51	.45	.45		.03
Self-propelled Sheepfoot and similar type	7.02	.45	.45		.03
Shovels, incl. all attachments, under 1 cu. yd.	7.02	.45	.45		.03
Shovels, incl. all attachments, 1 cu. yd. to & incl. 3 cu. yd.	7.20	.45	.45		.03
Shovels, incl. all attachments, over 3 cu. yd. to & incl. 5 cu. yd.	7.47	.45	.45		.03
Shovels, incl. all attachments, over 5 cu. yd.	7.60	.45	.45		.03
Shovel Oiler, 3 yds. & under	6.51	.45	.45		.03
Shovel Oiler, over 3 cu. yds.	6.92	.45	.45		.03
Slip form paver	7.15	.45	.45		.03
Stiff leg derrick & guy derrick	7.47	.45	.45		.03
Track-type front end loaders; up to & incl. 5 cu. yds.	7.02	.45	.45		.03
Track-type front end loaders; over 5 cu. yd. to & incl. 10 cu. yd.	7.25	.45	.45		.03
Track-type front end loaders, over 10 cu. yd. to & incl. 15 cu. yd.	7.35	.45	.45		.03

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.
Track-type front end loaders, over 15 cu. yd.	$7.45	.45	.45		.03
Track-type tractor with or without attachments	7.02	.45	.45		.03
Track-type tractor, on Euclid Loader	7.20	.45	.45		.03
Trenching Machine	7.02	.45	.45		.03
Turnhead Conveyor, or Head Tower on Batch Plant	7.02	.45	.45		.03
Wagner Roller & similar type	7.02	.45	.45		.03
Whirley Crane	7.55	.45	.45		.03
Whirley Crane Oiler	6.92	.45	.45		.03
Water Pull when used for compaction	7.02	.45	.45		.03
Washing and Screening Plant	7.02	.45	.45		.03
Washing and Screening Plant Oiler	6.51	.45	.45		.03

NEW DECISION

STATE: South Dakota COUNTY: Yankton
DECISION NUMBER: AQ-1,037 DATE: Date of Publication
DESCRIPTION OF WORK: Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
Concrete Finisher	$4.56					
Form Builder	4.56					
Form Setter	4.56					
Painter	3.76					
LABORERS:						
Air tool operator	3.36					
Common laborer	3.36					
Landscape workers	3.36					
Form builder helpers (bridge and culvert)	3.76					
Manhole builder	4.30					
Piledriver (leadsman)	4.20					
Pipelayer (other than culvert)	4.20					
Powderman (blaster)	5.00					
POWER EQUIPMENT OPERATORS:						
Asphalt distributor	4.50					
Asphalt distributor helper	3.76					
Asphalt paving machine	4.60					
Asphalt paving machine helper	3.36					
Asphalt plant helper	3.36					
Asphalt plant, stationary and traveling	4.60					
Auger operator (truck type)	3.76					
Automatic fine grader operator	4.70					
Beginner operator (1 year or less experience as Power Equipment Op.)	3.90					
Broom, self-propelled	3.76					
Bulldozer, 80 h.p. or less	4.10					
Bulldozer, over 80 h.p.	4.60					
Bullfloat machine	4.40					
Concrete batch plant	4.60					
Concrete mixer	3.90					
Concrete paver	5.00					
Concrete paving cure machine	4.00					
Concrete paving finishing machine	4.70					
Concrete paving form grader	4.70					
Concrete paving joint machine	4.50					
Concrete paving joint sealer	4.00					
Concrete paving saw	4.40					
Concrete paving spreader	4.70					
Concrete paving subgrader	4.60					
Conveyor	3.36					
Cranes, Derricks, Draglines, Piledrivers, Backhoes and Shovels, 1½ cu. yds. or less	4.60					
Cranes, Derricks, Draglines, Piledrivers, Backhoes and Shovels, over						

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
POWER EQUIPMENT OPERATORS (cont'd):						
Crusher (incl. those with integral screening plant)	$4.60					
Curb machine	4.00					
Fireman (boiler and retort)	3.80					
Front End Loader, 1½ cu. yds. or less	3.90					
Front End Loader, 1½ cu. yds. to 3½ cu. yds.	4.40					
Front End Loader, over 3½ cu. yds.	4.60					
Mechanic, heavy duty	4.90					
Mechanic, helper	3.90					
Mechanic, maintenance	4.40					
Motor grader, (finish)	5.00					
Motor grader, (rough)	4.50					
Oiler and greaser	4.40					
Roller, self-propelled (hot mix)	4.10					
Roller, self-propelled (other)	3.76					
Roller, sheepsfoot or 50 ton pneumatic	4.10					
Scrapers	5.20					
Spreader (materials)	4.40					
Stationary plant	4.00					
Tractor (crawler or pneumatic)	4.00					
Tractor, farm type w/attachments (including loader)	3.36					
Tractor - push	4.80					
Traveling plant (stabilization)	4.60					
Traveling plant, helper	3.36					
Trenching machine	4.40					
Wagon drill (including airtrac-trac-drill, etc.)	4.40					
TRUCK DRIVERS:						
Euclid or dumptor	3.72					
Truck crane	3.62					
Truck driver, single axle	3.36					
Truck driver, tandem or semitrailer	3.52					
WELDER:						
Welder, certified	4.70					
Welder, general	4.40					

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	
DECISION #AP-1105 - Mod. #3 (38 FR 16597 - June 22, 1973) Jefferson County, Alabama						
Change: Label on schedule issued in original decision for highway construction to read: Highway Construction (excluding Airport Construction).						
DECISION #AP-1106 - Mod. #2 (38 FR 16600 - June 22, 1973) Mobile County, Alabama						
Change: Label on schedule issued in original decision for highway construction to read: Highway Construction (excluding Airport Construction).						

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	
DECISION #AQ-1,007 - Mod. #2 (38 FR 21,038 - August 3, 1973) Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California						
Change:						
Brick Tenders:						
Imperial, Inyo, Mono, Riverside and San Bernardino Counties	$6.05	.65	1.35	.35		
Kern, Los Angeles, Orange, Santa Barbara and Ventura Counties	6.15	.65	1.35	.35		
San Luis Obispo County	6.05	.65	1.35	.35		
Soft Floor Layers:						
Imperial County	7.90	.45	.63	.60	.05	
DECISION #AQ-1,008 - Mod. #2 (38 FR 21,047 - August 3, 1973) Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties, California						
Change:						
Brick Tenders:						
Imperial, Inyo, Mono, Riverside and San Bernardino Counties	6.05	.65	1.35	.35		
Kern, Los Angeles, Orange, Santa Barbara and Ventura Counties	6.15	.65	1.35	.35		
San Luis Obispo County	6.05	.65	1.35	.35		
Soft Floor Layers:						
Imperial County	7.90	.45	.63	.60	.05	
DECISION #AQ-4,009 - Mod. #2 (38 FR 19037 - July 20, 1973) Fulton, Cobb, and DeKalb Counties, Georgia						
Change:						
Building Construction:						
Carpenters:						
Carpenters & Soft floor layers	$7.65	.35	.40		.02	
Millwrights	8.30	.35	.40		.02	
Piledrivermen	7.80	.35	.40		.02	
Glaziers	7.00	.40	.20	.25	.015	

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
DECISION #AP-82 - Mod. #3 (37 FR 28850 - December 29, 1972) Baraga, Houghton, Keweenaw, & Ontonagon Counties, Michigan						
Change:						
Truck Drivers:						
Regular	$5.19	9.50a	8.00a	b		
Heavy duty, double axle, semi-drivers	5.29	9.50a	8.00a	b		
Euclids	5.49	9.50a	8.00a	b		
Truck repair and maintenance	5.36	9.50a	8.00a	b		

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
DECISION #AP-760 - Mod. #2 (38 FR 16140 - July 6, 1973) Statewide, New Mexico						
Change:						
Plumbers - Pipefitters:						
Basing Point Cities or Towns: Albuquerque, Alamogordo, Anthony, Artesia, Belen, Carlsbad, Clovis, Deming, Espanola, Farmington, Gallup, Grants, Hobbs, Las Cruces, Las Vegas, Lordsburg, Lovington, Portales, Raton, Roswell, Ruidoso, Santa Fe, Silver City, Santa Rosa, Taos, Truchas, Truth or Consequences						
Zone (1) Shall extend a distance of five (5) road miles inclusive beyond the city or town limits of any of the basing point cities or towns as set forth above	$8.00	.42	.75		.09	
Zone (2) Shall extend a distance of eight (8) road miles inclusive beyond the outer perimeter of zone (1)	8.25	.42	.75		.09	
Zone (3) Shall extend a distance of ten (10) road miles inclusive beyond the perimeter of zone (2)	8.50	.42	.75		.09	
Zone (4) Shall extend a distance of twelve (12) road miles inclusive beyond the outer perimeter of zone (3)	8.75	.42	.75		.09	
Zone (5) Shall extend a distance of ten (10) road miles inclusive beyond the outer perimeter of zone (4)	9.25	.42	.75		.09	
Zone (6) Shall apply to all areas not within zones 1, 2, 3, 4 or 5	9.50	.42	.75		.09	
Plumbers-Pipefitters: Los Alamos, White Rock, South Mesa, McGregor Range, White Sands Missile Range and/or Proving Grounds, Atlas Missile Complex sites in Chaves and Lincoln Counties, and the Oro Grande Camp in Dona Ana and Otero Counties	8.63	.42	.75		.09	

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
DECISION #AQ-1011 - Mod. # 1 (38 FR 21716 - August 10, 1973) Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Walsh and Ward Counties, North Dakota						
Change: Sheet Metal Workers Burleigh, Grand Forks, Morton, Steel and Ward Counties	8.05					
DECISION #AQ-23 - Mod. 1 (38 FR 23738 - August 31, 1973) Tulsa County, Oklahoma						
Change: Electricians	$6.85	.36	15+.15	.30	.07	
Cable splicers	7.10	.36	15+.15	.30	.07	

SUPERSEDEAS DECISION

AO-1,026 P. 2

STATE: Arizona

COUNTIES: Cochise, Graham, Pima, Pinal and Santa Cruz

DECISION NUMBER: AO-1,026

DATE: Date of Publication

Supersedes Decision #AP-901 dated May 11, 1973, in 38 FR 12526

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories.)

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
ASBESTOS WORKERS	$8.48	.50	.65		.01	
BOILERMAKERS	7.95	.60	1.00	.50	.02	
BRICKLAYERS; Stonemasons: (Northern portions of Graham and Pinal Counties						
Zone A (0-25 miles from City Hall in Phoenix)	8.85	.35	.30		.03	
Zone B (25-40 miles from City Hall in Phoenix)	9.74	.35	.30		.03	
Zone C (40-70 miles from City Hall in Phoenix)	10.18	.35	.30		.03	
Zone D (70-100 miles from City Hall in Phoenix)	10.62	.35	.30		.03	
Zone E (100-200 miles from City Hall in Phoenix)	11.06	.35	.30		.03	
Zone F (200 miles and over from City Hall in Phoenix)	11.51	.35	.30		.03	
BRICKLAYERS; Stonemasons: (Southern portions of Graham and Pinal Counties and Remaining Counties						
Zone A (Tucson City limits through 10 miles)	8.575	.40	.30		.02	
Zone B (Tucson City limits 10-25 miles)	8.95	.40	.30		.02	
Zone C (Tucson City limits 25-40 miles)	9.325	.40	.30		.02	
Zone D (Tucson City limits over 40 miles)	10.075	.40	.30		.02	
CARPENTERS:						
Carpenters	8.25	.40	.60		.025	
Piledrivermen	8.50	.40	.60		.025	
Millwrights	8.625	.40	.60		.025	
CEMENT MASONS	7.585	.35	.65		.025	
ELECTRICIANS: (Western portion of Pinal County from East of Coolidge and Casa Grande and North to Maricopa County Line)						
Zone A (Beginning at the northeast corner, a line extending southward on Bush Highway to McKellips Road; a line extending east on McKellips Road to a point one mile east of the intersection of State Highway 88 and U. S. 60 and 70 near Apache Junction; southward to Baseline Road; West on Baseline Road to the intersection of Baseline Road and Ellsworth Road; south on Ellsworth Road to Hunt Highway; west on Hunt Highway to Powers Road; a line extending south on Powers Road five miles, then extending straight west to a point five miles west of Interstate 10, then northwest on a line parallel with Interstate 10 to intersect with Pecos Road, west on Pecos Road to intersect with Cotton Lane. North on Cotton Lane to Beloat Road. West on Beloat Road to Airport Road. North on Airport Road in a straight line to intersect Waddell Road. East on Waddell Road to intersect with Cotton Lane. North on Cotton Lane to Deer Valley Drive and east on Deer Valley Drive to intersection with Bush Highway and including Luke and Williams Air Force Bases.)						
Electricians	$9.45	.40	1¼+.60		3/4%	
Cable splicers	9.92	.40	1¼+.60		3/4%	

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
ELECTRICIANS: (cont'd)						
Zone B (Area outside of Zone A and bounded by a line formed by measuring sixteen (16) road miles from the outer boundaries of an area enclosed by the following boundaries: Powers Road on the east, from Hunt Highway on the south to one mile south of Pinnacle Peak Road on the north. One mile south of Pinnacle Peak Road to Cotton Lane on the west. Cotton Lane to Pecos Road on the south. Pecos Road to Price Road and from Price Road to Hunt Highway on the south. Hunt Highway to Powers Road on the east.)						
Electricians	$11.10	.40	1%+.60		3/4%	
Cable splicers	11.66	.40	1%+.60		3/4%	
Zone C (Outside edge of Zone B and extend to the outside limits of the Union's jurisdiction.)						
Electricians	11.93	.40	1%+.60		3/4%	
Cable splicers	12.53	.40	1%+.60		3/4%	
ELECTRICIANS:						
(Northeast portion of Pinal County)						
Zone A (Within 16 road miles beginning where the Southern Pacific Railroad intersects Highway 60-70 at Kaiser Crossing)						
Electricians	9.775	.45	1%		1/2%	
Cable splicers	10.025	.45	1%		1/2%	
Zone B (16-28 miles)						
Electricians	10.475	.45	1%		1/2%	
Cable splicers	10.725	.45	1%		1/2%	
Zone C (28-46 miles)						
Electricians	11.075	.45	1%		1/2%	
Cable splicers	11.325	.45	1%		1/2%	
Zone D (46 miles and over)						
Electricians	11.775	.45	1%		1/2%	
Cable splicers	12.025	.45	1%		1/2%	

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
ELECTRICIANS: (cont'd)						
(Southeast portion of Pinal County from South of Florence to Graham County line and Remaining Counties)						
Zone A (Within 16 miles of City Hall in Douglas and Tucson)						
Electricians	$9.175	.45	1%+.60		1/2%	
Cable splicers	9.425	.45	1%+.60		1/2%	
Zone B (16-32 miles from City Hall in Douglas and Tucson)						
Electricians	9.875	.45	1%+.60		1/2%	
Cable splicers	10.125	.45	1%+.60		1/2%	
Zone C (32-48 miles from City Hall in Douglas and Tucson)						
Electricians	10.475	.45	1%+.60		1/2%	
Cable splicers	10.725	.45	1%+.60		1/2%	
Zone D (48 miles and over from City Hall in Douglas and Tucson)						
Electricians	11.1[illegible]	.45	1%+.60		1/2%	
Cable splicers	11.4[illegible]	.45	1%+.60		1/2%	
ELEVATOR CONSTRUCTORS	7.58	.185	.20	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.185	.20	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR					
IRONWORKERS	8.58	.58	.625		.04	
LATHERS:						
(Northern portions of Graham and Pinal Counties)						
Zone I (0-35 miles from Phoenix)	5.60	.175			.04	
Zone II (15 miles beyond Zone I)	5.93	.175			.04	
Zone III (20 miles beyond Zone II)	6.26	.175			.04	
Zone IV (Outside of Zone III)	6.60	.175			.04	
LATHERS:						
(Southern portions of Graham and Pinal Counties and Remaining Counties)						
Zone A (0-30 miles from Tucson)	8.66	.20				
Zone B (30-40 miles from Tucson)	9.16	.20				
Zone C (40-50 miles from Tucson)	9.41	.20				
Zone D (Over 50 miles from Tucson)	10.16	.20				
PAINTERS:						
(Northern portions of Graham and Pinal Counties)						
Zone A (0-40 miles from Court House in Phoenix)						
Brush; Soft floor layers	7.54	.40	.35	.50	.05	
Spray	7.79	.40	.35	.50	.05	
Steel and bridge, brush	7.89	.40	.35	.50	.05	
Steel and bridge, spray	8.09	.40	.35	.50	.05	

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	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
PAINTERS: (cont'd)						
(Northern portions of Graham and Pinal Counties) (Cont'd)						
Zone B (41-60 miles from Court House in Phoenix)						
Brush; Soft floor layers	$8.54	.40	.35	.50	.05	
Spray	8.79	.40	.35	.50	.05	
Steel and bridge, brush	8.89	.40	.35	.50	.05	
Steel and bridge, spray	9.09	.40	.35	.50	.05	
Zone C (60 miles and over from Court House in Phoenix)						
Brush; Soft floor layers	9.04	.40	.35	.50	.05	
Spray	9.29	.40	.35	.50	.05	
Steel and bridge, brush	9.39	.40	.35	.50	.05	
Steel and bridge, spray	9.59	.40	.35	.50	.05	
PAINTERS; Brush:						
(Southern portions of Graham and Pinal Counties and Remaining Counties)						
Zone A (1-30 miles from Tucson P.O.)	6.7	.29	.25		.02	
Zone B (31-40 miles from Tucson P.O.)	7.0	.29	.25		.02	
Zone C (41-50 miles from Tucson P.O.)	7.25	.29	.25		.02	
Zone D (51 miles and over from Tucson P.O.)	7.50	.29	.25		.02	
PAINTERS; Structural steel, brush:						
Zone A (1-30 miles from Tucson P.O.)	7.20	.29	.25		.02	
Zone B (31-40 miles from Tucson P.O.)	7.95	.29	.25		.02	
Zone C (41-50 miles from Tucson P.O.)	8.20	.29	.25		.02	
Zone D (51 miles and over from Tucson P.O.)	8.45	.29	.25		.02	
PLASTERERS:						
(Northern portions of Graham and Pinal Counties)						
Zone A (0-40 miles from Phoenix)	7.25	.30	.50		.035	
Zone B (40-60 miles from Phoenix)	7.75	.30	.50		.035	
Zone C (60-80 miles from Phoenix)	8.00	.30	.50		.035	
Zone D (80 miles and over from Phoenix)	8.875	.30	.50		.035	
PLASTERERS:						
(Southern portions of Graham and Pinal Counties and Remaining Counties)						
Zone A (0-30 miles from Tucson P.O.)	8.12	.35	.60			
Zone B (30-40 miles from Tucson P.O.)	8.62	.35	.60			
Zone C (40-50 miles from Tucson P.O.)	8.87	.35	.60			
Zone D (Over 50 miles from Tucson P.O.)	9.62	.35	.60			

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	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
PLUMBERS; Steamfitters:						
FREE ZONE 0-15 miles						
The "Free Zone" (Zone I shall be 15 road miles from the stated base points in Flagstaff, Yuma, Tucson and Douglas. The "Free Zone" from Phoenix shall be 15 miles radius from the stated base point. In addition, all areas within the City limits of Phoenix, Chandler, Scottsdale, Tempe, Glendale, Mesa, Kingman, Havasu City, Prescott, Winslow and Holbrook will be included as Free Zones. Any work contracted for outside of these zones will be determined from the Phoenix and Tucson basing points.	$8.10	.50	1.07	1.00	.10	
Zone II (15-30 miles)	8.40	.50	1.07	1.00	.10	
Zone III (30-45 miles)	8.75	.50	1.07	1.00	.10	
Zone IV (Over 45 miles)	9.85	.50	1.07	1.00	.10	
ROOFERS:						
(Pinal County except City of Manuel)						
Roofers and Waterproofers	7.35	.40	.20		.02	
ROOFERS:						
(City of Manuel in Pinal County and Remaining Counties)						
Zone A (0-44 miles from Tucson) Waterproofing, Asbestos, shingles and tile	6.92	.40	.10		.02	
Zone B (Over 44 miles from Tucson) Waterproofing, Asbestos, shingles and tile	8.17	.40	.10		.02	
SHEET METAL WORKERS:						
(Northern portions of Graham and Pinal Counties)						
Zone I (0-25 miles from Phoenix)	7.59	.27	.32		.02	
Zone II (25-30 miles from Phoenix)	8.22	.27	.32		.02	
Zone III (50 miles and over from Phoenix)	9.56	.27	.32		.02	
SHEET METAL WORKERS:						
(Southern portions of Graham and Pinal Counties and Remaining Counties)						
Zone A (0-17 miles from Tucson)	7.58	.58	1.15		.01	
Zone B (18-23 miles from Tucson)	8.03	.58	1.15		.01	
Zone C (24-31 miles from Tucson)	8.48	.58	1.15		.01	
Zone D (32-43 miles from Tucson)	9.08	.58	1.15		.01	
Zone D (44 miles and over from Tucson)	9.53	.58	1.15		.01	

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
SPRINKLER FITTERS	$8.70	.30	.50		.05	
LINE CONSTRUCTION:						
Zone I (Phoenix and Tucson 30 mile radius from center of town)						
Groundman	7.22	.23	1%+.35		1/2%	
Equipment operators; Powdermen; Mechanics	8.33	.23	1%+.35		1/2%	
Linemen; Technicians; Crane operator; Linemen welder	8.85	.23	1%+.35		1/2%	
Cable splicers	9.17	.23	1%+.35		1/2%	
Zone IA (Douglas, 10 miles radius from center of town)						
Groundman	7.84	.23	1%+.35		1/2%	
Equipment operators; Powdermen; Mechanics	8.91	.23	1%+.35		1/2%	
Linemen; Technicians; Crane operator; Linemen welder	9.4[illegible]	.23	1%+.35		1/2%	
Cable splicers	9.[illegible]	.23	1%+.35		1/2%	
Zone II (Other areas)						
Groundman	8.43	.23	1%+.35		1/2%	
Equipment operators; Powdermen; Mechanics	9.49	.23	1%+.35		1/2%	
Linemen; Technicians; Crane operator; Linemen welder	10.00	.23	1%+.35		1/2%	
Cable splicers	10.30	.23	1%+.35		1/2%	

FOOTNOTE:
a. Employer credits 4% basic hourly rate of employee with over 5 years' service, 2% basic hourly rate from 6 months to 5 years' service to Vacation Fund.
6 Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
GROUP I						
ALL HELPERS NOT HEREIN SEPARATELY CLASSIFIED; Cesspool diggers and installers; Chat box man; Checker, tool dispatcher; Concrete dump man-belt, pipe and/or boseman; Dumpman and/or spotter; Fence builder, guard rail builder hwy.; Form strippers; Labor, general or construction; Landscape gardener and nurseryman; Packing rod steel and pans; Rip rap stoneman	$5.53	.35	.60		.05	
GROUP II						
CEMENT FINISHER TENDER; Concrete curer (impervious membrane); Cutting torch operator; Fine grader (highway, engineering and sewer work only); Kettleman - tarman; Power type concrete buggy	5.64	.35	.60		.05	
GROUP III						
BANDER; CHUCKTENDER (except tunnel); Creosote tieman; Guinea chaser; Powderman helper; Rip-rap stone paver; Sandblaster (pot tender); Spikers and wrenchers	5.75	.35	.60		.05	
GROUP IV						
CEMENT DUMPERS (skip-type mixer or handling bulk cement); Chain saw machines (on clearing and grubbing); Concrete vibrating machines; Cribber and shorer (except tunnel); Floor sanders - concrete; Hydraulic jacks, and similar mechanical tools not separately herein classified; Operators and tenders of pneumatic and electric tools; Pipe caulker and/or Backup man (pipeline); Pipe wrapper; Pneumatic gopher; Rigger/signalman (pipeline)	5.83	.35	.60		.05	

LABORERS: (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	C
GROUP V AIR AND WATER WASH-OUT NOZZLEMAN; Asphalt rakers and ironers; Driller; Grade setter (pipeline); Hand guided trenchor and similar operated equipment; Jackhammer and/or pavement breaker; Pipe layer (including but not limited to non-metallic, transite and plastic pipe, water pipe, sewer pipe, drain pipe, underground tile and conduit); Rock slinger; Scaler (using bos'ns chair or safety belt); Tampers (mechanical - all types)	$5.97	.35	.60		.05	
GROUP VI CONCRETE CUTTING TORCH; CONCRETE SAW (hand guided); Driller (core, diamond, wagon or air track); Drill doctor and/or air tool repairman; Gunman and mixerman (gunite); Sandblaster (nozzleman)	6.275	.35	.60		.05	
GROUP VII CONCRETE ROAD FORM SETTER; Gunite nozzleman or rodman; Drillers, Joy Mustang, PR 143, 220 Gardner-Denver, hydrosonic; Powder man; Scaler (drillers); Welders and/or pipe layers installing process piping	6.785	.35	.60		.05	
MASON TENDERS	6.135	.35	.60		.05	
PLASTERERS' TENDERS	6.45	.35	.60		.05	
Employees working underground shall receive twenty cents (20¢) per hour additional above the regular rate except where herein specifically covered.						

LABORERS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	C
Laborers employed where they may have afree fall over thirty (30) feet or on construction scaffolds above thirty (30) feet or bos'n chair above thirty (30) feet, or where gas masks are necessary, shall receive fifty cents (50¢) per hour in addition to their regular rate, except where inherent in classifications.						
TUNNEL AND SHAFT WORKERS						
GROUP I BULL GANG, MUCKERS, TRACKMAN; DUMPMEN; Concrete crew (includes rodders and spreaders); Grout crew; Swamper (brakeman and switchmen on tunnel work)	$5.725	.35	.60		.05	
GROUP II NIPPER; CHUCKTENDER, CABLETENDER; Vibratorman, Jackhammer, Pneumatic tools (except driller)	5.86	.35	.60		.05	
GROUP III GROUT GUNMAN	5.96	.35	.60		.05	
GROUP IV TIMBERMAN, RETIMBERMAN - wood or steel blaster, driller powderman; Cherry pickerman; Powderman - primer house; Steel form raiser and setter; Kemper and other pneumatic concrete placer operator; Miner - finisher	6.06	.35	.60		.05	
GROUP IV - A MINERS - Tunnel (hand or machine)	6.26	.35	.60		.05	
GROUP V DIAMOND DRILL	6.395	.35	.60		.05	
GROUP V-A SHAFT AND RAISE MINER WELDER	6.595	.35	.60		.05	

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Other
GROUP I Air compressor operator; Field equipment serviceman helper; Heavy duty repair helper; Heavy duty welder helper; Oiler; Pump operator	$6.42	.45	.50		.02	
GROUP II Conveyor operator; Generator operator-portable; Power grizzly operator; Self-propelled chip spreading machine-conveyor operator; Watch fireman; Welding machine operator - gasoline and diesel power	6.73	.45	.50		.02	
GROUP III Concrete mixer operator - skip type; Dinky operator - (under 20 tons wt.); Driver-moto paver, Slurry seal machine, and similar type equipment; Motor crane driver; Power sweeper operator - self-propelled; Ross carrier or fork lift operator; Skip loader operator - all types with rated capacity 1-1/2 cu. yds. or less; Wheel type tractor operator (Ford, Ferguson, or similar type) with attachments such as fresno, push blade, post hole auger, mower, etc. excluding compacting equipment	7.13	.45	.50		.02	
GROUP IV A-Frame boom truck or winch truck operator; Asphalt plant firemen; Elevator hoist operator (including Tuskey hoist or similar types); Grade checker (excluding civil engineer); Multiple power concrete saw operator; Pavement breaker, mechanical compactor operator, power propelled; Roller operator - all types except as otherwise classified; Screed operator; Self-propelled chip spreading machine operator (including Slurry seal machine operator) Stationary pipewrapping and cleaning machine operator; Tugger operator	7.57	.45	.50		.02	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Other
GROUP V Aggregate plant operator (including crushing screening and sand plants, etc.); Asphalt laydown machine operator; Asphalt plant mixer operator; Beltcrete machine; Boring machine operator; Concrete mechanical tamping, spreading or finishing machine (incl. Clary, Johnson, or similar types); Concrete pump operator; Concrete batch plant operator, all types and sizes; Conductor, brakeman, or handler; Elevating grader operator - all types and sizes (except as otherwise classified); Field equipment serviceman; Highline cableway signalman; Kolman belt loader operator or similar type, w/belt width 48" or over; Locomotive engineer (including Dinky-20 tons wt. and over); Moto-paver and similar type equipment operator; Operating engineer rigger; Pneumatic-tired scraper operator (Turnapull, Euclid, Cat, D-W, Hancock and similar equipment) up to and incl. 12 cu. yds.; Power jumbo form setter operator; Pressure grout machine operator (as used in heavy engineering construction); Road oil mixing machine operator; Roller operator-on all types asphalt pavement; Self-propelled compactor, with blade; Skip loader operator-all types with rated capacity over 1-1/2 but less than 4 cu. yds.; Slip form operator (power driven lifting device for concrete forms); Soil cement road mixing machine operator-single pass type; Stationary Central generating plant operator-rated 300 k.w. or more; Surface heater and planer operator; Traveling pipewrapping machine operator	$8.01	.45	.50		.02	
GROUP V-A Heavy duty mechanic and/or welder; Pneumatic tired scraper, all sizes and types over 12 cu. yds. up to and incl. 45 cu. yds. MRC (Turnapull, Euclid, Cat, D-W, Hancock, and similar equipment); Tractor operator (Pusher, Bulldozer, Scraper) up to 400 net horsepower rating; Trenching machine operator	8.27	.45	.50		.02	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
GROUP VI						
Auto-Grade Machine (CMI and similar equipment); Boring machine operator (including Mole, Badger and similar type); Concrete mixer operator-paving type, and mobile mixer; Concrete pump operator with boom attachment (truck mounted); Crane operator-crawler and pneumatic type, under 100 ton capacity MRC; Crawler type tractor operator - with boom attachment; Derrick operator; Forklift operator for hoisting personnel; Grade-all operator; Helicopter hoist; Highline cableway operator (less than 20 tons rated capacity); Mass excavator operator (150 Bucyrus Erie and similar types); Mechanical hoist operator (two or more drums); Motor grade operator - any type power blade; Motor grader operator with elevating grader attachment; Mucking machine operator; Overhead crane operator; Piledriver engineer (portable, stationary or skid rig); Pneumatic-tired scraper operator-all sizes and types (Turnapull, Euclid, Cat D-W, Hancock and similar equipment over 45 cu. yds. MRC); Power driven ditch lining or ditch trimming machine operator; Skip loader operator - all types with rated capacity 4 cu. yds. but less than 8 cu. yds.; Slip form paving machine operator (including Gunnert, Zimmerman and similar types); Specialized power digger operator - attached to wheel-type tractor; Tower crane (or similar type) operator; Tractor operator (Pusher, Bulldozer, Scraper) 400 net horsepower and over; Tugger operator (two or more); Universal equipment operator - Shovel, Backhoe, Dragline, Clamshell, etc., up to 8 cu. yds.	$8.55	.45	.50		.02	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
GROUP VII						
Crane Operator - pneumatic or crawler (100 ton hoisting capacity and over MRC rating); Helicopter pilot - FAA qualified when used in construction work; Highline cableway operator, over 20 ton rated capacity and using traveling head and tail tower; Remote control earth moving equipment operator Skip loader operator - all types with rate capacity of 8 cu. yds. or more; Universal equipment - shovel, backhoe, dragline, clamshell, etc., 8 cu. yds. and over	$9.05	.45	.50		.02	
MULTIPLE-UNIT EARTH MOVING EQUIPMENT: Tractor Operator - pneumatic-tired or track type, two units - fifty cents (50¢) per hour more than the base single-unit rate established in Group V, Group V-A, or Group VI, and one dollar ($1.00) per hour for each additional unit.						
All Operators, oiler, and motor crane drivers on equipment with booms of 80 and over, incl. jib shall receive .0075 (3/4 of a cent) per foot per hour premium pay additional to the regular rate of pay.						
Oiler shall be required on all track or crawler-type cranes, backhoes, shovels, clamshells, draglines, gradalls, etc.						
Oiler drivers shall be required on all truck mounted or self-propelled excavating and/or hoisting equipment having the configuration for two men.						

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Apprentice	Other
GROUP I PICKUP; Station wagon; Teamsters	$5.67	.35	.60		.02	
GROUP II BUGGYMOBILE, 1 C.Y. OR LESS; Bulk cement spreader (2 or 3 axle); Bus driver; Dump (2 or 3 axle); Flatrack (2 or 3 axle); Water (under 2500 gal.)	5.78	.35	.60		.02	
GROUP III BULK CEMENT SPREADER (4 AXLE); Dump (4 axle); Dumptor or dumpster, less than c.y.; Flatrack (4 axle); Water (2500 gal. but less than 4000 gal.)	5.94	.35	.60		.02	
GROUP IV BULK CEMENT SPREADER (5 AXLE); Dump (5 axle); Dumptor or dumpster, 7 c.y. but less than 16 c.y.; Flaherty spreader or similar type equipment or leverman; Flatrack (5 axle); Slurry type equipment or leverman; Transit mix, 8 c.y., or less mixer capacity	6.23	.35	.60		.02	
GROUP V BULK CEMENT SPREADER (6 AXLE); Dump (2 axle); Flatrack (6 axle); Rock truck (dart, euclid, and other similar type end dumps, single unit) less than 16 c.y.	6.36	.35	.60		.02	
GROUP V-A OIL TANKER OR SPREADER TRUCK DRIVER and/or bootman, retortman or leverman	6.50	.35	.60		.02	
GROUP VI BULK CEMENT SPREADER (7 AXLE); Concrete pump truck driver, (when integral part of transit mix truck); Dump (7 axle); Flatrack (7 axle); Hydro lift, Swedish crane, Iowa 300 and similar types; Ross carrier fork lift or lift truck; Transit mix, over 10.5 c.y. but less than 14 c.y. mixer capacity	6.61	.35	.60		.02	

TRUCK DRIVERS: (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Apprentice	Other
GROUP VII BULK CEMENT SPREADER (8 AXLE); Dump (8 axle); Flatrack (8 axle)	$6.95	.35	.60		.02	
GROUP VIII OFF-HIGHWAY EQUIPMENT DRIVER (2 or 4 wheel power unit, i.e. Cat DW series, Euclid, International, and similar type equipment, transporting material when top loaded or by external means, including pulling water tanks, fuel tanks, or other teamsters classifications; Bulk cement spreader (9 axle); Dump (9 axle); Dumptor or dumpster, 16 c.y. and over; Eject-alls; Flatrack (9 axle); Rock truck (Dart, Euclid, or other similar end dump types) 16 c.y. and over	7.365	.35	.60		.02	
HEAVY DUTY MECHANIC/WELDER	8.24	.35	.60		.02	
HEAVY DUTY MECHANIC/WELDER HELPER	6.39	.35	.60		.02	
FIELD EQUIPMENT SERVICEMAN or FUEL Truck driver	7.98	.35	.60		.02	
Combination Man - 30¢ over the highest rated work						
Multiple-unit equipment driver - two units 50¢ per hour more than the base single unit rate established in Group 8 above; and $1.00 per hour for each additional unit						

SUPERSEDEAS DECISION

STATE: Arizona
DECISION NUMBER: AQ-1,027
COUNTY: Coconino
DATE: Date of Publication

Supersedes Decision #AP-297 dated April 27, 1973, in 38 FR 10557.

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

*Establish a point 35 miles due north from the city hall of the City of Flagstaff and establish another point 35 miles due north from the city hall of the City of Kingman, then draw a straight line from the first point to the second point and extend that same line to the intersection of the Arizona-Nevada State Line. Establish a third point 35 miles due north of the city hall of the City of Holbrook and draw a straight line from the first point to the third point and from the third point extend a line due east to the intersection of the Airzona-New Mexico State Line.

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
ASBESTOS WORKERS	$8.48	.50	.65		.01	
BOILERMAKERS	7.95	.60	1.00	.50	.02	
BRICKLAYERS; Stonemasons:						
Zone A (0-25 miles from the City Hall of Flagstaff, Phoenix and Yuma)	8.85	.35	.30		.03	
Zone B (25-40 miles from City Hall of Phoenix)	9.74	.35	.30		.03	
Zone C (40-70 miles from City Hall of Phoenix)	10.18	.35	.30		.03	
Zone D (70-100 miles from City Hall of Phoenix)	10.62	.35	.30		.03	
Zone E (100-200 miles from City Hall of Phoenix)	11.06	.35	.30		.03	
Zone F (200 miles and over from City Hall of Phoenix).	11.51	.35	.30		.03	
CARPENTERS (Northern Area):						
Carpenters	10.125	.40	.60		.025	
Piledrivermen	10.375	.40	.60		.025	
Millwrights	10.50	.40	.60		.025	
CARPENTERS (Central and Southern Area):						
Carpenters	8.25	.40	.60		.025	
Piledrivermen	8.50	.40	.60		.025	
Millwrights	8.625	.40	.60		.025	
CEMENT MASONS (Northern Area)	9.51	.35	.65		.025	
CEMENT MASONS (Central and Southern Area)	7.585	.35	.65		.025	
ELECTRICIANS (Flagstaff Area):						
Zone A (In Flagstaff, which shall cover that area lying in a square extending 20 miles North-South, East and West of the Post Office) (Williams, and Sedona covering a square extending 5 miles North-South, East and West of the Post Office of each town):						
Electricians	9.35	.40	1%+.60		1/2%	
Cable splicers	9.55	.40	1%+.60		1/2%	
Zone B (Remaining Area):						
Electricians	10.85	.40	1%+.60		1/2%	
Cable splicers	11.05	.40	1%+.60		1/2%	
ELEVATOR CONSTRUCTORS	$7.58	.185	.20	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.185	.20	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR					
IRONWORKERS (Northern Area)	10.21	.58	.625		.04	
IRONWORKERS (Central and Southern Area)	8.58	.58	.625		.04	
PAINTERS:						
Zone A (From Flagstaff Court House to 20 miles):						
Brush	5.90					
Brush (steel and bridge)	6.15					
Spray	6.35					
Zone B (20-35 miles from Flagstaff Court House):						
Brush	6.40					
Brush (steel and bridge)	6.55					
Spray	6.85					
Zone C (35-100 miles from Flagstaff Court House):						
Brush	7.1[illegible]					
Brush (steel and bridge)	7.30					
Spray	7.60					
Zone D (Remaining Area):						
Brush	7.40					
Brush (steel and bridge)	7.55					
Spray	7.85					
PLUMBERS; Steamfitters:						
FREE ZONE 0-15 miles						
The "Free Zone" (Zone I shall be 15 road miles from the stated base points in Flagstaff, Yuma, Tucson and Douglas. The "Free Zone" from Phoenix shall be 15 miles radius from the state base point. In addition, all areas within the City limits of Phoenix, Chandler, Scottsdale, Tempe, Glendale, Mesa, Kingman, Havasu City, Prescott, Winslow, and Holbrook will be included as Free Zones. Any work contracted for outside of these zones will be determined from the Phoenix and Tucson basing points.	8.10	.50	1.07	1.00	.10	
Zone II (15-30 miles)	8.40	.50	1.07	1.00	.10	
Zone III (30-45 miles)	8.75	.50	1.07	1.00	.10	
Zone IV (Over 45 miles)	9.85	.50	1.07	1.00	.10	

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
ROOFERS	$7.35	.40	.20		.02	
SHEET METAL WORKERS:						
(Base zone Flagstaff City Hall or Administration Building):						
Zone I (0-25 miles)	7.59	.27	.32		.02	
Zone II (25-50 miles)	8.22	.27	.32		.02	
Zone III (50 miles and over)	9.56	.27	.32		.02	
LINE CONSTRUCTION:						
Zone IA (Flagstaff, 10 mile radius from center of town):						
Groundman	7.84	.23	1%+.35		1/2%	
Equipment operators; Powdermen; Mechanics	8.91	.23	1%+.35		1/2%	
Linemen; Technicians; Crane operator; Linemen welder	9.43	.23	1%+.35		1/2%	
Cable splicers	9.78	.23	1%+.35		1/2%	
Zone II (Other Areas):						
Groundman	8.43	.23	1%+.35		1/2%	
Equipment operators; Powdermen; Mechanics	9.49	.23	1%+.35		1/2%	
Linemen; Technicians; Crane operators; Linemen welder	10.00	.23	1%+.35		1/2%	
Cable splicers	10.30	.23	1%+.35		1/2%	

FOOTNOTE:
a. Employer contributes 4% of basic hourly rate for 5 years' service and 2% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

Northern Area

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
LABORERS:						
GROUP I						
ALL HELPERS NOT HEREIN SEPARATELY CLASSIFIED; Cesspool diggers and installers; Chat box man; Checker, tool dispatcher; Concrete dump manbelt, pipe and/or boseman; Dumpman and/or spotter; Fence builder, guard rail builder highway; Form strippers; Labor, general or construction; Landscape gardener and nurseryman; Packing rod steel and pans; Rip rap stone man	$7.155	.35	.60		.05	
GROUP II						
CEMENT FINISHER TENDER; Concrete curer (impervious membrane); Cutting torch operator; Fine grader (highway, engineering and sewer work only); Kettleman - tarman; Power type concrete buggy	7.265	.35	.60		.05	
GROUP III						
BANDER; CHUCKTENDER (except Tunnel); Creosote tieman; Guinea chaser; Powderman helper; Rip-rap stone paver; Sandblaster (pot tender); Spikers and wrenchers	7.375	.35	.60		.05	
GROUP IV						
CEMENT DUMPERS (Skip-type mixer or handling bulk cement); Chain saw machines (on clearing and grubbing); Concrete vibrating machine; Cribber and shorer (except Tunnel); Floor sanders - concrete; Hydraulic jacks, and similar mechanical tools not separately herein classified; Operators and tenders of pneumatic and electric tools; Pipe caulker and/or backup man (pipeline); Pipe wrapper; pneumatic gopher; Rigger/signalman (pipeline)	7.455	.35	.60		.05	

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LABORERS: (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
GROUP V						
AIR AND WATER WASH-OUT NOZZLEMAN; Asphalt rakers and ironers; Driller; Grade setter (pipeline); Hand guided trencher and similar operated equipment; Jackhammer and/or pavement breakers; Pipe layer (including but not limited to non-metallic, transite and plastic pipe, water pipe, sewer pipe, drain pipe, underground tile and conduit); Rock slinger; Scaler (using bos'ns chair or safety belt); Tampers (Mechanical - all types)	$7.595	.35	.60		.05	
GROUP VI						
CONCRETE CUTTING TORCH; CONCRETE SAW (hand guided); Driller (core, diamond, wagon or air track); Drill doctor and/or air tool repairman; Gunman and mixerman (gunnite); Sandblaster (nozzleman)	7.90	.35	.60		.05	
GROUP VII						
CONCRETE ROAD FORM SETTER; Gunnite nozzleman or rodman; Drillers, joy mustang, PR 143, 2200 Gardner-Denver, hydrasonic; Powder man; Scaler (drillers); Welders and/or pipe layers installing process piping	8.41	.35	.60		.05	
MASON TENDERS	7.21	.35	.60		.05	
PLASTERERS' TENDERS	7.525	.35	.60		.05	

Employees working underground shall receive twenty cents (20¢) per hour additional above the regular rate, except where herein specifically covered.

Laborers employed where they may have a free fall over thirty (30 feet or on construction scaffolds above thirty (30) feet or bos'n chair above thirty (30) feet, or where gas masks are necessary, shall receive fifty cents (50¢) per hour in addition to their regular rate, except where inherent in classifications.

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LABORERS: (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
TUNNEL AND SHAFT WORKERS						
GROUP I						
BULL GANG, MUCKERS, TRACKMAN; DUMPMEN; Concrete crew (includes rodders and spreaders); Grout crew; Swamper (brakeman and switchmen on tunnel work)	$7.35	.35	.60		.05	
GROUP II						
NIPPER; CHUCKTENDER, CABLETENDER; Vibratorman, jackhammer, pneumatic tools (except driller)	7.485	.35	.60		.05	
GROUP III						
GROUT GUNMAN	7.585	.35	.60		.05	
GROUP IV						
TIMBERMAN, RETIMBERMAN - wood or steel blaster, driller powderman; Cherry pickerman; Powderman - primer house; Steel form raiser and setter; Kemper and other pneumatic concrete placer operator; Miner - finisher	7.685	.35	.60		.05	
GROUP IV-A						
MINERS - Tunnel (hand or machine)	7.885	.35	.60		.05	
GROUP V						
DIAMOND DRILL	8.02	.35	.60		.05	
GROUP V-A						
SHAFT AND RAISE MINER WELDER	8.22	.35	.60		.05	

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Northern Area

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Other
GROUP I Air Compressor Operator; Field equipservicemen helper; Heavy duty repair helper; Heavy duty welder helper; Oiler; Pump operator	$8.06	.45	.50		.02	
GROUP II Conveyor Operator; Generator operator-portable; Power grizzly operator; Self-propelled chip spreading machine-conveyor operator; Watch Fireman; Welding machine operator - gasoline and diesel power	8.35	.45	.50		.02	
GROUP III Concrete Mixer Operator-Skip Type; Dinky operator - (under 20 tons wt.); Driver-moto paver, slurry seal machine, and similar type equipment; Motor crane driver; Power sweeper operator - self-propelled; Ross carrier or fork lift operator; Skip loader operator, - all types with rated capacity 1-1/2 cu. yds. or less; Wheel type tractor operator (Ford, Ferguson, or similar type) with attachments such as fresno, push blade, post hole auger, mower, etc., excluding compacting equipment	8.75	.45	.50		.02	
GROUP IV A-Frame Boom Truck or Winch Truck Operator; Asphalt plant firemen; Elevator hoist operator (including Tuskey hoist or similar types); Grade checker (excluding civil engineer); Multiple power concrete saw operator; Pavement breaker, mechanical compactor operator, power propelled; Roller operator - all types except as otherwise classified; Screed operator; Self-propelled chip spreading machine operator (including slurry seal machine operator) Stationary pipewrapping and cleaning machine operator; Tugger operator	9.19	.45	.50		.02	

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POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Other
GROUP V Aggregate Plant Operator (including crushing screening and sand plants, etc.); Asphalt laydown machine operator; Asphalt plant mixer operator; Beltcrete machine; Boring machine operator; Concrete mechanical tamping, spreading or finishing machine (incl. Clary, Johnson or similar types); Concrete pump operator; Concrete batch plant operator, all types and sizes; Conductor, Brakeman, or handler; Elevating grader operator - all types and sizes (except as otherwise classified); Field equipment serviceman; Highline cableway signalman; Kolman belt loader operator or similar type, w/blet width 48" or over; Locomotive engineer (including Dinky-20 tons weight and over); Moto-paver and similar type equipment operator; Operating engineer rigger; Pneumatic-tired scraper operator (Turnapull, Euclid, Cat, D-W, Hancock and similar equipment) up to and incl. 12 cu. yds.; Power jumbo form setter operator; Pressure grout machine operator (as used in heavy engineering construction); Road oil mixing machine operator; Roller operator-on all types asphalt pavement; Self-propelled compactor, with blade; Skip loader operator-all types with rated capacity over 1½ but less than 4 cu. yds.; Slip form operator (power driven lifting device for concrete forms); Soil cement road mixing machine operator single pass type; Stationary central generating plant operator - rated 300 k.w. or more; Surface heater and planer operator; Traveling pipewrapping machine operator	$9.63	.45	.50		.02	
GROUP V-A Heavy Duty Mechanic and/or Welder; Pneumatic tired scraper, all sizes and types over 12 cu. yds. up to and incl. 45 cu. yds. MRC (Turnapull, Euclid, Cat, D-W, Hancock, and similar equipment); Tractor operator (Pusher, Bulldozer, Scraper) up to 400 net horsepower rating; Trenching machine operator	9.89	.45	.50		.02	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
GROUP VI						
Auto-Grade Machine (CMI and similar equipment); Boring machine operator (including mole, badger and similar type); Concrete mixer operator-paving type, and mobile mixer; Concrete pump operator with boom attachment (truck mounted); Crane operator-crawler and pneumatic type, under 100 ton capacity MRC; Crawler type tractor operator - with boom attachment; Derrick operator; Forklift operator for hoisting personnel; Grade-all operator; Helicopter Hoist; Highline cableway operator (less than 20 tons rated capacity); Mass excavator operator (150 Bucyrus Erie and similar types); Mechanical hoist operator (two or more drums); Motor grade operator - any type power blade; Motor grader operator with elevating grader attachment; Mucking machine operator; Operating Engineer electricians - including lineman, tower erector, cable splicers, etc.; Overhead crane operator; Piledriver engineer (portable, stationary or skid rig); Pneumatic-tired scraper operator - all sizes and types (Turnapull, Euclid, Cat, D-W, Hancock and similar equipment over 45 cu. yds. MRC); Power driven ditch lining or ditch trimming machine operator; Skip loader operator - all types with rated capacity 4 cu. yds. but less than 8 cu. yds.; Slip form paving machine operator (including Gunnert, Zimmerman and similar types); Specialized power digger operator - attached to wheel-type tractor; Tower crane (or similar type) operator; Tractor operator (pusher, bulldozer, scraper) 400 net horsepower and over; Tugger operator (two or more); Universal equipment operator - Shovel, Backhoe, Dragline, Clamshell, etc., up to 8 cu. yds.	$10.17	.45	.50		.02	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
GROUP VII						
Crane Operator - Pneumatic or Crawler (100 ton hoisting capacity and over MRC rating); Helicopter pilot - FAA qualified when used in construction work; Highline cableway operator, over 20 ton rated capacity and using traveling head and tail tower; Remote control earth moving equipment operator; Skip loader operator - all types with rated capacity of 8 cu. yds. or more; Universal equipment - Shovel, Backhoe, Dragline, Clamshell, etc., 8 cu. yds and over	$10.69	.45	.50		.02	
MULTIPLE-UNIT EARTH MOVING EQUIPMENT: Tractor Operator-Pneumatic-tired or track type, two units - fifty cents (50¢) per hour more than the base single-unit rate established in Group V, Group V-A, or Group VI, and one dollar ($1.00) per hour for each additional unit.						
All Operator, Oiler, and Motor Crane Drivers on equipment with booms of 80 and over, incl. jib shall receive .0075 (3.4 of a cent) per foot per hour premium pay additional to the regular rate of pay.						
Oiler shall be required on all track or crawler-type cranes, backhoes, shovels, clamshells, draglines, gradalls, etc.						
Oiler drivers shall be required on all truck mounted or self-propelled excavating and/or hoisting equipment have the configuration for two men.						

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Northern Area

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Other
GROUP I PICKUP; STATION WAGON; TEAMSTERS	$7.295	.35	.60		.02	
GROUP II BUGGYMOBILE, 1 C. Y. OR LESS; Bulk cement spreader (2 or 3 axle); Bus driver; Dump (2 or 3 axle); Flatrack (2 or 3 axle); Water (under 2500 gal.)	7.405	.35	.60		.02	
GROUP III BULK CEMENT SPREADER (4 AXLE); Dump (4 axle); dumptor or dumpster, less than 7 c.y.; Flatrack (4 axle); Water (2500 gal. but less than 4000 gal.)	7.565	.35	.60		.02	
GROUP IV BULK CEMENT SPREADER (5 AXLE); Dump (5 axle); Dumptor or dumpster, 7 c.y. but less than 16 c.y.; Flaherty spreader or similar type equipment or leverman; Flatrack (5 axle); Slurry-type equipment or leverman; Transit mix, 8 c.y. or less	7.855	.35	.60		.02	
GROUP V BULK CEMENT SPREADER (6 AXLE); Dump (6 axle); Flatrack (6 axle); Rock truck (Dart, Euclid and other similar type end dumps, single unit) less than 16 c.y.	7.985	.35	.60		.02	
GROUP V-A OIL TANKER OR SPREADER TRUCK DRIVER and/or Bootman, retortman or leverman	8.125	.35	.60		.02	
GROUP VI BULK CEMENT SPREADER (7 AXLE); Concrete pump truck driver, (when integral part or transit mix truck); Dump (7 axle); Flatrack (7 axle); Hydro lift, Swedish crane, Iowa 300 and similar types; Ross carrier fork lift or lift truck; Transit mix, over 10.5 c.y. but less than 14 c.y. mixer capacity	8.235	.35	.60		.02	

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TRUCK DRIVERS (CONT'D):	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Other
GROUP VII BULK CEMENT SPREADER (8 axle); Dump (8 axle); Flatrack (8 axle)	$8.575	.35	.60		.02	
GROUP VIII OFF-HIGHWAY EQUIPMENT DRIVER(2 or 4 wheel power unit, i.e. Cat DW series, Euclid, International, and similar type equipment, transporting material when top loaded or by external means, including pulling water tanks, fuel tanks, or other Teamsters classifications; Bulk cement spreader (9 axle); Dump (9 axle); Dumptor or dumpster, 16 c.y. & over; Eject-alls; Flatrack (9 axle); Rock truck (Dart, Euclid or other similar end-dump types);16 c.y. & over	8.99	.35	.60		.02	
HEAVY DUTY MECHANIC/WELDER	9.86	.35	.60		.02	
HEAVY DUTY MECHANIC/WELDER HELPER	8.03	.35	.60		.02	
FIELD EQUIPMENT SERVICEMAN OR FUEL TRUCK DRIVER	9.62	.35	.60		.02	

Central and Southern Areas

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LABORERS:	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	D
GROUP I						
ALL HELPERS NOT HEREIN SEPARATELY CLASSIFIED; Cesspool diggers and installers; Chat box man; Checker, tool dispatcher; Concrete dump man-belt, pipe and/or hoseman; Dumpman and/or spotter; Fence builder, guard rail builder hwy.; Form strippers; Labor, general or construction; Landscape gardener and nurseryman; Packing rod steel and pans; Rip rap stoneman	$5.53	.35	.60		.05	
GROUP II						
CEMENT FINISHER TENDER; Concrete curer (impervious membrane); Cutting torch operator; Fine grader (highway, engineering and sewer work only); Kettleman - tarman; Power type concrete buggy	5.64	.35	.60		.05	
GROUP III						
BANDER; CHUCKTENDER (except tunnel); Creosote tieman; Guinea chaser; Powderman helper; Rip-rap stone paver; Sandblaster (pot tender); Spikers and wrenchers	5.75	.35	.60		.05	
GROUP IV						
CEMENT DUMPERS (skip-type mixer or handling bulk cement); Chain saw machines (on clearing and grubbing); Concrete vibrating machines; Cribber and shorer (except tunnel); Floor sanders - concrete; Hydraulic jacks, and similar mechanical tools not separately herein classified; Operators and tenders of pneumatic and electric tools; Pipe caulker and/or Backup man (pipeline); Pipe wrapper; Pneumatic gopher; Rigger/signalman (pipeline)	5.83	.35	.60		.05	

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LABORERS: (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
GROUP V						
AIR AND WATER WASH-OUT NOZZLEMAN; Asphalt rakers and ironers; Driller; Grade setter (pipeline); Hand guided trencher and similar operated equipment; Jackhammer and/or pavement breakers; Pipe layer (including but not limited to non-metallic, transite and plastic pipe, water pipe, sewer pipe, drain pipe, underground tile and conduit); Rock slinger; Scaler (using bos'ns chair or safety belt); Tampers (mechanical - all types)	$5.97	.35	.60		.05	
GROUP VI						
CONCRETE CUTTING TORCH; CONCRETE SAW (hand guided); Driller (core, diamond, wagon or air track); Drill doctor and/or air tool repairman; Gunman and mixerman (gunite); Sandblaster (nozzleman)	6.275	.35	.60		.05	
GROUP VII						
CONCRETE ROAD FORM SETTER; Gunite nozzleman or rodman; Drillers, Joy Mustang, PR 143, 220 Gardner-Denver, hydrosonic; Powder man; Scaler (drillers); Welders and/or pipe layers installing process piping	6.785	.35	.60		.05	
MASON TENDERS	6.135	.35	.60		.05	
PLASTERERS' TENDERS	6.45	.35	.60		.05	
Employees working underground shall receive twenty cents (20¢) per hour additional above the regular rate except where herein specifically covered.						

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	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
LABORERS (cont'd)						
Laborers employed where they may have a free fall over thirty (30) feet or on construction scaffolds above thirty (30) feet or bos'n chair above thirty (30) feet, or where gas masks are necessary, shall receive fifty cents (50¢) per hour in addition to their regular rate, except where inherent in classifications.						
TUNNEL AND SHAFT WORKERS						
GROUP I BULL GANG, MUCKERS, TRACKMAN; DUMPMEN; Concrete crew (includes rodders and spreaders); Grout crew; Swamper (brakeman and switchmen on tunnel work)	$5.7[illegible]	.35	.60		.05	
GROUP II NIPPER; CHUCKTENDER, CABLETENDER; Vibratorman, Jackhammer, Pneumatic tools (except driller)	5.86	.35	.60		.05	
GROUP III GROUT GUNMAN	5.96	.35	.60		.05	
GROUP IV TIMBERMAN, RETIMBERMAN - wood or steel blaster, driller powderman; Cherry pickerman; Powderman - primer house; Steel form raiser and setter; Kemper and other pneumatic concrete placer operator; Miner - finisher	6.06	.35	.60		.05	
GROUP IV - A MINERS - Tunnel (hand or machine)	6.26	.35	.60		.05	
GROUP V DIAMOND DRILL	6.395	.35	.60		.05	
GROUP V-A SHAFT AND RAISE MINER WELDER	6.595	.35	.60		.05	

Central and Southern Areas

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	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
POWER EQUIPMENT OPERATORS:						
GROUP I Air compressor operator; Field equip-servicemen helper; Heavy duty repair helper; Heavy duty welder helper; Oiler; Pump operator	$6.42	.45	.50		.02	
GROUP II Conveyor operator; Generator operator-portable; Power grizzly operator; Self-propelled chip spreading machine-conveyor operator; Watch fireman; Welding machine operator - gasoline and diesel power	6.73	.45	.50		.02	
GROUP III Concrete mixer operator - skip type; Dinky operator - (under 20 tons wt.); Driver-moto paver, Slurry seal machine, and similar type equipment; Motor crane driver; Power sweeper operator - self-propelled; Ross carrier or fork lift operator; Skip loader operator - all types with rated capacity 1-1/2 cu. yds. or less; Wheel type tractor operator (Ford, Ferguson, or similar type) with attachments such as fresno, push blade, post hole auger, mower, etc. excluding compacting equipment	7.13	.45	.50		.02	
GROUP IV A-Frame boom truck or winch truck operator; Asphalt plant firemen; Elevator hoist operator (including Tuskey hoist or similar types); Grade checker (excluding civil engineer); Multiple power concrete saw operator; Pavement breaker, mechanical compactor operator, power propelled; Roller operator - all types except as otherwise classified; Screed operator; Self-propelled chip spreading machine operator (including Slurry seal machine operator) Stationary pipewrapping and cleaning machine operator; Tugger operator	7.57	.45	.50		.02	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
GROUP V						
Aggregate plant operator (including crushing screening and sand plants, etc.); Asphalt laydown machine operator; Asphalt plant mixer operator; Beltcrete machine; Boring machine operator; Concrete mechanical tamping, spreading or finishing machine (incl. Clary, Johnson, or similar types); Concrete pump operator; Concrete batch plant operator, all types and sizes; Conductor, brakeman, or handler; Elevating grader operator - all types and sizes (except as otherwise classified); Field equipment serviceman; Highline cableway signalman; Kolman belt loader operator or similar type, w/belt width 48" or over; Locomotive engineer (including Dinky-20 tons wt. and over); Moto-paver and similar type equipment operator; Operating engineer rigger; Pneumatic-tired scraper operator (Turnapull, Euclid, Cat, D-W, Hancock and similar equipment) up to and incl. 12 cu. yds.; Power jumbo form setter operator; Pressure grout machine operator (as used in heavy engineering construction); Road oil mixing machine operator; Roller operator-on all types asphalt pavement; Self-propelled compactor, with blade; Skip loader operator-all types with rated capacity over 1-1/2 but less than 4 cu. yds.; Slip form operator (power driven lifting device for concrete forms); Soil cement road mixing machine operator-single pass type; Stationary Central generating plant operator-rated 300 k.w. or more; Surface heater and planer operator; Traveling pipewrapping machine operator	$8.01	.45	.50		.02	
GROUP V-A						
Heavy duty mechanic and/or welder; Pneumatic tired scraper, all sizes and types over 12 cu. yds. up to and incl. 45 cu. yds. MRC (Turnapull, Euclid, Cat, D-W, Hancock, and similar equipment); Tractor operator (Pusher, Bulldozer, Scraper) up to 400 net horsepower rating; Trenching machine operator	8.27	.45	.50		.02	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
GROUP VI						
Auto-Grade Machine (CMI and similar equipment); Boring machine operator (including Mole, Badger and similar type); Concrete mixer operator-paving type, and mobile mixer; Concrete pump operator with boom attachment (truck mounted); Crane operator-crawler and pneumatic type, under 100 ton capacity MRC; Crawler type tractor operator - with boom attachment; Derrick operator; Forklift operator for hoisting personnel; Grade-all operator; Helicopter hoist; Highline cableway operator (less than 20 tons rated capacity); Mass excavator operator (150 Bucyrus Erie and similar types); Mechanical hoist operator (two or more drums); Motor grade operator - any type power blade; Motor grader operator with elevating grader attachment; Mucking machine operator; Overhead crane operator; Piledriver engineer (portable, stationary or skid rig); Pneumatic-tired scraper operator-all sizes and types (Turnapull, Euclid, Cat D-W, Hancock and similar equipment over 45 cu. yds. MRC); Power driven ditch lining or ditch trimming machine operator; Skip loader operator - all types with rated capacity 4 cu. yds. but less than 8 cu. yds.; Slip form paving machine operator (including Gunnert, Zimmerman and similar types); Specialized power digger operator - attached to wheel-type tractor; Tower crane (or similar type) operator; Tractor operator (Pusher, Bulldozer, Scraper) 400 net horsepower and over; Tugger operator (two or more); Universal equipment operator - Shovel, Backhoe, Dragline, Clamshell, etc., up to 8 cu. yds.	$8.55	.45	.50		.02	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
GROUP VII Crane Operator - pneumatic or crawler (100 ton hoisting capacity and over MRC rating); Helicopter pilot - FAA qualified when used in construction work; Highline cableway operator, over 20 ton rated capacity and using traveling head and tail tower; Remote control earth moving equipment operator; Skip loader operator - all types with rate capacity of 8 cu. yds. or more; Universal equipment - shovel, backhoe, dragline, clamshell, etc., 8 cu. yds. and over	$9.05	.45	.50		.02	
MULTIPLE-UNIT EARTH MOVING EQUIPMENT: Tractor Operator - pneumatic-tired or track type, two units - fifty cents (50¢) per hour more than the base single-unit rate established in Group V, Group V-A, or Group VI, and one dollar ($1.00) per hour for each additional unit.						
All Operators, oiler, and motor crane drivers on equipment with booms of 80 and over, incl. jib shall receive .0075 (3/4 of a cent) per foot per hour premium pay additional to the regular rate of pay.						
Oiler shall be required on all track or crawler-type cranes, backhoes, shovels, clamshells, draglines, gradalls, etc.						
Oiler drivers shall be required on all truck mounted or self-propelled excavating and/or hoisting equipment having the configuration for two men.						

Central and Southern Areas

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
GROUP I PICKUP; Station wagon; Teamsters	$5.67	.35	.60		.02	
GROUP II BUGGYMOBILE, 1 C.Y. OR LESS; Bulk cement spreader (2 or 3 axle); Bus driver; Dump (2 or 3 axle); Flatrack (2 or 3 axle); Water (under 2500 gal.)	5.78	.35	.60		.02	
GROUP III BULK CEMENT SPREADER (4 AXLE); Dump (4 axle); Dumptor or dumpster, less than c.y.; Flatrack (4 axle); Water (2500 gal. but less than 4000 gal.)	5.94	.35	.60		.02	
GROUP IV BULK CEMENT SPREADER (5 AXLE); Dump (5 axle); Dumptor or dumpster, 7 c.y. but less than 16 c.y.; Flaherty spreader or similar type equipment or leverman; Flatrack (5 axle); Slurry type equipment or leverman; Transit mix, 8 c.y., or less mixer capacity	6.23	.35	.60		.02	
GROUP V BULK CEMENT SPREADER (6 AXLE); Dump (2 axle); Flatrack (6 axle); Rock truck (dart, euclid, and other similar type end dumps, single unit) less than 16 c.y.	6.36	.35	.60		.02	
GROUP V-A OIL TANKER OR SPREADER TRUCK DRIVER and/or bootman, retortman or leverman	6.50	.35	.60		.02	
GROUP VI BULK CEMENT SPREADER (7 AXLE); Concrete pump truck driver, (when integral part of transit mix truck); Dump (7 axle); Flatrack (7 axle); Hydro lift, Swedish crane, Iowa 300 and similar types; Ross carrier fork lift or lift truck; Transit mix, over 10.5 c.y. but less than 14 c.y. mixer capacity	6.61	.35	.60		.02	

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TRUCK DRIVERS: (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Oth
GROUP VII						
BULK CEMENT SPREADER (8 AXLE); Dump (8 axle); Flatrack (8 axle)	$6.95	.35	.60		.02	
GROUP VIII						
OFF-HIGHWAY EQUIPMENT DRIVER (2 or 4 wheel power unit, i.e. Cat DW series, Euclid, International, and similar type equipment, transporting material when top loaded or by external means, including pulling water tanks, fuel tanks, or other teamsters classifications; Bulk cement spreader (9 axle); Dump (9 axle); Dumptor or dumpster, 16 c.y. and over; Eject-alls; Flatrack (9 axle); Rock truck (Dart, Euclid, or other similar end dump types) 16 c.y. and over	7.3[illegible]	.35	.60		.02	
HEAVY DUTY MECHANIC/WELDER	8.24	.35	.60		.02	
HEAVY DUTY MECHANIC/WELDER HELPER	6.39	.35	.60		.02	
FIELD EQUIPMENT SERVICEMAN or FUEL Truck driver	7.98	.35	.60		.02	
Combination Man - 30¢ over the highest rated work						
Multiple-unit equipment driver - two units 50¢ per hour more than the base single unit rate established in Group 8 above; and $1.00 per hour for each additional unit						

STATE: Montana

COUNTIES: Flathead, Lake, Lincoln, Mineral, Missoula and Sanders

DECISION NUMBER: AQ-1,032

DATE: Date of Publication

Supersedes Decision #AP-913 dated June 29, 1973, in 38 FR 17392

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth.
ASBESTOS WORKERS	$7.96	.44	.72			
BOILERMAKERS	8.25	.30	1.00		.02	
BRICKLAYERS; Stonemasons	6.65	.30	.25			
CARPENTERS:						
Flathead, Lincoln, Lake (northern area including town of Ravalli from a point where Hwy #10A and Hwy #93 intersect), Mineral (northern area including the town of Superior), Sanders (Except S.E. portion)						
Carpenters	6.15	.30	.45		.02	
Sawmen; Filers; Piledrivers; Carpenters working burned, charred, creosoted or similar treated material	6.35	.30	.45		.02	
Millwrights and machine erectors	6.50	.30	.45		.02	
Lake (Southern area, south of Ravalli), Mineral (area southeast of southeast city limits of the town of Superior), Missoula and Sander (S. E. portion)						
Carpenters	5.97	.30	.35		.01	
Millwrights; Piledriver; Power saw; Saw filer	6.22	.30	.35		.01	
CEMENT MASONS:						
Flathead, Lake, (North of the City of Ronan), Lincoln, and Sanders (North of the City of Plains) Counties	6.15	.20				
Lake (Southern area, incl. the City of Ronan), Mineral, Missoula and Sanders (Southern area, incl. the City of Plains) Counties	6.40	.35				
ELECTRICIANS:						
Electricians	7.00	.20	1%		1/2%	
Cable splicers	7.40	.20	1%		1/2%	
ELEVATOR CONSTRUCTORS	6.74	.345	.23	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.345	.23	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR					
IRONWORKERS:						
Reinforcing	7.56	.48	.65		.05	
Ornamental; Structural	7.56	.48	.65		.05	
LATHERS	5.95					
MARBLE MASONS	6.65	.30	.25			
PAINTERS:						
Lake (Southern area incl. City of Ronan), Mineral, Missoula and Sanders (Area south of Thompson Falls) Cos. Brush and Spray	$6.11	.30	.15			
PLASTERERS:						
Lake (Southern Area incl. the City of Ronan), Mineral, Missoula and Sanders (Southern Area incl. the City of Plains)	6.65	.35				
Flathead, Lake (Area north of the City of Ronan), Lincoln, and Sanders (North of the City of Plains) Counties	6.45	.20				
PLUMBERS:						
Flathead, Lake (Area north of the City of Ronan), Lincoln, and Sanders (Northern area incl. the City of Thompson Falls) Counties	5.90	.30	.30		.02	
Lake (Southern area incl. the City of Ronan), Mineral, Missoula and Sanders (Area south of Thompson Falls) Counties	6.58	.30	.30		.05	
ROOFERS	5.60					
SHEET METAL WORKERS	6.88	.22	.10		.01	
SPRINKLER FITTERS	7.20	.30	.90		.05	
TERRAZZO WORKERS	6.65	.30	.25			
TILE SETTERS	6.65	.30	.25			

FOOTNOTE:

a. Employer contributes 4% basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Othe
Flathead, Lake (Northern area), Lincoln, and Sanders (Northern area) Counties						
Laborers	$5.405	.37	.27			
Nozzlemen (air and water); Sandblast tail hoseman; Powderman helper; Powerdriven wheelbarrow; Rodder and spreader; Form setters (paving); Bucketman	5.555	.37	.27			
Small air tool operator incl. blow pipes, small power tools; Chuck tenders; Asphalt rakers; Dumpman; Rip rapping; Pipe wrapper; Pot tender	5.585	.37	.27			
Jackhammer; Pavement breaker; Vibrator; Mechanical tamper and other air tools; Cement handlers (sack or bulk)	5.64	.37	.27			
Lake (Southern area), Mineral, Missoula, and Sanders (Southern area) Counties						
Laborers	5.455	.37	.27		.03	
All power tools, creosote workers; Jackhammer; Marble and tile setters' tenders; Pipelayers; Pipewrappers; Pot tenders; Small concrete mixers; Vibrators	5.705	.37	.27		.03	
Cement masons and plasterer's tenders; Mason tenders; Pumpcrete, gunnite and plasterer pump	5.855	.37	.27		.03	

MONT-1-PEO-2-3-b (1-4)

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	C
A-Frame Truck Crane, Winch Truck and similar	$6.86	.45	.45		.03	
Air Compressor, Single	6.55	.45	.45		.03	
Air Compressor, two or more	6.72	.45	.45		.03	
Air Doctor	7.02	.45	.45		.03	
Asphalt Paving Machine	7.02	.45	.45		.03	
Asphalt Paving Machine Screed	7.02	.45	.45		.03	
Automatic Finegrader, Curries and other similar types	7.15	.45	.45		.03	
Belt Finish Machine	6.72	.45	.45		.03	
Bit Grinder	7.[illegible]	.45	.45		.03	
Bituminous Mixer Paving, Travel Plant	7.[illegible]	.45	.45		.03	
Boring Machine (small), jeep, pickup or farm tractor mounted	6.61	.45	.45		.03	
Boring Machine (large)	7.02	.45	.45		.03	
Broom, self-propelled	6.69	.45	.45		.03	
Cableway Highline	7.53	.45	.45		.03	
Cement Silo	6.81	.45	.45		.03	
Central Mixing Plants, Concrete dam & stationary	7.27	.45	.45		.03	
Chain Bucket Loader	6.74	.45	.45		.03	
Chip or Gravel Spreader, self-propelled	6.74	.45	.45		.03	
Concrete Batch Plant, one & two mixers	7.02	.45	.45		.03	
Concrete Batch Plant, three and four mixers	7.22	.45	.45		.03	
Concrete Batch Plant, five mixers & over	7.42	.45	.45		.03	
Concrete Batch Plant Oiler, up to & incl. two mixers	6.54	.45	.45		.03	
Concrete Batch Plant Oiler, three mixers and over	6.85	.45	.45		.03	
Concrete Bucket Dispatcher	7.02	.45	.45		.03	
Concrete Curing Machine	7.02	.45	.45		.03	
Concrete Finish Machine Paving	7.02	.45	.45		.03	
Concrete Float-Spreader	7.02	.45	.45		.03	
Concrete Mixer, three bags & under	6.61	.45	.45		.03	
Concrete Mixer, four bags and over	6.78	.45	.45		.03	
Concrete Power Saw, self-propelled	7.02	.45	.45		.03	
Concrete Travel Batcher	7.02	.45	.45		.03	
Conveyor Loader, up to & incl. 42" belt	6.60	.45	.45		.03	
Conveyor Loader, over 42 inch belt	6.72	.45	.45		.03	
Crane, to & incl. 80' boom with jib	7.18	.45	.45		.03	
Crane, 81' to 130' boom	7.33	.45	.45		.03	

MONT-1-PED-2-3-b (2-4)

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	Apprn. Tr.	Oth
Crane, 131' to 150' boom	$7.38	.45	.45		.03	
Crane, 151' boom & over	7.43	.45	.45		.03	
Crane Oiler	6.59	.45	.45		.03	
Crusher	7.02	.45	.45		.03	
Crusher Oiler & Helper	6.51	.45	.45		.03	
Crusher Conveyor, when required	6.48	.45	.45		.03	
Distributor	7.02	.45	.45		.03	
DW 10, 15, or 20 Tractor pulling roller	6.74	.45	.45		.03	
Electric Overhead Cranes	7.20	.45	.45		.03	
Elevating Grader	7.02	.45	.45		.03	
Farm Type Tractor, up to & incl. 50 HP Engine	6.48	.45	.45		.03	
Farm Type Tractor, over 50HP Engine	6.56	.45	.45		.03	
Field Equipment Serviceman	6.94	.45	.45		.03	
Field Equipment Serviceman Helper	6.51	.45	.45		.03	
Fireman	6.61	.45	.45		.03	
Forklift, on construction job site	6.83	.45	.45		.03	
Form Grader	6.79	.45	.45		.03	
Gradall	7.02	.45	.45		.03	
Grade Setter	6.48	.45	.45		.03	
Heavy Duty Drill, all types	7.02	.45	.45		.03	
Heavy Duty Driller Helper	6.61	.45	.45		.03	
Herman-Nelson Heaters & similar type	6.56	.45	.45		.03	
Hoist, Single drum	6.79	.45	.45		.03	
Hoist, two or more drums	7.02	.45	.45		.03	
Helicopter Hoist	7.52	.45	.45		.03	
Hot Plant	7.02	.45	.45		.03	
Hot Plant Fireman, when in Operation	7.02	.45	.45		.03	
Hot Plant Oiler, 100 ton per hour or over	6.51	.45	.45		.03	
Hydra lift and similar types	6.92	.45	.45		.03	
Industrial Locomotive all classes	7.02	.45	.45		.03	
Mechanic and/or Welder on job	7.12	.45	.45		.03	
Mechanic and/or Welder Helper on job	6.51	.45	.45		.03	
Mixermobile	7.10	.45	.45		.03	
Motor Patrol	7.15	.45	.45		.03	
Mountain Logger or smiilar type	7.02	.45	.45		.03	
Mucking Machine	7.02	.45	.45		.03	
Oiler-Driver, Tubber Tired Cranes	6.59	.45	.45		.03	
Oilers, other than Shovels & Cranes	6.51	.45	.45		.03	
Oiler, hoist house, dams	6.92	.45	.45		.03	
Pavement Breaker, Esco & similar	7.02	.45	.45		.03	
Paving & Mixing Machine	7.15	.45	.45		.03	
Power Auger, Large Truck or Tractor Mounted	7.02	.45	.45		.03	
Power Mixer, single or double drum	7.02	.45	.45		.03	
Power Saw, Multiple cut, self-propelled	7.02	.45	.45		.03	
Pumpcrete or Grout Machine	7.02	.45	.45		.03	
Pumpman	6.55	.45	.45		.03	

MONT-1-PED-2-3-b (3-4)

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	Apprn. Tr.	O
Push Tractor	7.02	.45	.45		.03	
Quad Cat	7.32	.45	.45		.03	
Refrigerator Plant	7.02	.45	.45		.03	
Retort	6.61	.45	.45		.03	
Roller, on blade or hot mix oil paving	7.02	.45	.45		.03	
Roller, on other blade or hot mix paving	6.72	.45	.45		.03	
Roller, 25 ton or over	7.02	.45	.45		.03	
Ross & similar type carriers, on construction site	7.02	.45	.45		.03	
Rubber-tired Dozer	7.02	.45	.45		.03	
Rubber-tired Front End Loader, 1 yd. & under	6.73	.45	.45		.03	
Rubber-tired Front End Loader, 1 yd. to and incl. 3 yds.	7.02	.45	.45		.03	
Rubber-tired Front End Loader, over 3 yds. to and incl. 5 yds.	7.14	.45	.45		.03	
Rubber-tired Front End Loader, over 5 yds. to and incl. 10 yds.	7.24	.45	.45		.03	
Rubber-tired Front End Loader, over 10 yds. to and incl. 15 yds.	7.34	.45	.45		.03	
Rubber-tired Front End Loader, over 15 yds.	7.44	.45	.45		.03	
Scraper, DW 15, 20, 21 & similar type if power unit is not used	7.02	.45	.45		.03	
Scraper, single or twin engine pulling belly dump trailer	7.40	.45	.45		.03	
Scraper, single engine	7.15	.45	.45		.03	
Scraper, twin engine	7.25	.45	.45		.03	
Scraper, tandem engine	7.51	.45	.45		.03	
Self-propelled Sheepfoot and similar type	7.02	.45	.45		.03	
Shovels, incl. all attachments, under 1 cu. yd.	7.02	.45	.45		.03	
Shovels, incl. all attachments, 1 cu. yd. to & incl. 3 cu. yd.	7.20	.45	.45		.03	
Shovels, incl. all attachments, over 3 cu. yd. to & incl. 5 cu. yd.	7.47	.45	.45		.03	
Shovels, incl. all attachments, over 5 cu. yd.	7.60	.45	.45		.03	
Shovel Oiler, 3 yds. & under	6.51	.45	.45		.03	
Shovel Oiler, over 3 cu. yds.	6.92	.45	.45		.03	
Slip form paver	7.15	.45	.45		.03	
Stiff leg derrick & guy derrick	7.47	.45	.45		.03	
Track-type front end loaders; up to & incl. 5 cu. yds.	7.02	.45	.45		.03	
Track-type front end loaders; over 5 cu. yd. to & incl. 10 cu. yd.	7.25	.45	.45		.03	
Track-type front end loaders, over 10 cu. yd. to & incl. 15 cu. yd.	7.35	.45	.45		.03	

MONT- FSQ-2-7-b (4-4)

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Appr. Tr.	Oth
Track-type front end loaders, over 15 cu. yd.	$7.45	.45	.45		.03	
Track-type tractor with or without attachments	7.02	.45	.45		.03	
Track-type tractor, on Euclid Loader	7.20	.45	.45		.03	
Trenching Machine	7.02	.45	.45		.03	
Turnhead Conveyor, or Head Tower on Batch Plant	7.02	.45	.45		.03	
Wagner Roller & similar type	7.02	.45	.45		.03	
Whirley Crane	7.55	.45	.45		.03	
Whirley Crane Oiler	6.92	.45	.45		.03	
Water Pull when used for compaction	7.02	.45	.45		.03	
Washing and Screening Plant	7.02	.45	.45		.03	
Washing and Screening Plant Oiler	6.51	.45	.45		.03	

MONT-LINE CONSTRUCTION-2-3-c

(Flathead-Lake-Lincoln Counties)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Appr. Tr.	Oth
LINE CONSTRUCTION						
All construction of "H" fixture and Steel Tower Transmission Lines with capacity of 69 K.V. voltages & over, switch yard and substation rated at 5000 K.V.A. & all work not covered by Schedule "B".						
SCHEDULE "A"						
GROUNDMAN "B"	4.61	.25	1%		1%	
GROUNDMAN "A" (experienced)	5.31	.25	1%		1%	
HEAD GROUNDMAN; Powderman; Jackhammer-Compressorman	5.6	.25	1%		1%	
LINE EQUIPMENT OPERATOR	6.50	.25	1%		1%	
LINEMAN	7.58	.25	1%		1%	
CABLE SPLICER	8.43	.25	1%		1%	
SCHEDULE "B"						
All work for Power Utilities & R.E.A's except work covered under Schedule "A" all Highway Lighting, Street Lighting & Motor Traffic Controlling.						
JACKHAMMER-COMPRESSORMAN; Powderman; Head Groundman	5.13	.25	1%		1%	
LINE EQUIPMENT OPERATOR	5.88	.25	1%		1%	
LINEMEN; Pole Sprayer	6.67	.25	1%		1%	
CABLE SPLICER	7.48	.25	1%		1%	

MONT-W-LINE CONSTRUCTION-2-3-f

Mineral, Missoula and Sanders Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
LINE CONSTRUCTION: (Jobs 69,000 volts or less)					
Cable splicer	$7.18	.25	1%		½%
Linemen	6.49	.25	1%		½%
Line equipment operators; Powdermen	6.38	.25	1%		½%
Experienced groundmen (2 yrs.); Truck drivers	5.05	.25	1%		½%
Groundmen	4.49	.25	1%		½%
(Jobs over 69,000 volts) and/or (projects of $400,000 or over)					
Cable splicers	7.[illegible]	.25	1%		½%
Linemen; Pole sprayer	6.99	.25	1%		½%
Line equipment operators; Powdermen	6.42	.25	1%		½%
Groundmen	5.31	.25	1%		½%

STATE: Montana

COUNTIES: Blaine, Broadwater, Cascade, Chouteau, Daniels, Fergus, Glacier, Hi Judith-Basin, Lewis & Clark, Liberty, Meagher, Phillips, Pondera, Sheridan, Teton, Toole, Valley and Wheatland

DECISION NUMBER: AQ-1,035

DATE: Date of Publication

Supersedes Decision Number: AQ-1,018 dated August 31, 1973 in 38 FR 23713

DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
ASBESTOS WORKERS	$7.96	.44	.72			
BOILERMAKERS	8.25	.30	1.00		.02	
BRICKLAYERS:						
Broadwater, Lewis & Clark and Meagher Counties	6.65					
Cascade, Chouteau, Glacier, Pondera, and Teton Counties	7.65	.25				
Remaining Counties	6.25					
CARPENTERS:						
Blaine and Hill Counties						
Carpenters	4.75	.225	.25			
Sawfilers, Stationary power saw operator; Piledriver	4.90	.225	.25			
Millwrights	5.00	.225	.25			
Broadwater, Lewis & Clark Counties						
Carpenters	6.25	.30	.45		.02	
Piledrivermen	6.40	.30	.45		.02	
Millwrights	6.50	.30	.45		.02	
Daniels, Phillips, Sheridan and Valley Counties						
Carpenters	6.00	.30	.45		.02	
Piledrivermen	6.25	.30	.45		.02	
Millwrights	6.50	.30	.45		.02	
Wheatland County						
Carpenters	6.27	.30	.45		.02	
Floor sanders; Sawmen	6.395	.30	.45		.02	
Piledrivermen	6.42	.30	.45		.02	
Millwrights	6.57	.30	.45		.02	
Remaining Counties						
Carpenters	6.47	.30	.45		.02	
Piledrivermen; Saw Filers; Sawmen	6.72	.30	.45		.02	
Millwrights	6.97	.30	.45		.02	
CEMENT MASONS:						
Wheatland County	6.00	.35				
Broadwater, Lewis & Clark and Meagher Counties	6.22					
Glacier County	6.15	.20				
Remaining Counties	6.55	.35				
ELECTRICIANS:						
Broadwater, Lewis and Clark and Meagher Counties						
Electricians	$7.00		1%		1/2%	
Blaine, Hill, Liberty and Phillips Cos.						
Electricians	6.80		1%		1/2%	
Daniels, Sheridan and Valley Counties						
Electricians	6.40		1%		1/2%	
Cascade, Chouteau, Glacier, Judith-Basin, Pondera, Teton and Toole Cos.						
Electricians	7.83	.32	1%		1/2%	
Cable splicers	8.08	.32	1%		1/2%	
Fergus and Wheatland Counties						
(Electrical Contracts less than $20,000)	5.40		1%		1/2%	
(Electrical Contracts $20,000 or more)	6.10		1%		1/2%	
ELEVATOR CONSTRUCTORS	6.74	.345	.23	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.345	.23	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR					
GLAZIERS:						
Cascade, Chouteau, Glacier, Judith-Basin, Lewis & Clark, Pondera, Teton, and Toole Counties	6.01	.29	.20	4%		
IRONWORKERS:						
Ornamental; Reinforcing, Structural						
Lewis and Clark (South portion)	7.10	.40	.65		.05	
Lewis and Clark (Northern area) and Remaining Counties	7.03	.40	.65		.05	
MARBLE MASONS:						
Broadwater, Lewis & Clark and Meagher Counties	6.65					
Cascade, Chouteau, Glacier, Pondera, and Teton Counties	7.65	.25				
Remaining Counties	6.25					
PAINTERS:						
Broadwater, Lewis & Clark (Southern portion) and Meagher Counties						
Brush	6.11	.25	.20			
Paperhanging	6.36	.25	.20			
Taping; Hand taping	6.86	.25	.20			
Brush on Steel; Spray	7.11	.25	.20			
Cascade, Chouteau, Fergus, Glacier, Judith-Basin, Lewis & Clark (Northern portion), Pondera, Teton and Toole Cos.						
Brush	5.85	.34	.30			
Paperhanger	6.10	.34	.30			
Brush on steel	6.35	.34	.30			
Spraying; Sandblasting	8.10	.34	.30			
Daniels, Phillips, Sheridan and Valley Counties						
Brush or roller	5.84	.25	.20			
Structural steel	6.09	.25	.20			
Spray	6.82	.25	.20			

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
PLASTERERS:						
Blaine, Cascade, Chouteau, Liberty, Pondera, Teton and Toole Counties	$6.04	.20				
Hill, Phillips and Valley Counties	6.25					
Glacier County	6.45	.20				
Broadwater, Lewis & Clark and Meagher Counties	6.30	.25	.15		.05	
Wheatland County	6.05	.35				
PLUMBERS:						
Wheatland County	7.30	.40	.40		1½%	
Broadwater, Lewis & Clark Counties	7.50	.25	.35		.05	
Remaining Counties	7.35	.35	.50		1%	
ROOFERS:						
Broadwater, and Meagher Counties	5.33	.35	.30	.50		
Wheatland County	6.155					
Remaining Counties	6.15					
SHEET METAL WORKERS:						
Lewis & Clark, Broadwater and Meagher Counties	6.88	.22	.10			
Daniels, Fergus, Phillips, Sheridan, Valley and Wheatland Counties	7.05	.32	.20		.02	
Remaining Counties	6.81	.32	.10	.50	.02	
SPRINKLER FITTERS	7.65	.30	.50		.05	

FOOTNOTE:
a. Employer contributes 4% of basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
Cascade, Chouteau, Fergus, Glacier, Judith Basin, Pondera, Teton, and Toole Counties						
Laborers:						
General laborers; Concrete (wet or dry); Dumpman (spotter); Fence erectors and installer; Scalemen	$5.52	.37	.27		.03	
Brick tenders; Dumpman (grade); Small concrete mixers	5.92	.37	.27		.03	
Air-Track; Asphalt raker and tampers; Barco tampers; Concrete nozzlemen; High scaler; Hod carriers; Plaster tenders	6.02	.37	.27		.03	
Car or truck mounted air operated drills and other air tools; Mechanical tampers; Jackhammers; Pavement breakers, wagon drillers; Pipelayers (non-metallic); Power driven wheelbarrow; Power saw (bucking and falling)	5.77	.37	.27		.03	
Blaine, Daniels, Hill, Liberty, Phillips, Sheridan and Valley Counties						
Laborers: Car and truck loaders; Carpenter tender and form stripper; Concrete laborers; Dumpman (spotter); Small power tools, chippers; Clay spades, pogo stick; Fence erectors and installers	5.17	.37	.27		.03	
Dumpman (Grade)	5.29	.37	.27		.03	
Caisson workers (free air); Concrete saw; Small concrete mixer; Concrete nozzleman; Barco tamper; Jackhammer; Pavement breaker; Placo operator; Pipe layers (non-metallic); Power driven concrete buggies or wheelbarrows; Nozzleman; Sandblaster; Pot tender; Tar pot tender; Tailhoseman; Vibrator (over 2½"); Vibrator turtle; Bull gang; Chuck tender; Muckers and nippers pot tender; Primerhouseman	5.42	.37	.27		.03	
Brick tenders (handling bricks and blocks only)	5.57	.37	.27		.03	
Concrete nozzleman; Miner	5.67	.37	.27		.03	
Lazer tools and equipment; Powderman	5.92	.37	.27		.03	

LABORERS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
Broadwater(Northern area), Lewis & Clark and Meagher Counties		H & W	Pensions	Vacation	App. Tr.	Other
General laborer; Car and truck loader; Concrete handler; Form stripper; Fence erector and installer	$ 5.20	.37	.27	.10	.03	
Concrete buggy; Vibrator; Jackhammer; Wagon driller; Barco tamper; Pavement breaker; Powderman helper	5.355	.37	.27	.10	.03	
All power tools; Rodder and spreader; Non-metallic pipe layers; Pipe wrappers; Sandblasters; Pot tenders; Curb form setter; Concrete tenders	5.455	.37	.27	.10	.03	
Mortar mixer; Powderman	5.55	.37	.27	.10	.03	
Wheatland and Broadwater(Southern area)						
Common laborers	5.19	.37	.27		.03	
Semi-skilled; Hod carriers; Jackhammer operator; Vibrator; Mixer operator; Concrete pump tender; Nozzleman; Concrete machiner; Curb form setter	5.44	.37	.27		.03	

Remaining Counties

MON-4-PEO-1-g (1-4)

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
SHOVELS, incl. all attachments, over 5 yds.; Stiff-leg derrick and guy derrick; Cableway highline; Helicopter hoist; Tower crane; Whirley crane	$7.64	.45	.45		.03	
SCRAPER, tandem engine; Shovels, incl. all attachments, over 3 yds. to and incl. 5 yds.	7.51	.45	.45		.03	
RUBBER-TIRED FRONT-END LOADERS, over 15 yds.; Track-type front-end loaders, over 15 cu. yds.	7.45	.45	.45		.03	
RUBBER-TIRED FRONT-END LOADERS, 10 yds. to and incl. 15 yds.; Track-type front-end loaders, 10 cu. yds. to and incl. 15 cu. yds.; Concrete conveyor; Crane, to and incl. 80' boom with jib	7.35	.45	.45		.03	
QUAD CAT	7.32	.45	.45		.03	
CENTRAL MIXING PLANT, concrete and stationary	7.27	.45	.43		.03	
RUBBER-TIRED FRONT-END LOADERS, over 5 yds. to and incl. 10 yds.; Scraper, twin engine; Track-type front-end loaders, over 5 cu. yds. to and incl. 10 cu. yds.; Scraper single or twin engine, pulling belly dump trailer	7.25	.45	.45		.03	
CRANE, ELECTRIC OVERHEAD, ALL; Shovels, incl. all attachments, 1 yd. to and incl. 3 yds.; Track-type tractor on euclid loader	7.21	.45	.45		.03	
HOIST, TWO OR MORE DRUMS; Motor patrol; Ross and similar type carriers on construction site	7.18	.45	.45		.03	
AUTOMATIC FINEGRADER, Gurries and other types; Paver; Slip form; Paving and mixing machine; Roller, 25 tons or over; Rubber tired front-end loader, over 3 yds. to and incl. 5 yds.; Scraper, single	7.15	.45	.45		.03	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
MIXERMOBILE	$7.11	.45	.45		.03	
BORING MACHINE; Jeep, pickup or farm tractor mounted; Boring machine, large; Power auger large truck or tractor, mounted and punch	7.05	.45	.45		.03	
AIR DOCTOR; Asphalt paving machine; Asphalt paving machine screed operator; Bit grinder; Bituminous mixer paving travel plant; Concrete batch plant operator; Concrete curing machine; Concrete finish machine, paving; Concrete float and spreader; Concrete Power saw, self-propelled; Concrete travel batcher; Crusher; Distributor; Elevating grader; Forklift on construction job site; Gradall; Heavy duty drills, all types, Hot plant; Hot plant fireman, when in operation; Industrial locomotive; Mountain logger or similar type machine; Mucking machine; Pavement breaker, Ensco and similar; Power mixer, single or double drum; Pumpcrete or grout machine; Refrigerator plant; Roller, steel and self-propelled rubber on blade or hot mix oil paving; Roller, Wagner and similar types, rubber-tired dozer; Rubber-tired front-end loaders, 1 yd. to and incl. 3 yds.; Shovels, incl. all attachments, under 1 yd.; Track-type tractor, with or without attachments; Track-type tractor with or without attachments incl. track-type front-end loaders up to and incl. 5 cu. yds.; Trench machine; Belt finishing machine; Concrete batch plant, 1 and 2 mixers; DW 10, 15, 20 tractor pulling roller; Power saw self-propelled, multiple cut; Push tractor; Scraper, DW 15, 20, 21 and similar type if power unit is not used; Self-propelled sheepsfoot; Turnhead conveyor, or head tower, on batch plant; Wagner roller; Water pull operator	7.02	.45	.45		.03	

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
FIELD EQUIPMENT SERVICEMAN; Hydralift and similar type; Oiler, hoist-house, dams; Shovel oiler, over 3 yds.; Winch truck with boom	$6.92	.45	.45		.03	
CONCRETE MIXER, 4 bags and over	6.89	.45	.45		.03	
HOIST, SINGLE DRUM	6.81	.45	.45		.03	
A-FRAME TRUCK CRANE, winch truck and similar	6.80	.45	.45		.03	
CEMENT SILO; Form grader	6.79	.45	.45		.03	
HYDRO TAMPER	6.77	.45	.45		.03	
CHAIN BUCKET; Chip or gravel spreader, self-propelled; Conveyor loader, over 42" belt	6.72	.45	.45		.03	
AIR COMPRESSOR, two or more; Roller, steel and self-propelled rubber other than blade or hot mix oil paving; Rubber-tired front-end loaders, under 1 yd.	6.71	.45	.45		.03	
BROOM, self-propelled	6.67	.45	.45		.03	
CONCRETE MIXER, 3 bags and under; Fireman	6.61	.45	.45		.03	
CONVEYOR LOADER, up to and incl. 42" belt; Crusher conveyor	6.60	.45	.45		.03	
RETORT OPERATOR	6.57	.45	.45		.03	
MECHANIC AND/OR WELDER HELPER; Concrete batch plant oiler; Crane oiler; Farm type tractor, over 50HP engine; Hot plant oiler, 100 tons per hr. and over; Oiler driver, rubber-tired crane	6.56	.45	.45		.03	
PUMPMAN	6.55	.45	.45		.03	
AIR COMPRESSOR, SINGLE; Concrete batch plant oiler, up to and incl. 2 mixers	6.52	.45	.45		.03	

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MON-4-PEO-1-g (4-4)

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
SHOVEL, OILER, 3 yds. and under	$6.51	.45	.45		.03	
CRUSHER OILER AND HELPER; Farmtype tractor, up to and incl. 50 HP engine; Field equipment service helper; Grade setter; Heavy duty drill helper; Heaters, Herman Nelson and similar type; Oilers, other than shovels and cranes; Washer and screening plant oiler	6.48	.45	.45		.03	
CONCRETE BATCH PLANT, 3 and 4 mixers	7.22	.45	.45		.03	
CONCRETE BATCH PLANT, 5 mixers and over	7.42	.45	.45		.03	
CONCRETE BATCH PLANT OILER, 3 mixers and over	6.83	.45	.45		.03	
CONCRETE PUMP	7.80	.45	.45		.03	
CRANE 81' to 130' BOOM	7.50	.45	.45		.03	
CRANE 131' to 150' BOOM	7.55	.45	.45		.03	
CRANE 151' BOOM AND OVER	7.60	.45	.45		.03	
MECHANIC AND/OR WELDER	7.12	.45	.45		.03	
WHIRLEY CRANE OILER	6.85	.45	.45		.03	

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Broadwater, Daniels, Fergus, Judith-Basin, Lewis & Clark, Meagher, Phillips, Sheridan, Valley and Wheatland Counties

MONT-1-PEO-2-3-4 (1-4)

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	O
A-Frame Truck Crane, Winch Truck and similar	$6.86	.45	.45		.03	
Air Compressor, Single	6.55	.45	.45		.03	
Air Compressor, two or more	6.72	.45	.45		.03	
Air Doctor	7.02	.45	.45		.03	
Asphalt Paving Machine	7.02	.45	.45		.03	
Asphalt Paving Machine Screed	7.02	.45	.45		.03	
Automatic Finegrader, Curries and other similar types	7.15	.45	.45		.03	
Belt Finish Machine	6.72	.45	.45		.03	
Bit Grinder	7.02	.45	.45		.03	
Bituminous Mixer Paving, Travel Plant	7.02	.45	.45		.03	
Boring Machine (small), jeep, pickup or farm tractor mounted	6.61	.45	.45		.03	
Boring Machine (large)	7.02	.45	.45		.03	
Broom, self-propelled	6.69	.45	.43		.03	
Cableway Highline	7.53	.45	.45		.03	
Cement Silo	6.81	.45	.45		.03	
Central Mixing Plants, Concrete dam & stationary	7.27	.45	.45		.03	
Chain Bucket Loader	6.74	.45	.45		.03	
Chip or Gravel Spreader, self-propelled	6.74	.45	.45		.03	
Concrete Batch Plant, one & two mixers	7.02	.45	.45		.03	
Concrete Batch Plant, three and four mixers	7.22	.45	.45		.03	
Concrete Batch Plant, five mixers & over	7.42	.45	.45		.03	
Concrete Batch Plant Oiler, up to & incl. two mixers	6.54	.45	.45		.03	
Concrete Batch Plant Oiler, three mixers and over	6.85	.45	.45		.03	
Concrete Bucket Dispatcher	7.02	.45	.45		.03	
Concrete Curing Machine	7.02	.45	.45		.03	
Concrete Finish Machine Paving	7.02	.45	.45		.03	
Concrete Float-Spreader	7.02	.45	.45		.03	
Concrete Mixer, three bags & under	6.61	.45	.45		.03	
Concrete Mixer, four bags and over	6.78	.45	.45		.03	
Concrete Power Saw, self-propelled	7.02	.45	.45		.03	
Concrete Travel Batcher	7.02	.45	.45		.03	
Conveyor Loader, up to & incl. 42" belt	6.60	.45	.45		.03	
Conveyor Loader, over 42 inch belt	6.72	.45	.45		.03	
Crane, to & incl. 80' boom with jib	7.18	.45	.45		.03	
Crane, 81' to 130' boom	7.33	.45	.45		.03	

MONT-1-PEO-2-3-b (2-6)

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Oth
Crane, 131' to 150' boom	$7.38	.45	.45		.03	
Crane, 151' boom & over	7.43	.45	.45		.03	
Crane Oiler	6.59	.45	.45		.03	
Crusher	7.02	.45	.45		.03	
Crusher Oiler & Helper	6.51	.45	.45		.03	
Crusher Conveyor, when required	6.48	.45	.45		.03	
Distributor	7.02	.45	.45		.03	
DW 10, 15, or 20 Tractor pulling roller	6.74	.45	.45		.03	
Electric Overhead Cranes	7.20	.45	.45		.03	
Elevating Grader	7.02	.45	.45		.03	
Farm Type Tractor, up to & incl. 50 HP Engine	6.48	.45	.45		.03	
Farm Type Tractor, over 50HP Engine	6.56	.45	.45		.03	
Field Equipment Serviceman	6.94	.45	.45		.03	
Field Equipment Serviceman Helper	6.51	.45	.45		.03	
Fireman	6.61	.45	.45		.03	
Forklift, on construction job site	6.83	.45	.45		.03	
Form Grader	6.79	.45	.45		.03	
Gradall	7.02	.45	.45		.03	
Grade Setter	6.48	.45	.45		.03	
Heavy Duty Drill, all types	7.02	.45	.45		.03	
Heavy Duty Driller Helper	6.61	.45	.45		.03	
Herman-Nelson Heaters & similar type	6.56	.45	.45		.03	
Hoist, Single drum	6.79	.45	.45		.03	
Hoist, two or more drums	7.02	.45	.45		.03	
Helicopter Hoist	7.52	.45	.45		.03	
Hot Plant	7.02	.45	.45		.03	
Hot Plant Firemen, when in Operation	7.02	.45	.45		.03	
Hot Plant Oiler, 100 ton per hour or over	6.51	.45	.45		.03	
Hydro lift and similar types	6.92	.45	.45		.03	
Industrial Locomotive all classes	7.02	.45	.45		.03	
Mechanic and/or Welder on job	7.12	.45	.45		.03	
Mechanic and/or Welder Helper on job	6.51	.45	.45		.03	
Mixermobile	7.10	.45	.45		.03	
Motor Patrol	7.15	.45	.45		.03	
Mountain Logger or similar type	7.02	.45	.45		.03	
Mucking Machine	7.02	.45	.45		.03	
Oiler-Driver, Rubber Tired Cranes	6.59	.45	.45		.03	
Oilers, other than Shovels & Cranes	6.51	.45	.45		.03	
Oiler, hoist house, dam	6.92	.45	.45		.03	
Pavement Breaker, Ensco & similar	7.02	.45	.45		.03	
Paving & Mixing Machine	7.15	.45	.45		.03	
Power Auger, Large Truck or Tractor Mounted	7.02	.45	.45		.03	
Power Mixer, single or double drum	7.02	.45	.45		.03	
Power Saw, Multiple cut, self-propelled	7.02	.45	.45		.03	
Pumpcrete or Grout Machine	7.02	.45	.45		.03	
Pumpman	6.55	.45	.45		.03	

MONT-1-PEO-2-3-b (3-4)

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Oth
Push Tractor	$7.02	.45	.45		.03	
Quad Cat	7.32	.45	.45		.03	
Refrigerator Plant	7.02	.45	.45		.03	
Retort	6.61	.45	.45		.03	
Roller, on blade or hot mix oil paving	7.02	.45	.45		.03	
Roller, on other blade or hot mix paving	6.72	.45	.45		.03	
Roller, 25 ton or over	7.02	.45	.45		.03	
Ross & similar type carriers, on construction site	7.02	.45	.45		.03	
Rubber-tired Dozer	7.02	.45	.45		.03	
Rubber-tired Front End Loader, 1 yd. & under	6.73	.45	.45		.03	
Rubber-tired Front End Loader, 1 yd. to and incl. 3 yds.	7.02	.45	.45		.03	
Rubber-tired Front End Loader, over 3 yds. to and incl. 5 yds.	7.14	.45	.45		.03	
Rubber-tired Front End Loader, over 5 yds. to and incl. 10 yds.	7.24	.45	.45		.03	
Rubber-tired Front End Loader, over 10 yds. to and incl. 15 yds.	7.34	.45	.45		.03	
Rubber-tired Front End Loader, over 15 yds.	7.44	.45	.45		.03	
Scraper, LP 15, 20, 21 & similar type if power unit is not used	7.02	.45	.45		.03	
Scraper, single or twin engine pulling belly dump trailer	7.40	.45	.45		.03	
Scraper, single engine	7.15	.45	.45		.03	
Scraper, twin engine	7.25	.45	.45		.03	
Scraper, tandem engine	7.51	.45	.45		.03	
Self-propelled Sheepfoot and similar type	7.02	.45	.45		.03	
Shovels, incl. all attachments, under 1 cu. yd.	7.02	.45	.45		.03	
Shovels, incl. all attachments, 1 cu. yd. to & incl. 3 cu. yd.	7.20	.45	.45		.03	
Shovels, incl. all attachments, over 3 cu. yd. to & incl. 5 cu. yd.	7.47	.45	.45		.03	
Shovels, incl. all attachments, over 5 cu. yd.	7.60	.45	.45		.03	
Shovel Oiler, 3 yds. & under	6.51	.45	.45		.03	
Shovel Oiler, over 3 cu. yds.	6.92	.45	.45		.03	
Slip form paver	7.15	.45	.45		.03	
Stiff leg derrick & guy derrick	7.47	.45	.45		.03	
Track-type front end loaders; up to & incl. 5 cu. yds.	7.02	.45	.45		.03	
Track-type front end loaders; over 5 cu. yd. to & incl. 10 cu. yd.	7.25	.45	.45		.03	
Track-type front end loaders, over 10 cu. yd. to & incl. 15 cu. yd.	7.35	.45	.45		.03	

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MONT- PEO-2-3-5 (4-4)

POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Oth
Track-type front end loaders, over 15 cu. yd.	$7.45	.45	.45		.03	
Track-type tractor with or without attachments	7.02	.45	.45		.03	
Track-type tractor, on Euclid Loader	7.20	.45	.45		.03	
Trenching Machine	7.02	.45	.45		.03	
Turnhead Conveyor, or Head Tower on Batch Plant	7.02	.45	.45		.03	
Wagner Roller & similar type	7.02	.45	.45		.03	
Whirley Crane	7.55	.45	.45		.03	
Whirley Crane Oiler	6.92	.45	.45		.03	
Water Pull when used for compaction	7.02	.45	.45		.03	
Washing and Screening Plant	7.02	.45	.45		.03	
Washing and Screening Plant Oiler	6.51	.45	.45		.03	

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MONT-1-2-3-5 (1-2)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments: H & W	Pensions	Vacation	App. Tr.	Others
COMBINATION Truck; Concrete Mixer and Transit Mixer:						
To and incl. 4 cu. yds.	$6.30	.475	.325			
Over 4 cu. yds. to and incl. 6 cu. yds.	6.38	.475	.325			
Over 6 cu. yds. to and incl. 8 cu. yds.	6.46	.475	.325			
Over 8 cu. yds. to and incl. 10 cu. yds.	6.54	.475	.325			
Over 10 cu. yds. - additional $.08 per hour each additional 2 cu. yds. increment						
DISTRIBUTOR DRIVER AND HELPER	6.23	.475	.325			
DRY BATCH TRUCKS:						
3 Batch or under	6.05	.475	.325			
Over 3 Batch to and incl. 5 Batch	6.18	.475	.325			
Over 5 Batch to and incl. 10 Batch	6.34	.475	.325			
Over 10 Batch to and incl. 15 Batch	6.50	.475	.325			
Over 15 Batch - additional $.15 per hour each additional 5 Batch increment						
DUMPMAN, GRAVEL SPREADER BOX: Pickup Driver, Hauling Materials; Pilot Car Driver, Teamsters and Helpers; Warehousemen, Partsmen, Cardex men, Warehouse Expediter	6.05	.475	.325			
DUMP TRUCKS AND SIMILAR EQUIPMENT WATER LEVEL CAPACITY, INCLUDING SIDEBOARDS:						
7 cu. yds. or less	6.05	.475	.325			
Over 7 cu. yds. to and incl. 10 cu. yds.	6.18	.475	.325			
Over 10 cu. yds. to and incl. 15 cu. yds.	6.34	.475	.325			
Over 15 cu. yds. to and incl. 20 cu. yds.	6.48	.475	.325			
Over 20 cu. yds. to and incl. 25 cu. yds.	6.54	.475	.325			
Over 25 cu. yds. to and incl. 30 cu. yds.	6.60	.475	.325			
Over 30 cu. yds. to and incl. 35 cu. yds.	6.66	.475	.325			
Over 35 cu. yds. to and incl. 40 cu. yds.	6.72	.475	.325			
Over 40 cu. yds. to and incl. 45 cu. yds.	6.78	.475	.325			
Over 45 cu. yds. - additional $.06 per hour each additional 5 cu. yds. increment						
DUMPSTERS	6.18	.475	.325			

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MONT-1-T-1-2-3-h (2-2)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
DW 20, DW 21, or EUCLID TRACTORS, PULLING P.B. 21 or SIMILAR DUMP WAGONS:						
To and incl. 25 cu. yds.	$6.54	.475	.325			
Over 25 cu. yds. to and incl. 30 cu. yds.	6.60	.475	.325			
Over 30 cu. yds. - additional $.06 per hour each additional 5 cu. yds. increment						
SERVICEMEN	6.79	.475	.325			
POWDER TRUCK DRIVER (bulk unloader type)	6.23	.475	.325			
FLAT TRUCKS:						
To and incl. 3 Tons	6.05	.475	.325			
Over 3 tons Factory rating	6.40	.475	.325			
FUEL TRUCK; SERVICE TIREMEN	6.52	.475	.325			
LOWBOYS, FOUR-WHEEL TRAILER, FLOAT SEMI-TRAILER	6.40	.475	.325			
LUMBER CARRIERS, LIFT TRUCKS; Power broom	6.14	.475	.325			
WATER TANK DRIVERS, PETROLEUM PRODUCTS DRIVERS:						
2,500 gals. and under	6.05	.475	.325			
Over 2,500 gals. to and incl. 4,500 gals.	6.34	.475	.325			
Over 4,500 gals. to and incl. 6,000 gals.	6.54	.475	.325			
Over 6,000 gals. to and incl. 8,000 gals.	6.60	.475	.325			
Over 8,000 gals. to and incl. 10,000 gals.	6.68	.475	.325			
Over 10,000 gals. - additional $.08 per hour each additional 2,000 gals. increment						
WINCH, A-FRAME, SWEDISH CRANE, HYDRA-LIFT, GROUTCRETE, AND COMBINATION MULCHING, SEEDING AND FERTILIZING	6.30	.475	.325			
TRUCK MECHANIC	6.79	.475	.325			

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MONT-SW-LINE CONSTRUCTION-2-3-f

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Oth
LINE CONSTRUCTION:						
(Jobs 69,000 volts or less)						
Cable splicer	$7.18	.25	1%		4%	
Linemen	6.49	.25	1%		4%	
Line equipment operators; Powdermen	6.38	.25	1%		4%	
Experienced groundmen (2 yrs.); Truck drivers	5.85	.25	1%		4%	
Groundmen	4.49	.25	1%		4%	
(Jobs over 69,000 volts) and/or (projects of $400,000 or over)						
Cable splicers	7.36	.25	1%		4%	
Linemen; Pole sprayer	6.99	.25	1%		4%	
Line equipment operators; Powdermen	6.42	.25	1%		4%	
Groundmen	5.31	.25	1%		4%	

SUPERSEDEAS DECISION

AQ-1,036 F. 2

STATE: Nevada

COUNTIES: Churchill, Douglas, Elko, Humboldt, Lander, Lyon, Mineral, Ormsby, Pershing, Storey, and Washoe

DECISION NUMBER: AQ-1,036

DATE: Date of Publication

Supersedes Decision #AP-907 dated May 25, 1973, in 38 FR 14141.

DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Other
ASBESTOS WORKERS (Elko County)	$7.46	.50	.72			
ASBESTOS WORKERS (Remaining Counties)	8.75	.90	.65	1.07	.06	
BOILERMAKERS	7.95	.60	1.00	.50	.02	
BRICKLAYERS; Stonemasons:						
ZONE A: Within 15 miles radius of Court House in Reno	8.95	.40			.01	
ZONE B: Within 15 to 35 miles radius of Court House in Reno	9.30	.40			.01	
ZONE C: Within 35 to 75 miles radius of Court House in Reno	9.70	.40			.01	
BRICK TENDERS:						
ZONE A: 0-15 miles from court house in Reno	6.50	.40	.30			
ZONE B: 15-35 miles from court house in Reno	6.85	.40	.30			
ZONE C: 35-75 miles from court house in Reno	7.25	.40	.30			
CARPENTERS:						
Carpenters	6.90	.50	.70	.90	.03	
Floorlayers; Shinglers; Power saw operator; Patent scaffold erector	7.05	.50	.70	.90	.03	
Piledrivermen	7.10	.50	.70	.90	.03	
Millwrights	7.20	.50	.70	.90	.03	
CEMENT MASONS:						
Except Lake Tahoe Area						
Cement Masons	6.70	.50	.40	1.00	.01	
Mastic, Magnesite composition; Trowelling machine	6.95	.50	.40	1.00	.01	
Lake Tahoe Area						
Cement Masons	7.90	.50	.40	1.00	.01	
Mastic, Magnesite composition; Trowelling machine	8.15	.50	.40	1.00	.01	
ELECTRICIANS:						
Except Lake Tahoe Area						
Electricians	9.09	.53	1%+.25		.01	
Cable splicers	10.00	.53	1%+.25		.01	
Lake Tahoe Area						
Electricians	9.84	.53	1%+.25		.01	
Cable splicers	10.82	.53	1%+.25		.01	
ELEVATOR CONSTRUCTORS	$9.21	.345	.23	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.345	.23	2%+a		
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR					
GLAZIERS	7.605	.15	.25	8%		
IRONWORKERS (Elko County)	7.53	.50	.65		.05	
IRONWORKERS (Remaining Counties):						
Fence erectors	8.64	.68	.875	.85	.02	
Reinforcing	8.75	.68	.875	.85	.02	
Ornamental; Structural	8.78	.68	.875	.85	.02	
LATHERS	7.71	.40	.10	1.00	.01	
PAINTERS:						
Except Lake Tahoe Area						
Painters:						
Brush	7.70	.30	.20	.40		
Spray; Structural	7.95	.30	.20	.40		
Lake Tahoe Area						
Brush	8.10	.30	.20			
Spray; Structural steel	8.35	.30	.20			
PLASTERERS	7.35	.50	.50			
PLASTERERS' TENDERS	7.15	.50	.40			
PLUMBERS; Steamfitters	8.10	.30	.60	1.55	.07	
ROOFERS	8.10	.25	.05		.02	
SHEET METAL WORKERS	8.30	.69	1.05	10%	.02	
SOFT FLOOR LAYERS	8.35	.30	.20			
SPRINKLER FITTERS	11.30	.30	.50		.05	
TILE SETTERS:						
Zone A: Within 15 miles radius of court house in Reno	8.95	.40			.01	
Zone B: Within 15 to 35 miles radius of court house in Reno	9.30	.40			.01	
Zone C: Within 35 to 75 miles radius of court house in Reno	9.70	.40			.01	

FOOTNOTE:

a. Employer contributes 4% basic hourly rate for over 5 years' service and 2% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

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LABORERS:	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
GROUP I						
Asphalt workers (ironers, shoveler, cutting machine); Buggymobile; Chainsaw, faller, logloader and bucker; Compactor (all types); Concrete mixer under ½ yds.; Concrete pan work (breadpan type), (handling, cleaning, stripping); Concrete saw, chipping, grinding, sanding, vibrator; Cribbing, shoring, lagging, trench jacking, handguided lagging hammer; Curbing or divider machine; Curb setter (precast or cut); Ditching machine (hand-guided); Drillers helper, chuck tender; Form raiser, slip forms; Grouting of concrete walls; Windows and door jams; Headerboardman; Jackhammer, pavement breaker, air spade; Mastic workers (wet or dry); Pipe wrapper, kettleman, potman, and men applying asphalt, creosote and similar type materials; All power tools(air, gas or electric) not listed in Group V; Pipejacking; Postbole digger (air, gas, or electric) Post driver; Rirrap-stonepaver and rock slinger, incl. placing of sack concrete wet or dry; Tototiller; Rigging and signaling in connection with laborers work; Sandblaster, potman, gunman or nozzleman; Vibra-screed; Skilled wrecker (removing and salvaging of sash, windows, doors, plumbing and electrical fixtures)	$6.05	.40	.30			
GROUP II						
Choker setter or rigger (clearing work only) Pittsburg chipper and similar type brush shredders; concrete worker (wet or dry) all concrete work not listed in Group I; Crusher or Grizzly tender; Guinea chaser (stakeman); Panel forms (wood or metal) handling, cleaning, and stripping of; Loading and unloading, carrying and handling of all rods and material for use in reinforcing concrete; Railroad trackmen (maintenance, repair or builders); Sloper; Semi-skilled wreckers (salvaging of building materials other than those listed in Group I)	5.90	.40	.30			

(2-2)

LABORERS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
GROUP III						
All cleanup work of debris, grounds, and building including windows and tile; Dumpman or spotter (other than asphalt); General laborer; Gardners and landscape laborers; Limber, brushloader and piler	$5.80	.40	.30			
GROUP IV						
Burning and welding in connection with laborers work	6.15	.40	.30			
GROUP V						
Joy drill model TWH-2A, Gardner denver model DN143 and similar type drills; Core drillers, wagon drillers; Mechanical drillers on multiple units; Blaster and powderman, all work of loading, placing, and blasting of all powder and explosives of any type, regardless of method used for such loading and placing; High scalers; Concrete pump operator; Heavy duty vibrator with stinger 5" diameter or over; Pipelayer; Caulker and bander; Pipelayer-waterline, sewerline, gasline conduit; Asphalt rakers	6.30	.40	.30			
GROUP VI						
Nozzleman, Rodman	6.60	.40	.30			
Gunman, Materialman	6.30	.40	.30			
Reboundman	5.95	.40	.30			

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TRUCK DRIVERS

Douglas, Ormsby, Storey Counties & those areas within 25 mi. radius of the City Hall in the following cities: Fallon in Churchill Co., Elko in Elko Co., Yerington in Lyon Co., Carson City in Ormsby Co., Lovelock in Pershing Co., and Reno in Washoe Co.

(1-2)

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
All Dump Trucks (single multiple or dump units incl. Semi's & double & transfer units):						
Under 4 yds. (water level)	5.40	.41	.25	.25		
4 yds. & under 8 yds. (water level)	5.60	.41	.25	.25		
8 yds. & under 18 yds. (water level)	5.80	.41	.25	.25		
18 yds. & under 35 yds. (water level)	5.95	.41	.25	.25		
35 yds. & under 60 yds. (water level)	6.20	.41	.25	.25		
60 yds. & over	6.35	.41	.25	.25		
Transit Mix:						
Under 8 yds.	5.80	.41	.25	.25		
8 yds. & incl. 12 yds.	5.90	.41	.25	.25		
Over 12 yds.	6.10	.41	.25	.25		
Transit Mix with Boom shall receive 12 - 1/2¢ per hour above the appropriate yardage classification rate of pay when such boom is used.						
Water Trucks:						
Up to 2,500 gals.	5.60	.41	.25	.25		
2,500 gals. & over	5.70	.41	.25	.25		
Semi Trailers	5.80	.41	.25	.25		
DW 20's and 21's and other similar Cat type, Terra Cobra, LeTourneau Pulls, Tournarocker, Euclid and similar type equipment when pulling Aqua/Pak, Water Tank Trailers and fuel &/or Grease Tank Trailers, or other misc. Trailers	5.95	.41	.25	.25		
Heavy Duty Transport (high bed), Heavy Duty Transport (gooseneck low bed), Tiltbed or Flatbed Pull Trailers	5.70	.41	.25	.25		
Bootman, Combination Bootman and Road Oiler	5.85	.41	.25	.25		
Road Oil Truck or Bootman	5.55	.41	.25	.25		
Flat Rack (single unit) (2 axle unit)	5.45	.41	.25	.25		
Flat Rack (single unit) (3 axle unit)	5.55	.41	.25	.25		

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(2-2)

	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
TRUCK DRIVERS (Cont'd):						
Truck Drivers (Cont'd) Bus and Manhaul Drivers:						
Up to 18,000 lbs. (single unit)	5.45	.41	.25	.25		
18,000 lbs & over (single unit)	5.55	.41	.25	.25		
Helicopter Pilot (when transporting men or materials)	6.35	.41	.25	.25		
Industrial Lift Truck - Use Appropriate Flat Rack Rate (mechanical tailgate)						
Lift Jitneys and Fork Lift	5.65	.41	.25	.25		
Winch Truck & "A" Frame Drivers:						
Under 18,000 lbs.	5.55	.41	.25	.25		
18,000 lbs. & over	5.65	.41	.25	.25		
Warehousemen Spotters Teamsters	5.35	.41	.25	.25		
Tire Repairman	5.65	.41	.25	.25		
Truck Repairman	6.10	.41	.25	.25		
Pick-up Truck & Pilot Cars (job site)	5.45	.41	.25	.25		
Truck Oiler & Greaser, Fuel Truck Driver, Fuel Man & Fuel Island Man	5.55	.41	.25	.25		

REMAINING PORTIONS OF NEVADA	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
Truck Drivers:						
All Dump Trucks (single or multiple dump units incl. semi's & double & transfer units):						
Under 4 yds. (water level)	$ 6.15	.41	.25	.25		
4 yds. & under 8 yds. (water level)	6.35	.41	.25	.25		
8 yds. & under 18 yds. (water level)	6.55	.41	.25	.25		
18 yds. & under 35 yds. (water level)	6.70	.41	.25	.25		
35 yds. & under 60 yds. (water level)	6.95	.41	.25	.25		
60 yds. & over	7.10	.41	.25	.25		
Transit Mix:						
Under 8 yds.	6.55	.41	.25	.25		
8 yds. & incl. 12 yds.	6.65	.41	.25	.25		
Over 12 yds.	6.85	.41	.25	.25		
Transit Mix with Boom shall receive 12 - 1/2c per hour above the appropriate yardage classification rate of pay when such boom is used.						
Water Trucks:						
Up to 2,500 gals.	6.35	.41	.25	.25		
2,500 gals. & over	6.45	.41	.25	.25		
Semi Trailers	6.55	.41	.25	.25		
DW 20's and 21's and other similar Cat type, Terra Cobra, LeTourneau Pulls, Tournarocker, Euclid and similar type equipment when pulling Aqua/Pak, Water Tank Trailers and Fuel &/or Grease Tank Trailers, or other misc. trailers	6.70	.41	.25	.25		
Heavy Duty Transport (high bed), Heavy Duty Transport (gooseneck low bed), Tiltbed or Flatbed Pull Trailers	6.45	.41	.25	.25		
Bootman, combination Bootman and Road Oiler	6.60	.41	.25	.25		
Road Oil Truck or Bootman	6.30	.41	.25	.25		
Flat Rack (single unit) (2 axle unit)	6.20	.41	.25	.25		
Flat Rack (single unit) (3 axle unit)	6.30	.41	.25	.25		

TRUCK DRIVERS (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments				
		H & W	Pensions	Vacation	App. Tr.	Others
Truck Drivers:						
Bus and Manhaul Drivers:						
Up to 18,000 lbs (single unit)	6.20	.41	.25	.25		
18,000 lbs & over (single unit)	6.30	.41	.25	.25		
Helicopter Pilot (when transporting men or materials)	7.10	.41	.25	.25		
Industrial Lift Truck - Use Appropriate Flat Rack Rate (mechanical tailgate)						
Lift Jitneys and Fork Lift	6.40	.41	.25	.25		
Winch Truck & "A" Frame Drivers:						
Under 18,000 lbs.	6.30	.41	.25	.25		
18,000 lbs. & over	6.40	.41	.25	.25		
Warehousemen Spotters Teamsters	6.10	.41	.25	.25		
Tire Repairman	6.40	.41	.25	.25		
Truck Repairman	6.85	.41	.25	.25		
Pick-up Truck & Pilot Cars (job site)	6.20	.41	.25	.25		
Truck Oiler & Greaser, Fuel Truck Driver, Fuel Man & Fuel Island Man	6.30	.41	.25	.25		

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(1-6)

POWER EQUIPMENT OPERATORS:		Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	O
GROUP I							
ASSISTANT TO ENGINEER, Including brakeman, deckhand, fireman, heavy duty repairman helper, oiler, partsman (heavy duty repair shops parts room when needed), switchman, tar pot fireman	AREA I	$6.64	.73	1.00	.65	.31	
	AREA II	7.64	.73	1.00	.65	.31	
GROUP II							
COMPRESSOR (Electrically, diesel or gas powered, etc.) Material loader and/or conveyor (handling building materials); Oiler (truck crane); Pump; Tar pot fireman (power agitated)	AREA I	6.95	.73	1.00	.65	.31	
	AREA II	7.95	.73	1.00	.65	.31	
GROUP III							
BOX OPERATOR (Bunker); Concrete curing machines (streets, highways, airports, canals); Conveyor belt (tunnel); Engineer generating plant (500 K.W.); Fireman hot plant; Hydraulic monitor; Lubrication and service engineer (mobile and grease rack); Mixer box operator (concrete plant); Motorman; Rodman or chainman; Rotomist; Screedman (except asphaltic or concrete paving)	AREA I	7.11	.73	1.00	.65	.31	
	AREA II	8.11	.73	1.00	.65	.31	
GROUP IV							
BALLAST JACK TAMPER; Ballast regulator; Ballast tamper multi-purpose; Boxman (asphalt plant); Concrete mixer, skip type; Dinky (assistant to engineer required); Fork lift (construction job site); Koss carrier; Skip loader (under 1 cu. yd.); Tie spacer	AREA I	7.53	.73	1.00	.65	.31	
	AREA II	8.53	.73	1.00	.65	.31	

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POWER EQUIPMENT OPERATORS (cont'd)		Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Di
GROUP V							
CONCRETE MIXER (over 1 cu. yd.); Concrete pumps or pumpcrete guns; Elevator and material hoist (1 drum); Gradesetter, grade checker; Screedman (Barber-greene and similar) (asphaltic or concrete paving); Shuttle car; Signalman	AREA I	$7.70	.73	1.00	.65	.31	
	AREA II	8.70	.73	1.00	.65	.31	
GROUP VI							
BOOM TRUCK OR DUAL PURPOSE "A" FRAME TRUCK; B.L.H. Lima road pactor or similar; Chip box spreader (Flaherty type of similar); Concrete batch plant (wet or dry); Concrete saws (highways, streets, airports, canals); Highline cableway signalman; Locomotive (over 30 tons); Maginnis International Full Slab Vibrator (airports, highways, canals, warehouses); Mechanical burn, curb and/or curb gutter machine (concrete or asphalt); Power jumbo (setting slip forms, etc., in tunnels); Roller; Self-propelled compactor (single engine); Slip form pump (power driven by hydraulic, electric, air gas, etc., lifting device for concrete forms); Stationary pipe wrapping, cleaning and bending machine; Pavement breaker or tamper (with or without compressor combination); Pavement breaker, truck mounted, with compressor combination; Small rubber-tired tractors	AREA 1	7.79	.73	1.00	.65	.31	
	AREA II	8.79	.73	1.00	.65	.31	

(3-6)

POWER EQUIPMENT OPERATORS (cont'd)		Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	O
GROUP VII							
COMPRESSOR (2 to 6)(electric, diesel or gas); Concrete conveyor; Concrete conveyor or concrete pump, truck or equipment mounted (boom length to apply); Crusher plant engineer; Deck engineer; Drilling and boring machinery, vertical and horizontal (not to apply to waterliners, wagon drills or jackhammers); Instrument man; Kolman loader; Material hoist (2 or more drums); Mechanical finishers or spreader machine (asphalt, Barber-Greene and similar) (screedman required); Mine or shaft hoist; Pipe bending machines (pipelines only); Pipe cleaning machines (tractor propelled and supported); Pipe wrapping machines (tractor propelled and supported); Portable crushing and screening plants; Pumps (2 to 6); Refrigeration plant; Self-propelled boom type lifting device; Slusher; Soil tester (certified); Surface heater and planer; Trenching machine (maximum digging capacity 3 ft. depth) Truck type loader; Welding machines (gasoline or diesel) (2 to 6)	AREA I	7.94	.73	1.00	.65	.31	
	AREA II	8.94	.73	1.00	.65	.31	

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POWER EQUIPMENT OPERATORS (cont'd)		Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	O
GROUP VIII							
ASPHALT PLANT ENGINEER; CAR PAVER; Cast-in-place pipe laying machine; Combination slusher and motor; Dozer; Concrete batch plant - (multiple units); Elevating grader; Heavy-duty repairman and/or welder; Ken-seal; Loader (up to and including 2½ cu. yds.); Mechanical trench shield, mixermobile; Push cats; Road oil mixing machine Wood-mixer (and other similar pugmill equipment); Rubber-tired earthmoving equipment (up to and including 35 cu. yds. "struck." M.R.C., Euclids, T-Pulls, DW's 10, 20, 21 and similar); Self-propelled compactor with dozer; Sheepfoot; Small tractor (with boom); Soil stabilizer (P & H or equal); Timber skidder (rubber tire) or similar equipment; Tractor; Tractor drawn scraper; Tractor mounted compressor drill combination; Trenching machine (over 3 ft. depth); Tri-batch paver; Tunnel badger or tunnel boring machine; Tunnel mole boring machine	AREA I	$8.24	.73	1.00	.65	.31	
	AREA II	9.24	.73	1.00	.65	.31	
GROUP IX							
CANAL FINGER DRAIN DIGGER; Chicago boom combination backhoe and loader (up to and including 3/8 yds.); Combination mixer and compressor (gunnite); Lull Hi-Lift (20 ft. or over); Mucking machine; Tractor (with boom) (D6 or larger); Track laying type earth moving machine (single engine with tandem scrapers; Sub-grader (Curries or other types)	AREA I	8.42	.73	1.00	.65	.31	
	AREA II	9.42	.73	1.00	.65	.31	

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POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	O
GROUP X						
BOOM-TYPE BACKFILLING MACHINE; Back hoe hydraulic); Back hoe (up to and incl. 1 cu. yd.) (cable); Bridge crane; Cranes (not over 25 tons) (hammerhead and gantry); Cary-Lift or similar; Chemical grouting machine; Derricks (2 Group 10 operators required when swing engine remote from hoist); Derrick barges (except excavation work) Euclid loader similar types; Grade-alls (up to and including 1 cu. yd.); Heavy duty rotary drill rigs (including caisson foundation work and ribbons type drills); Lift-slab (Vagtborg and similar types); Loader (over 2½ yds. up to and including 4 yds.); Locomotive (over 100 tons) (single or multiple units); Motor patrol operator; Multiple engine earth moving machines (Euclids, Dozers, etc.) (no tandem scraper); Power shovels, Clamshell, Draglines, Cranes (up to and including 1 cu. yd.); Pre-stress wire wrapping machines; Self-propelled reservoir-debree equipment floating (200 h.p. and over); Shuttle car (reclaim station); Single engine scraper (over 35 cu. yd.); Vacuum cooling plant; Whirley crane (up to and including 25 tons); Rubber-tired scraper (self loading)						
AREA I	$8.61	.73	1.00	.65	.31	
AREA II	9.61	.73	1.00	.65	.31	

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POWER EQUIPMENT OPERATORS (cont'd)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	App. Tr.	Oth
GROUP XI						
AUTOMATIC ASPHALT OR CONCRETE SLIP FORM PAVER; Automatic railroad car dumper; Canal finger drain backfiller; Canal trimmer; Cranes (over 25 tons); Highline cableway operator; Loader (over 4 yds. up to and including 12 cu. yds.); Multi-engine earthmoving equipment (up to and including 75 cu. yds. "struck" M.R.C.); Power shovels, Clamshells, Draglines, Backhoes, Grade-alls (over 1 yd. and up to and including 7 cu. yds. M.R.C.); Self-propelled compactor (with multiple propulsion power units); Single engine rubber tired earth-moving machine (with tandem scraper); Slip form paver (concrete or asphalt (1 operator and 2 screedmen); Tandem cats and scrapers; Tower crane mobile Universal Liebher and Tower cranes (and similar types); Wheel excavator (up to and including 750 cu. yds. per hour); Whirley cranes (over 25 tons)						
AREA I	$8.84	.73	1.00	.65	.31	
AREA II	9.84	.73	1.00	.65	.31	
GROUP XI-A						
BAND WAGONS (in conjunction with wheel excavators); Loader (over 12 cu. yds.); Multi-engine earth moving equipment (over 75 cu. yds. "struck" m.r.c.); Operator of helicopter (when used in construction work); Power shovels and Draglines (over 7 cu. yds. M.R.C.); Remote controlled earth moving equipment; Wheel excavator (over 750 cu. yds. per hour)						
AREA I	9.71	.73	1.00	.65	.31	
AREA II	10.71	.73	1.00	.65	.31	

NEVADA AREA DEFINITIONS for Power Equipment Operators

** AREA 2: All areas not included within Area 1 as defined below.
* AREA 1: All of Northern Nevada within the following lines:

Commencing at the N.W. corner of township 22N, range 18E, Mount Diablo Baseline and Meridian at the California-Nevada border;
Thence Easterly to the N.E. corner of township 22N, range 22E;
Thence Southerly to the N.E. corner of township 20N, range 22E;
Thence Easterly to the N.W. corner of township 20N, range 26E;
Thence Northerly to the N.W. corner of township 22N, range 26E;
Thence Easterly to the N.W. corner of towhnsip 22N, range 29E;
Thence Northerly to the N.W. corner of township 30N, range 29E;
Thence Easterly to the N.E. corner of township 30N, range 33E;
Thence Southerly to the S.E. corner of township 24N, range 33E;
Thence Westerly to the S.E. corner of township 24N, range 31E;
Thence Southerly to the S.E. corner of township 16N,range 31E;
Thence Westerly to the S.E.corner of township 16N, range 30E;
Thence Southerly to the S.E. corner of township 15N, range 30E;
Thence Westerly to the S.E. corner of township 15N, range 27E;
Thence Southerly to the S.E. corner of township 14N, range 27E;
Thence Westerly to the S.E. corner of towpship 14N, range 23E;
Thence Southerly to the S.E. corner of township 13N, range 23E;
Thence Westerly to the S.E. corner of township 13N, range 22E;
Thence Southerly to the N.E. corner of township 10N, range 22E;
Thence Easterly to the N.E. corner of township 10N, range 23E;
Thence Southerly along the Easterly line of range 23E to the intersection of the California-Nevada border;
Thence North-Westerly, then Northerly following the California-Nevada border to the point of beginning.

Area 1 also includes that portion of Northern Nevada included within the following line:

Commencing at the S.W. corner of township 37N, range 52E;
Thence Easterly to the S.E. corner of township 37N, range 52E;
Thence Northerly to the N.E. corner of township 37N, range 52E;
Thence Easterly to the N.W. corner of township 37N, range 58E;
Thence Southerly to the S.W. corner of township 37N, range 58E;
Thence Easterly to the S.E. corner of township 37N, range 58E;
Thence Southerly to the N.E. corner of township 31N, range 58E;
Thence Westerly to the N.W. corner of township 31N, range 58E;
Thence Southerly to the S.W. corner of township 31N, range 58E;
Thence Westerly to the S.E. corner of township 31N, range 52E;
Thence Northerly to the N.E. corner of township 31N, range 52E;
Thence Westerly to the S.E. corner of township 32N, range 51E;
Thence Northerly to the point of beginning.

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